

Overcoming Judicial Backlog and Delay.

ABSTRACT:

The legal system in India is extremely strict. Extraordinary efforts have been made to develop tactics that try to resolve conflicts in a way that is less expensive, more effective, and more fulfilling. These strategies include using mediation and other "alternative dispute resolution" (ADR) approaches more widely and appropriately. The study examines how the ADR system has been embraced by Indian society and how it has resulted in numerous advantages for various courts and their clients, including cost and time savings. laws pertaining to alternative dispute resolution (ADR) in India, as well as the function of attorneys in this process.

Keywords: Stringent; Legal practitioners; Disputes; Society.

INTRODUCTION

Article 21 of the Indian Constitution guaranties every citizen the right to a timely trial, which guaranties a fair, reasonable, and just process. Courtroom conflict is like cancer. All parties involved, as well as society at large, will benefit from a speedy resolution.¹

The history of ADR can be linked to our past. One of India's most significant contributions to global jurisprudence is the concept of Lok Adalats, or People's Courts. ADR procedures like mediation and Lok Adalat have long been used in Indian society at the local level; they are known as panchayats. In the Lok Adalat procedure, the age-old idea of resolving a problem or disagreement through arbitration, conciliation, mediation, or negotiation known as the "Nyaya Panchayat" decision is abstracted.

Meaning and Modes Of ADR

ADR can be defined as the most cooperative method of resolving disputes in the modern world. An ideal answer to expensive and time-consuming litigation or conflict resolution. ADR is a clientfriendly method where a client fully knows his case and can monitor its development, while litigation is completely complicated for the average person. ADR offers a substitute for the time-consuming and unnecessary litigation. A third party or independent individual, such as an ADR practitioner, mediator, negotiator, or conciliator, is

¹ P.M. BAKSHI: THE CONSTITUTION OF INDIA, UNIVERSAL LAW PUBLISHING CO. NEW DELHI. 2012

typically tasked with reaching a reasonable and reasonable result. ADR frequently resolves a conflict at the outset and keeps the parties from requesting court support.

Pre- Independence: British Rule

When India was ruled by the British Numerous laws were proposed, and India's government underwent a significant transformation. In 1772, the courts were given the authority to arbitrate disputes at the parties' request or on their own initiative. Code of Civil Procedure was enacted, under sections 312 to 327 of the Act mentioned arbitration but in 1882 the sections relating to arbitration was repealed.²

The Indian Arbitration Act, 1899 was passed in order to implement alternative dispute resolution in India. The English law served as the only foundation for the measure. The CPC was then changed once more in 1908, and section 89 with the second schedule granted the courts broad authority to submit cases to alternative dispute resolution (ADR). Then, two useful pieces of law to deal with arbitration were the Indian Arbitration Act of 1899 and section 89 read with the second schedule of the Code of Civil Procedure of 1908.³

After that, India signed and ratified the Geneva Convention in 1937, and the Arbitration (Protocol and Convention) Act, 1937 was created as a comparable piece of law. Section 89 of the CPC's second schedule and the Indian Arbitration Act, 1899 were repealed in 1940 and replaced by the Arbitration Act, 1940. Panchayats were highly successful at settling conflicts in Indian villages at the local level.

Post- Independence Era

In India, the Arbitration (Protocol and Convention) Act, 1937 was used to enforce foreign awards, while the Arbitration Act, 1940 was used to send conflicts to alternative dispute resolution (ADR). The Foreign Award (Recognition and Convention) Act, 1961 was then passed, and India signed the New York Convention in 1961.⁴

²[HTTP://COURTS.STATE.DE.US/COURTS/SUPERIOR%20COURT/ADR/ADR/ADR_HISTORY.HTM](http://courts.state.de.us/courts/superior%20court/ADR/ADR/ADR_HISTORY.HTM)

³ <https://www.thelawpoint.com/post/brief-history-of-arbitration-in-india>

⁴ [Arbitration and Conciliation Act, 1996](#). [1, 2]

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61 The Supreme Court provided an off-quoted description of the Arbitration Act, 1940 in M/S
62 Guru Nanak Foundation vs. Rattan Singh & Sons in 1981. It said that "lawyers have laughed
63 and legal philosophers have wept over the way the proceedings under the act are conducted
64 and without exception challenged in courts." Experience demonstrates and legal reports
65 provide ample evidence that the act's proceedings have grown extremely technical and
66 accompanied by endless prolixity, offering the unwary a legal trap at every turn. In 1985, the
67 UNCITRAL model law was adopted and signed by India on International commercial
68 arbitration.

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70 The Arbitration (Protocol and Convention) Act, 1937, the Arbitration Act, 1940, and the
71 Foreign Award (Recognition and Convention) Act, 1961 were finally repealed and combined
72 into a single piece of legislation in 1996, which was named the Arbitration and Conciliation
73 Act, 1996. In order to improve the Act's effectiveness and efficiency, Section 89 with Order-
74 X (Rules 1A to 1C) was reintroduced in CPC in 2002. In 2015, 2019, and 2021, the Act of
75 1966 underwent two amendments.

