

ALTERNATIVE DISPUTE RESOLUTION (ADR) IN INDIA: A MODERN PATH TO JUSTICE

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INTRODUCTION

Justice delayed is justice denied – this timeless saying captures one of the most persistent challenges faced by the Indian legal system. With more than 4.5 crore cases pending across Indian courts, the need for an efficient, affordable, and speedy mechanism of dispute resolution has become more pressing than ever. In this context, Alternative Dispute Resolution (ADR) has emerged as a powerful tool to supplement traditional court litigation.

ADR refers to a range of techniques that enable disputing parties to resolve their conflicts outside formal courts. It includes arbitration, mediation, conciliation, negotiation, and Lok Adalats. The core philosophy of ADR lies in promoting amicable settlement, procedural flexibility, party autonomy, and confidentiality.

In this blog, we will explore the concept, evolution, legal framework, and importance of ADR in India, along with landmark judgments and challenges in its implementation.

1. Concept and Meaning of ADR

Alternative Dispute Resolution (ADR) encompasses all methods of resolving disputes other than the traditional court process. These mechanisms emphasize collaboration over confrontation and resolution over adjudication.

The main forms of ADR include:

Arbitration: A neutral third party (arbitrator) hears both sides and gives a binding decision known as an “award.”

Conciliation: Similar to mediation but more structured; the conciliator actively proposes terms of settlement.

Mediation: A mediator facilitates communication between parties to help them reach a voluntary settlement.

Negotiation: Parties directly discuss and settle the dispute without a third-party facilitator.

Lok Adalats: People’s courts organized at various levels to settle disputes quickly and amicably.

2. Historical Evolution of ADR in India

The concept of ADR is not new to India. It finds its roots in ancient practices of panchayats and village councils, where local elders resolved disputes based on fairness and community harmony.

During the British period, codified legal systems and formal courts were established, which gradually overshadowed indigenous systems. However, after independence, realizing the heavy burden on courts, the Indian government revived the ADR idea.

Some key milestones include:

The Arbitration Act, 1940: The first legislation to regulate arbitration proceedings.

The Legal Services Authorities Act, 1987: Provided statutory recognition to Lok Adalats.

The Arbitration and Conciliation Act, 1996: A landmark reform that aligned Indian arbitration law with the UNCITRAL Model Law (United Nations Commission on International Trade Law).

Amendments in 2015, 2019, and 2021: These amendments strengthened the efficiency, independence, and credibility of the arbitration process.

Thus, ADR evolved from informal community-based systems to modern, legally recognized mechanisms designed to complement the judiciary.

3. Legal Framework of ADR in India

The Constitution of India itself supports ADR principles under Article 39A, which directs the State to ensure equal access to justice and free legal aid.

(a) Arbitration and Conciliation Act, 1996

This is the principal legislation governing arbitration and conciliation in India.

It covers:

Domestic arbitration (Part I)

International commercial arbitration (Part I)

Enforcement of foreign awards under the New York Convention and Geneva Convention (Part II)

Conciliation proceedings (Part III)

The Act ensures party autonomy, minimal court intervention, and finality of awards. Amendments introduced time limits for awards, fast-track procedures, and institutional arbitration centers.

(b) Legal Services Authorities Act, 1987

This Act institutionalized Lok Adalats, which function as informal courts where disputes are settled amicably without fees or procedural complexities. Awards passed by Lok Adalats are final and binding and have the status of a civil court decree.

(c) Section 89 of the Code of Civil Procedure, 1908

Inserted through the CPC Amendment Act, 1999, Section 89 mandates courts to refer cases for ADR if there is a possibility of settlement. It covers arbitration, conciliation, mediation, and Lok Adalat settlement.

(d) Commercial Courts Act, 2015

It introduced mandatory pre-institution mediation for commercial disputes, encouraging early settlements and reducing court backlog.

4. Types of ADR Mechanisms

(a) Arbitration

In arbitration, parties agree to submit their dispute to an independent arbitrator or tribunal instead of going to court. The decision, known as an arbitral award, is binding and enforceable.

Advantages: Time-efficient, confidential, expert decision-makers.

Example: Arbitration is common in commercial contracts, infrastructure projects, and cross-border trade.

(b) Mediation

Mediation focuses on communication and negotiation between parties, facilitated by a neutral mediator. The mediator doesn't impose a decision but helps parties find mutually acceptable solutions.

Advantages: Preserves relationships, voluntary, and flexible.

