



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2025

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

ARBITRATION AND MEDIATION IN INDIA

~ *Yash Sharma*

INTRODUCTION

Alternative Dispute Resolution (ADR) means you can solve a dispute in ways other than going to court. They refer to arbitration, mediation, conciliation, negotiation and lok adalats. Strategies in ADR seek to quicken, make less expensive and settle disputes friendlier, giving the court system help and bringing together disputing parties. In India, arbitration and mediation are considered particularly important because they can be adapted easily and receive legal recognition. When dealing with commercial disputes of any kind, arbitration is now essential because an arbitrator's decision is binding on both parties. Unlike negotiation, mediation has a mediator who helps parties work out a solution they both can accept. It has become clear to the law in India that such policies have value. Thanks to the Arbitration and Conciliation Act, 1996¹, based on the UNCITRAL Model Law², arbitration and conciliation are regulated well in India. Thanks to the amendments of 2015, 2019 and 2021 which are included in the Arbitration and Conciliation (Amendment) Acts³, India has improved its approach to arbitration. Additionally, mediation is becoming more common because of Section 89 of the Code of Civil Procedure, 1908⁴, the creation of the Mediation Rules and the recent Mediation Act. Indian lawmakers are focusing on the importance of consensual dispute resolution as a main principle in modern law.

HOW ALTERNATIVE DISPUTE RESOLUTION HAS DEVELOPED IN INDIA

Taking disputes out of court has long been practiced in India. A century or more before any laws existed, Panchayats of village elders settled disputes among people. They worked towards

¹ The Arbitration and Conciliation Act, No. 26 of 1996, INDIA CODE (1996).

² UNCITRAL Model Law on International Commercial Arbitration, 1985, with amendments as adopted in 2006.

³ Arbitration and Conciliation (Amendment) Act, No. 3 of 2016; No. 33 of 2019; No. 3 of 2021.

⁴ The Code of Civil Procedure, No. 5 of 1908, § 89, INDIA CODE (1908).

building peace, community togetherness and justice. When rituals and beliefs were in use, the system solved every day and straightforward problems with ease. Although courts today do not treat their rulings as laws, the community respected them due to their position in the community⁵. There were big changes to India's legal system when Britain began its colonial rule. Customary law was first replaced in the formal judiciary by statutes. But ideas for other methods to end wars kept circulating. Roughly twenty-three years after the English law came the Arbitration Act of India in 1899⁶. After that, the Arbitration Act of 1940 handled all aspects of arbitration, but it only lasted until it was no longer needed. But some said that, because of the 1940 Act, courts were stepping in too much and wasting time that ought to go to arbitration instead⁷. India updated its ways of settling disputes after it won independence. When the Arbitration and Conciliation Act, 1996 was enacted based on the UNCITRAL Model Law, a big transformation happened. It hoped to update India's arbitration laws to match international norms and reduce the court's involvement. Later, in 2015, 2019 and 2021, the regulations were changed to foster institutional arbitration and set deadlines for resolving arbitration disputes. Mediation was started as an official procedure in India when Section 89 of the Code of Civil Procedure, 1908⁸ required courts to check for possible settlements through mediation, conciliation and arbitration.

LEGAL ANALYSIS

In India, arbitration is governed by the Arbitration and Conciliation Act, 1996 ("1996 Act") which connects and updates domestic, international commercial and enforcing foreign arbitration decisions under UNCITRAL's Model Law. These four parts of the Act deal with arbitration within India, arbitration abroad, enforcing foreign awards, conciliation and a range of other matters. Sections 7, 8, 11, 34 and 36 each deal with essential aspects of arbitration. Under the Act, dispute resolution parties are prompted to act more independently and achieve results more rapidly. The government has updated the Act in 2015, 2019 and 2021 so that it mirrors the standards used in other nations. According to Section 29A of the Arbitration and Conciliation (Amendment) Act, 2015, the time limit for passing an arbitral award is set, unless this time is extended by the arbitrators. As a result of the 2019 Amendment, Part IA established the Arbitration Council of India (ACI) to help and monitor arbitral institutions that support

⁵ M.P. Jain, *Outlines of Indian Legal and Constitutional History* 57 (7th ed. 2014).

⁶ Arbitration Act, 1899 (India); see also P.C. Rao & William Sheffield, *Alternative Dispute Resolution: What It Is and How It Works* 14 (1997).