76

77 However, the Indian Arbitration Act of 1940, which was entirely based on the English
78 Arbitration Act, was a momentous step. It mostly addressed domestic arbitration.
79 Article 21 of the Indian Constitution, which was ratified following the country's
80 independence, states that no one may be deprived of their life or personal freedom unless a
81 legally mandated process is followed. Additionally, the process ought to be "reasonable, fair,
82 and just.

Supreme Court of India in landmark case held that right to speedy trial is part and parcel of right to life or personal liberty.⁵

The Civil Procedure Code Amendment Act of 1999 added Section 89 (Settlement of Dispute outside Court) and Rules 1A to 1C, Order 10 (Direction of Court to opt for any one mode of ADR after first hearing of suit) to the Code of Civil Procedure, 1908. This means that courts that have elements of settlement must ask the parties to agree on one or more ADR methods.

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Arbitration and Conciliation Act, 1996: The UNCITRAL Model Law on International Commercial Arbitration, 1985 and the Conciliation Rules, 1980 served as the foundation for the Arbitration and Conciliation Act, 1996, which was enacted with the significant goal of harmonizing the concept of arbitration and conciliation across various legal systems worldwide and ensuring its universal application. The primary goal of the act is to promote peaceful conflict resolution at the national and international levels through arbitration and conciliation. It encourages the settlement of conflicts by mediation, conciliation, or other procedures during arbitral proceedings, which is a good step toward the effective promotion of ODR. This Act also gives settlement agreement reached by parties as a result of proceedings the status of court judgment under section 73 of this Act. Recently, Arbitration and Conciliation (Amendment) Act, 2015, gave legal recognition to Arbitration Agreement entered into by communication through electronic means, which is a positive initiative towards the promotion of ODR in effective manner.

Information and Technology Act, 2000: In order to provide online contracts more certainty and so promote e-commerce, the ideas of writing and signing have recently undergone substantial modernization. Adopting the UNCITRAL Model Law on Electronic Commerce in 1996 was the most significant international step toward this goal. The UNCITRAL Model Law on Electronic Signatures 2001 was then enacted. The Information and Technology Act, 2000, which is based on the UNCITRAL Model Law of e-commerce, was passed in India to promote e-commerce and provide legal recognition for e-transactions. These legislative

⁵*Hussainara Khatoon v. State of Bihar* (1979)

amendments led to "a global reform of writing requirement." The Act's Sections 4, 5, 10-A, and 11–15 demonstrate the legal acceptance of electronic signatures and records.⁶

Indian Evidence Act, 1872: What if the agreements entered into through e-communication are not admissible as evidence in courts of law? For this purpose, Section 65-A and 65-B were inserted which has made electronic evidence as secondary copy to be admissible in courts of law subject to the satisfaction of requirements mentioned in section 65-B.

Types of ADR In India.

Arbitration

Arbitration, an alternative dispute resolution mechanism (ADR), is often described as "a binding voluntary alternative dispute resolution process by a private forum chosen by the Parties". It is inherently expected, that: If the Parties with their eyes wide open have consented to refer the matter to the arbitration, then normally the finding of the Arbitrator should be accepted without demur. Apparently, after the pronouncement of the arbitral award the Court(s) are expected to discharge a mere "supervisory role",

In *ONGC vs Saw Pipes*, one of the first detailed judgment(s) analysing and interpreting Section 34 and *Associate Builders vs DDA*, that had the benefit of the *ONGC* judgment (*supra*), the Supreme Court painstakingly defined and re-defined, the limited scope of interference with arbitral awards.

Mediation

A third, impartial party mediates disputes between two or more parties in an effort to help them come to a consensus. A third party serves as a mediator to settle disputes amicably via the use of suitable communication and negotiation strategies in this simple and straightforward party-centered negotiation procedure. The parties have complete control over this process. The mediator's job is to help the parties settle their disagreement. The mediator does not force his opinions or decide what constitutes a just settlement.

Conciliation

Although it is less formal, conciliation is a type of arbitration. It is the process of assisting the parties in reaching a mutually agreeable conclusion through the use of a conciliator who

⁶<https://contractshield.in/blog/e-contracts-india-guide.html>

meets with each party individually. In order to reduce tension between parties, improve communication, and interpret issues in order to reach a negotiated settlement, conciliators meet separately. Prior consent is not required, and it cannot be imposed on a party that does not intend to engage in conciliation. In that regard, it differs from arbitration.

Lok Adalat

Lok Adalat, sometimes known as the "People's Court," is chaired by a sitting or retired judge, a social activist, or a member of the legal profession. In order to exercise this jurisdiction, the National Legal Service Authority (NALSA) and other Legal Services Institutions regularly hold Lok Adalats.

