

ALTERNATIVE DISPUTE RESOLUTION IN LAND DISPUTE RESOLUTION: LEGAL FRAMEWORK, JUDICIAL TRENDS, AND CONTEMPORARY CHALLENGES

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ABSTRACT

Land disputes constitute one of the most pervasive and contentious categories of civil litigation in India, burdening an already overwhelmed judiciary with prolonged proceedings, escalating costs, and uncertain outcomes. This article examines the role of Alternative Dispute Resolution (ADR) mechanisms – namely arbitration, mediation, conciliation, and Lok Adalats – in addressing land-related conflicts, including boundary disputes, title contests, family partition suits, landlord-tenant disagreements, and compensation disputes arising out of compulsory land acquisition. The article traces the statutory framework underpinning ADR in India, analyses landmark and recent judicial pronouncements, surveys the transformative impact of the Mediation Act, 2023, and identifies contemporary challenges and the trajectory of reforms. It concludes that a robust, institutionalised, and context-sensitive ADR ecosystem is essential to delivering timely, equitable, and lasting resolution of land disputes in India.

Keywords: *Alternative Dispute Resolution, Land Disputes, Mediation Act 2023, Arbitration, Lok Adalats, Land Acquisition, Section 89 CPC, Judicial Trends.*

I. INTRODUCTION

Land is among the most prized and contested forms of property in India, carrying not only economic value but deep social, cultural, and emotional significance. Disputes over land – whether concerning title and ownership, boundary demarcation, tenancy rights, inheritance and partition, encroachment, or compulsory acquisition – are among the oldest and most complex forms of legal conflict. The Indian judiciary, already strained by a pendency of over 50 million cases across all tiers, is particularly challenged by the sheer volume and intractability of land disputes.

The conventional adversarial model of litigation, while essential for certain categories of disputes, is often ill-suited to land conflicts that

are embedded in family relationships, community ties, and long-standing possession. Prolonged trials, multiple appeals, interim injunctions, and the possibility of tampering with land records render court-based adjudication slow, expensive, and sometimes counterproductive. It is against this backdrop that Alternative Dispute Resolution (ADR) has emerged as an indispensable complement – and often a preferable substitute – to ordinary litigation.

ADR encompasses a spectrum of non-adversarial mechanisms, including arbitration, mediation, conciliation, negotiation, and Lok Adalats, each offering distinct procedural features adapted to the nature and complexity of the dispute at hand.¹ The Indian legislature

and judiciary have progressively expanded the ADR landscape through statutory reform and judicial innovation, culminating most recently in the enactment of the Mediation Act, 2023 – a watershed legislation that places mediation on a par with arbitration as a primary method of dispute resolution.⁶

This article surveys the ADR framework as applied to land disputes. Section II outlines the statutory and institutional framework. Section III categorises the types of land disputes amenable to ADR. Section IV analyses landmark judicial decisions shaping the field. Section V reviews recent developments including the Mediation Act, 2023 and proposed amendments to arbitration law. Section VI identifies the challenges and limitations of ADR in land disputes. Section VII offers concluding observations and reform recommendations.

II. STATUTORY AND INSTITUTIONAL FRAMEWORK GOVERNING ADR IN LAND DISPUTES

A. Section 89 of the Code of Civil Procedure, 1908

Section 89 of the Code of Civil Procedure, 1908 (CPC) constitutes the foundational provision mandating courts to encourage settlement outside the adversarial framework.³ Inserted by the CPC (Amendment) Act, 1999 and operationalised from 2002, the provision directs courts to formulate the terms of a possible settlement and refer the dispute to any of four mechanisms: arbitration, conciliation, judicial settlement including settlement through Lok Adalat, or mediation. The Supreme Court in *Salem Advocate Bar Association v. Union of India*²⁸ issued procedural directions for the uniform implementation of Section 89, and later in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.*² clarified the categories of disputes that are or are not suitable for ADR. Significantly, the Court held that disputes concerning partition or division among family members, co-owners, or coparceners are ordinarily suitable for ADR.

B. Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996⁴ is the principal statute governing arbitration and conciliation in India. It applies to both domestic and international commercial arbitrations. In the context of land disputes, the Act is particularly relevant in boundary disputes between companies, real estate development conflicts, construction contracts, and disputes arising under conveyances, leases, or joint development agreements. However, the arbitrability of disputes over immovable property – particularly those touching upon title and rights in rem – remains nuanced. The Supreme Court in *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.*⁸ held that rights in rem, such as those involving ownership and title to immovable property, are generally non-arbitrable, whereas rights in personam arising from contractual relationships over land are arbitrable.

C. The Legal Services Authorities Act, 1987 and Lok Adalats

The Legal Services Authorities Act, 1987⁵ established the statutory framework for Lok Adalats, which have become a critical instrument for mass resolution of land and property disputes. Lok Adalats function at the national, state, district, and taluk levels and are empowered to settle both pending and pre-litigation matters. An award of the Lok Adalat is deemed a decree of a civil court and is final and binding, with no appeal lying therefrom. National Lok Adalats, periodically organised by the National Legal Services Authority (NALSA), have succeeded in settling millions of land-related disputes, especially compensation claims under revenue laws and boundary matters at the panchayat level.²⁹

D. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

The Land Acquisition Act, 2013⁹ introduced a sui generis dispute resolution structure for compensation and rehabilitation grievances

arising from compulsory acquisition. Under Section 64,¹⁰ all disputes concerning the determination of and payment of compensation are referred to arbitration under an Arbitral Tribunal constituted by the appropriate government. This statutory arbitration mechanism is a significant departure from ordinary civil litigation and reflects the legislature's commitment to expedited resolution in the sensitive context of state-induced displacement. Sections 75–76 further provide for judicial review of the Tribunal's award.¹¹

E. The Mediation Act, 2023

The Mediation Act, 2023⁶ received Presidential assent on 15th September 2023 and marks the most significant institutional development in India's ADR landscape in recent years. The Act establishes mediation as a formal, structured, and enforceable dispute resolution mechanism for civil and commercial disputes, irrespective of whether the parties have a pre-existing mediation clause.¹² Its key provisions – discussed in detail in Section V below – include voluntary pre-litigation mediation, online mediation, the Mediation Council of India, and enforcement of Mediated Settlement Agreements (MSAs) as court decrees. Importantly, the Act explicitly excludes *land acquisition and determination of compensation under land acquisition laws* from its purview,²² recognising that such disputes are already governed by the specialised framework under the 2013 Act. However, private land disputes – partition, title, boundary, tenancy – fall squarely within the Mediation Act's scope.

F. Real Estate (Regulation and Development) Act, 2016 (RERA)

RERA²⁷ introduced a distinct adjudicatory mechanism for disputes between homebuyers/allottees and real estate developers concerning the sale, development, and delivery of immovable property. The Real Estate Regulatory Authority (RERA) and its Appellate Tribunal function as quasi-judicial bodies with authority to direct mediation and

conciliation as a first step before formal adjudication. The RERA framework is especially significant given the proliferation of real estate disputes in peri-urban and metropolitan areas.

III. CATEGORIES OF LAND DISPUTES AMENABLE TO ADR

Land disputes are highly heterogeneous. For ADR to be applied effectively, it is necessary to map the dispute type onto the appropriate mechanism:

(i) Family Partition Disputes: Disputes among coparceners, co-owners, and heirs over division of ancestral and joint family property are among the most common categories of land litigation. The Supreme Court has consistently held that such disputes are 'most appropriate' for mediation and ADR resolution.²

(ii) Title and Ownership Disputes: Contests over ownership and title to land – particularly those involving registered documents, adverse possession, or fraud in conveyance – are in principle non-arbitrable given their in rem character. However, they are amenable to mediation, which can produce agreed resolutions without the court determining title.

(iii) Boundary Disputes: Disagreements between adjoining landowners over precise demarcation, encroachment, or common walls are well-suited to neutral expert determination or conciliation facilitated by a surveyor-mediator.