Example: Effective in family disputes, workplace conflicts, and community issues.

(c) Conciliation

Conciliation is similar to mediation but more formal. The conciliator can suggest settlement proposals and actively guide discussions.

Advantages: Less adversarial, cost-effective, suitable for commercial disputes.

(d) Lok Adalat

Organized by Legal Services Authorities, Lok Adalats settle disputes pending in courts or pre-litigation cases.

Advantages: No court fee, speedy disposal, binding decisions, community participation.

Example: Motor accident claims, family disputes, cheque bounce cases, etc.

(e) Negotiation

This is the most informal form, where parties communicate directly without a third-party facilitator. It emphasizes mutual understanding and compromise.

5. Advantages of ADR

1. Speedy Justice: ADR resolves disputes in months rather than years.

2. Cost-Effective: Lower procedural and legal costs compared to litigation.

3. Confidentiality: Proceedings and settlements remain private.

4. Flexibility: Parties can choose procedure, place, and rules.

5. Preservation of Relationships: Particularly beneficial in family or business disputes.

6. Reduced Court Burden: Helps the judiciary focus on serious criminal and constitutional matters.

7. Global Acceptance: Encourages foreign investment by ensuring efficient dispute resolution mechanisms

6. Landmark Judgments Strengthening ADR in India

1. Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (2010)

The Supreme Court clarified that courts must explore ADR options before trial and identified suitable cases for mediation and conciliation.

2. Salem Advocate Bar Association v. Union of India (2003)

Upheld the constitutional validity of Section 89 CPC and emphasized ADR as a vital tool for reducing court backlog.

3. Bharat Aluminium Co. v. Kaiser Aluminium Technical Service Inc. (BALCO) (2012)

The Court ruled that Part I of the Arbitration Act applies only to domestic arbitration, enhancing clarity in international commercial arbitration.

4. M/s DLF Home Developers Ltd. v. Rajapura Homes (2021)

The Supreme Court reinforced the enforceability of arbitration clauses and emphasized institutional arbitration.

5. Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd. (2022)

Held that pre-institution mediation under the Commercial Courts Act is mandatory, promoting a mediation-first approach.

7. Institutional and Governmental Initiatives

To promote ADR, the government and judiciary have taken several initiatives:

Arbitration Council of India (ACI): Established to grade arbitral institutions and ensure quality standards.

India International Arbitration Centre (IIAC): Aimed at making India a global arbitration hub.

National Legal Services Authority (NALSA): Regularly organizes Lok Adalats and legal awareness camps.

Online Dispute Resolution (ODR): Digital ADR mechanisms like e-Lok Adalats and virtual mediations gained prominence during COVID-19.

8. Challenges in Implementation

Despite its promise, ADR faces several practical challenges:

1. Lack of Awareness: Many people still prefer traditional litigation due to lack of knowledge about ADR benefits.

2. Quality of Arbitrators and Mediators: Need for professional training and standardization.

3. Enforcement Issues: Delay in enforcement of arbitral awards discourages parties.

4. Institutional Weaknesses: Limited number of effective ADR institutions outside metropolitan cities.

5. Cultural Resistance: People often equate court decisions with justice and hesitate to settle privately.

6. Costs in High-Stake Arbitrations: Some arbitrations, especially international ones, are expensive and time-consuming.

9. The Future of ADR in India

The future of ADR in India appears bright, given recent legal and institutional reforms. Some key trends include:

Mandatory Mediation Laws: India is moving toward making mediation a first step before litigation in civil matters.

Online Dispute Resolution (ODR): Integration of technology through video conferencing, AI-based case management, and e-filing.

Institutional Arbitration Growth: Emergence of credible arbitration centers such as the Mumbai Centre for International Arbitration (MCIA) and Delhi International Arbitration Centre (DIAC).

Global Arbitration Hub Vision: India aims to compete with Singapore, London, and Hong Kong as a regional arbitration hub.

Educational Integration: Law schools now include ADR training and moot programs to prepare future mediators and arbitrators.

10. Conclusion

Alternative Dispute Resolution is no longer an “alternative” but a complementary necessity to traditional litigation. It reflects a shift from an adversarial to a collaborative justice model, ensuring that disputes are resolved amicably, efficiently, and equitably.

For a country like India, burdened by millions of pending cases, ADR represents hope for timely justice and trust in the rule of law. By strengthening institutional mechanisms,

promoting awareness, and adopting digital tools, ADR can truly transform the justice landscape – making justice accessible, affordable, and effective for all.