Lok Adalat may be consulted for any issue that is pending in a regular court or for any disagreement that hasn't been presented before a court of law. The process is quick since there are no court costs and certain guidelines are followed. The court fee that was initially paid in court at the time the petition was filed is also reimbursed to the parties if any matter that was ongoing in court or referred to the Lok Adalat is later settled.

Regular courts do not allow for direct communication between parties and the judge. If both parties agree, a case that has been pending in ordinary court for a long time may be transferred to Lok Adalat. The judges' duty is limited to that of statutory conciliators; they are only able to convince the parties to reach a settlement outside of the normal court in the Lok Adalat. Legal Services Authorities (State or District) as the case may be on receipt of an application from one of the parties at a pre-litigation stage may refer such matter to the Lok Adalat for which notice would then be issued to the other party. Lok Adalats do not have any jurisdiction to deal with cases of non-compoundable offenses.⁷

Judicial Pronouncement

Important instances include *Maruti Udyog Limited v. Maruti Software Pvt. Ltd. and Tata Sons v. The Advanced Information Technology Association* [38]. In this case, the domain name issue was resolved through WIPO, the Arbitration and Mediation Center. The Supreme Court ruled in *State of Maharashtra v. Dr. Praful B. Desai* that video-conferencing could be used to record witness testimony because it satisfies Section 273 of the

⁷[HTTPS://SINGHANIAN.IN/ALTERNATIVE-DISPUTE-RESOLUTION-IN-INDIA-A-BRIEF-OVERVIEW/](https://singhanian.in/alternative-dispute-resolution-in-india-a-brief-overview/)

179 Code of Criminal Procedure's requirement that evidence be recorded in the accused's
180 presence.

181 The Hon'ble Supreme Court ruled in Trimex that the online arbitration agreement is the most
182 crucial arbitration document. Since the parties do not meet in person but rather digitally, it is
183 necessary that the agreement precisely outlines every aspect of the dispute settlement process.
184 A consensus must be reached, and the agreement must comply with Section 7 of the
185 Arbitration and Conciliation Act of 1996. Telex, Telegram, and other forms of
186 communication have been recognized as legitimate forms of communication in Shakti Bhog
187 Food Ltd. v. Kola Shipping Ltd. While there is a win-lose scenario in the litigation process,
188 there is a win-win scenario in the alternative dispute resolution (ADR) system. Through the
189 ADR system the result is final and the award has been passed by the Sole Arbitrator or
190 Arbitral Tribunal.⁸

191 **Advantages of Mediation⁹**

192 The parties actively engage in the negotiation process during participatory mediation. The
193 mediation is within the power of the parties. They have the authority to determine the terms
194 of the settlement as well as whether or not to resolve the conflict.

- 195 • The mediation process is incredibly quick, effective, and economical.
- 196 • The mediation procedure is confidential.
- 197 • There is improved and more efficient communication between the parties.
- 198 • Mediation aids in preserving, enhancing, and mending the parties' relationships.
- 199 • The parties are free to withdraw from the mediation process at any time, making it
- 200 voluntary. Any party may choose to withdraw from the mediation process if they believe it is
- 201 not beneficial to them.
- 202 • In mediation, a mutually beneficial settlement is established.
- 203 • At every step of the conflict resolution process, the mediation process takes the parties'
- 204 long-term and fundamental interests into account.

205 **Advantages of Lok Adalats.¹⁰**

206 In highlighting the significance of Lok Adalats, the Apex Court has noted:
207 "To lessen the burden of minor disputes in the normal courts, Lok Adalats were established to

⁸ <https://arbitrationagreements.org/how-adr-creates-winwin-situation/>

⁹ <https://www.systech-int.com/insights/thoughts/mediation-advantages-and-disadvantages>

¹⁰ <https://testbook.com/ias-preparation/lok-adalats>

restore access to remedies and rights. Experience has demonstrated that Lok Adalats not only resolve enormous numbers of cases but also have certain benefits, some of which are mentioned below:

- Quick justice and avoidance of drawn-out court processes.
- No-cost justice.
- Resolving backlog case issues.
- Sustaining friendly relations

CONCLUSION.

The purpose of the Alternative Dispute Resolution mechanism (ADR) is to improve the effectiveness and efficiency of our conventional judicial systems, not to replace litigation. In order to lessen the current burden of judicial functioning, this system expresses the efficient Alternative Dispute Resolution processes. The number of pending cases is growing daily, but the judiciary is not only to blame. It should be mentioned that "inadequate judge population ratio" is the cause of the backlog.

In this regard, the government must play a crucial role. According to this perspective, the goal is to increase the effectiveness of Alternative Dispute Resolution Mechanisms by expanding their scope of operation and removing them from a very specific and constrained field of application. Additionally, attorneys must play a highly active and constructive role. They must always remember that a dispute is a problem that has to be resolved rather than a fight that needs to be won.