(iv) Landlord-Tenant Disputes: Matters relating to rent, eviction, arrears, and conditions of tenancy – particularly where regulated by state Rent Control Acts – are frequently resolved through Lok Adalats and, increasingly, through formal mediation under the 2023 Act.

(v) Land Acquisition Compensation: Disputes about the quantum of compensation awarded under the 2013 Act are statutorily channelled to Arbitral Tribunals, providing a mandatory ADR channel in the acquisition context.²⁴

(vi) Real Estate and Builder-Buyer Disputes: Conflicts concerning delayed possession,

defective construction, or breach of allotment terms between developers and purchasers are increasingly being resolved through RERA-mandated conciliation and through arbitration clauses embedded in builder-buyer agreements.¹³

IV. LANDMARK JUDICIAL PRONOUNCEMENTS

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

This landmark decision² by a two-judge bench of the Supreme Court remains the locus classicus on ADR in civil proceedings. The Court provided a definitive catalogue of cases suitable and unsuitable for ADR under Section 89 CPC. Significantly, it identified partition and property disputes among family members as paradigmatically suited for ADR, while excluding cases involving serious fraud, rights of the public, and matters affecting incapacitated parties from the ADR mandate. The decision also clarified that the court's role under Section 89 is facilitative rather than coercive, and that parties must consent to the chosen mechanism.

B. Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. (2011)

In this decision⁸ the Supreme Court laid down a crucial distinction between rights in rem and rights in personam for the purpose of arbitrability. The Court held that actions relating to ownership and title over immovable property – being rights in rem – are not arbitrable as they affect the world at large and can only be adjudicated by courts of competent jurisdiction. Conversely, contractual rights arising from transactions over land, such as a dispute about breach of a development agreement, are rights in personam and therefore arbitrable. This distinction continues to govern the scope of arbitration in land matters.

C. M/s Emaar MGF Land Ltd. v. Aftab Singh (2019)

In this important decision,¹³ the Supreme Court held that consumer disputes before the Consumer Disputes Redressal Commissions

cannot be referred to arbitration merely because a builder-buyer agreement contains an arbitration clause. The Court ruled that the Consumer Protection Act, 1986 confers special jurisdiction that cannot be ousted by arbitration agreements. This judgment has significant implications for homebuyers in real estate disputes, preserving their right to access consumer fora despite contractual arbitration clauses.

D. Indore Development Authority v. Manoharlal (2020)

This Constitution Bench decision¹⁴ is critical in the land acquisition context. The Court overruled earlier judgments and held that acquisition proceedings are deemed to have lapsed under Section 24 of the 2013 Act only when both conditions – non-payment of compensation and failure to take physical possession – are simultaneously unfulfilled. The decision has a direct bearing on the volume of compensation disputes channelled to ADR, clarifying the conditions that keep acquisitions alive and thus the scope of compensation arbitration.

E. NN Global Mercantile Pvt. Ltd. v. Indo Unique Flame Ltd. (2023)

This five-judge Constitution Bench decision¹⁸ held that an arbitration agreement contained in an unstamped or insufficiently stamped instrument is not enforceable and that courts are bound to impound such instruments before proceeding further under Section 11 of the Arbitration Act. Given that agreements concerning sale, development, or lease of land are frequently required to be stamped and registered, this judgment has considerable practical implications for the arbitrability of land-related contractual disputes.

F. Mahendra Nath Soral v. Ravindra Nath Soral (2024)

In a recent pronouncement,¹⁵ a bench of Justices Rajesh Bindal and P.B. Varale reiterated that property disputes between family members are among the most appropriate

cases for ADR. The Court observed that the trial court should have attempted to resolve the partition dispute through mediation and conciliation before proceeding to trial, citing *Afcons Infrastructure* with approval. The dismissal of the appeal was accompanied by a strong judicial exhortation to all courts to explore ADR proactively in family property matters.

G. TATA Sons (P) Ltd. v. Siva Industries & Holdings Ltd. (2023)

This decision¹⁶ clarified the interpretation of Section 29A of the Arbitration Act regarding mandatory timelines for completion of arbitral proceedings in the context of international commercial arbitrations. The Court held that the amended Section 29A – which prescribes a 12-month timeline for rendering an award, extendable by court order – does not apply to international commercial arbitrations. Although not directly a land dispute case, the judgment has implications for international real estate and infrastructure arbitrations.

V. RECENT LEGISLATIVE AND INSTITUTIONAL DEVELOPMENTS

A. The Mediation Act, 2023 – A Paradigm Shift

The enactment of the Mediation Act, 2023⁶ represents the most significant legislative intervention in Indian ADR since the Arbitration and Conciliation Act, 1996. Prior to 2023, mediation in India operated in a fragmented manner – court-annexed mediation under Section 89 CPC, mediation under the Commercial Courts Act, 2015, and isolated mediation provisions in sector-specific legislation such as RERA and the Companies Act, 2013. The 2023 Act consolidates and supersedes this fragmented framework.²⁰

Key features of the Act relevant to land disputes include:

Pre-Litigation Mediation: Parties may, voluntarily and by mutual consent, refer any civil or commercial dispute – including disputes over property, title, and tenancy – to a registered mediator before instituting suit. This is a

voluntary process, having been amended from the original mandatory scheme following Parliamentary Committee recommendations.¹²

Mediated Settlement Agreement (MSA): An MSA authenticated by the mediator is final and binding upon the parties and is enforceable as a decree of a civil court under the CPC. Challenges to an MSA are limited to grounds of fraud, corruption, impersonation, or subject-matter non-suitability, and must be made within 90 days.¹⁴

Online Mediation: The Act institutionalises online mediation – particularly significant for land disputes in rural or remote areas where physical attendance is onerous.

Mediation Council of India: The Act establishes the Mediation Council of India as the apex regulatory body for mediators and mediation institutions, tasked with setting qualification standards, maintaining a register, and accrediting mediation service providers.⁶

Community Mediation: Chapter X of the Act provides for community mediation to resolve disputes likely to affect peace, harmony, and tranquillity among residents of an area – a provision of direct relevance to village-level land and boundary disputes.¹¹

Despite these advances, the Act has been criticised for excluding land acquisition compensation disputes from its purview, and for limiting applicability to government parties in commercial disputes only.¹²

B. Arbitration and Conciliation (Amendment) Bill, 2024

Following the report of the High-Level Committee on Arbitration Law Reforms under T.K. Viswanathan in 2023,²⁵ the Government introduced the Arbitration and Conciliation (Amendment) Bill, 2024.²⁶ The proposed amendments include statutory recognition of emergency arbitration, enforcement of emergency arbitrator orders in India-seated proceedings, and the delegation of certain court powers (such as extension of award timelines and arbitrator substitution) to arbitral

institutions. These reforms are expected to significantly enhance the efficiency and attractiveness of arbitration for land and infrastructure disputes.

C. Commercial Courts Act, 2015 – Mandatory Pre-Litigation Mediation

Section 12A of the Commercial Courts Act, 2015²¹ mandates pre-institution mediation for all commercial disputes – which includes high-value real estate and land development matters – before a plaint can be filed. The Supreme Court has held that this provision is substantive and non-compliance renders the suit liable to rejection. This mechanism has channelled a significant number of commercial property disputes into mediation.

D. Institutional Developments

India's institutional ADR infrastructure has expanded considerably. The India International Arbitration Centre (IIAC) in New Delhi, the Delhi International Arbitration Centre (DIAC), the Mumbai Centre for International Arbitration (MCIA), and the Arbitration Bar of India (inaugurated May 2024) collectively represent a maturing ecosystem. The recent August 2024 Singapore International Commercial Court ruling setting aside an ICC arbitral award for procedural lapses in an Indian infrastructure dispute³⁰ has also prompted Indian institutions to adopt more rigorous standards, with direct implications for land and infrastructure arbitrations.

VI. CHALLENGES AND LIMITATIONS OF ADR IN LAND DISPUTE RESOLUTION

A. Issues of Non-Arbitrability

The doctrinal distinction between rights in rem and rights in personam – firmly established in *Booz Allen* – creates a significant limitation on the use of arbitration in land matters. Disputes touching upon title and ownership cannot be arbitrated, and parties often encounter difficulties in precisely demarcating in personam from in rem claims, particularly in cases involving contested conveyances, benami transactions, or adverse possession.⁸

B. Power Imbalances and Rural Land Disputes

In a substantial proportion of rural land disputes, power asymmetries – arising from caste, gender, economic status, and access to information – undermine the voluntariness and fairness of ADR processes. Village-level or community mediation risks reinforcing existing hierarchies rather than delivering impartial resolutions. The effectiveness of Gram Nyayalayas (village courts) and informal panchayat-based dispute resolution remains uneven.

C. Multiplicity of Parties and Complex Title Chains

Land disputes frequently involve multiple parties – heirs, co-owners, mortgagees, lessees, encroachers – and span multiple transactions over generations. The presence of non-signatories to a mediation or arbitration agreement raises complex questions of joinder and estoppel. The 'group of companies' doctrine in arbitration, recently affirmed by the Supreme Court, offers a partial solution in commercial contexts, but has limited application in family partition or agricultural land disputes.

D. Land Records and Documentary Uncertainty

ADR processes are hampered by India's notoriously unreliable land record system. Multiple and conflicting entries in revenue records, mutation registers, and cadastral surveys create factual complexity that is difficult to resolve without the coercive evidentiary powers of a court. A mediator or arbitrator lacks the authority to compel production of official records or direct correction of revenue entries.

E. Exclusion of Compensation Disputes from Mediation Act

The Mediation Act, 2023 explicitly excludes land acquisition and compensation determination from its scope.²² This means that landowners dispossessed under the 2013 Act and dissatisfied with the Arbitral Tribunal's award continue to face the formal arbitration-cum-court pathway, with its attendant delays. There

is a compelling case for incorporating a mediation window into the acquisition compensation process, particularly at the pre-Tribunal stage.

F. Enforcement of MSAs and Arbitral Awards

While MSAs under the Mediation Act and awards under the Arbitration Act are enforceable as decrees, practical enforcement in land disputes often requires further recourse to courts – for mutation of title, delivery of possession, or eviction of occupants – thereby restoring a degree of dependence on the formal judicial system.

VII. CONCLUSION AND WAY FORWARD

The integration of ADR into India's land dispute resolution ecosystem has advanced significantly in the last decade, driven by legislative innovation, judicial activism, and growing institutional capacity. The Mediation Act, 2023 heralds a new era for mediation as a structured, enforceable, and professionally mediated process, and the proposed amendments to the Arbitration Act promise a more efficient arbitral system. The Supreme Court's consistent exhortations – most recently in *Mahendra Nath Soral* (2024) – underscore the judiciary's commitment to directing appropriate land disputes away from congested courts and into ADR.

Nevertheless, significant challenges remain. Non-arbitrability of title disputes, power imbalances in rural settings, unreliable land records, multiplicity of parties, and incomplete enforcement mechanisms all limit the transformative potential of ADR. The exclusion of government parties from the Mediation Act's purview – save for commercial disputes – is a notable lacuna, given that the State remains the largest litigant in land-related proceedings.

Going forward, reform priorities should include: (i) the creation of specialised land mediation tribunals with access to certified surveyors and revenue officials; (ii) mandatory digital land record updation as part of any ADR settlement; (iii) targeted capacity-building for mediators in

rural and tribal land dispute contexts; (iv) a phased extension of the Mediation Act to government-party land acquisition disputes; and (v) the enactment of clear rules on interim relief during mediation proceedings involving immovable property.

Land is not merely a commodity – it is a source of livelihood, identity, and dignity for millions of Indians. ADR, when implemented with sensitivity to context, inclusivity, and institutional rigour, holds the genuine promise of transforming India's land dispute landscape from one of chronic litigation to one of timely, dignified, and durable resolution.

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