⁷ *Guru Nanak Foundation v. Rattan Singh*, (1981) 4 SCC 634.

⁸ The Code of Civil Procedure, § 89, No. 5 of 1908 (India).

institutional arbitration. Even now, people argue that this step might limit how colleges and universities work. As a result of the 2021 Amendment, section 36(3) now means courts can put off enforcing awards made after finding fraud or corruption. They indicate that the legislature seeks to enhance both arbitration practices and their reputation. The law of arbitration has been influenced mainly by the way courts have interpreted it. The *Bharat Aluminium Co. Case*⁹ shows that Part I on arbitral jurisdiction of the UNCITRAL Model Law does not rule for foreign arbitrations, since authority is given to local courts. Because of this, the overriding court believed Section 87 was not fair and struck it down, making the 2015 Amendment's rules for enforcement once more apply. People are now more confident about investor-state arbitration, since the Court regularly supports finality and the freedom of decisions made by arbitrators. The combination of statutory and judicial changes indicates that arbitration in India is gaining international significance.

ODR platforms and the use of technology are now playing a growing part in enhancing arbitration in India. The NITI Aayog's support for digital justice has inspired the use of technology in arbitration and mediation, so that low-value claims and those in rural areas can benefit from more accessible resolution of disputes. Sama, Presolv360 and CADRE have started teaming up with banks, public services and e-commerce businesses to resolve disputes quickly. At present, there is a need for better legal recognition in the 1996 Act for ODR—especially for making digital settlements or awards legally enforceable. India's desire to use arbitration is seen in how it constructs its bilateral investment treaties (BIT). But, after terminating some BITs following the *White Industries* case, India worries foreign investors. Opponents of the new model BITs worry that the added protections for state sovereignty and tougher arbitration rules may make India less attractive for FDI. The country is also trying to establish important arbitration centers such as the India International Arbitration Centre (IIAC) in New Delhi. Just like SIAC (Singapore), HKIAC (Hong Kong) or LCIA (London), the IIAC is developed to raise the status of institutional arbitration over private ad hoc arbitration. Even so, many users still prefer ad hoc dispute resolution because they value flexibility and being in charge which prompts us to ask about the demand for incentives and campaigns leading to more institutional arbitration. Although arbitration is quickly evolving, the legal framework that supports mediation, cultural practices such as panchayats and lok adalats, is not completely developed. In 2021, the Mediation Bill suggested adding formal rules, so that mediations before lawsuits and mediation results would receive legal recognition. If this system is put in place, it

⁹*Bharat Aluminium Co. V. Kaiser Aluminium Technical Services Inc. (BALCO)*, [(2012) 9 SCC 552].

will help develop India's ADR area and bring about a connected system of dispute resolution that pairs well with arbitration and litigation.

INSTITUTIONS AND SPECIAL BODIES

India has set up helpful systems to help with arbitration and mediation. The Federation of Indian Chambers of Commerce and Industry founded the Indian Council of Arbitration (ICA), one of the oldest institutions in arbitration. ICA handles disputes inside and outside the country and a group of arbitrators in different fields also participates at the ICA. MCIA which launched in 2016, aims to provide top-notch arbitration services within India and reduce the use of international arbitral centers¹⁰. Using guidelines from across the globe, the MCIA enforces its own rules and supports international arbitration in India. As a result, more Indian parties are participating in SIAC disputes over international business today. The widespread acceptance of SIAC results from its credibility, diverse procedures and the agreement made under the New York Convention that allows results from SIAC to be enforced¹¹. In addition, India created many court-annexed centers for mediation after the Supreme Court issued its statement in *Salem Advocate Bar Association v. Union of India*¹² mentioned that mediation should be used under Section 89 of the Code of Civil Procedure. The High Courts and District Courts oversee the centres which use qualified mediators to help settle many conflicts in a peaceful manner. Because of these systems, ADR in India keeps being efficient, honest and believable.

A COMPARISON OF ARBITRATION VS MEDIATION

Even though arbitration and mediation are considered ADR, they address disputes in quite different ways. Arbitration gives two parties who are in a dispute a chance to have a neutral party, called an arbitrator, settle matters in a binding style like a courtroom judgment. Unlike arbitration, mediation supports the parties as they mutually work out a settlement that, unlike an arbitrator's, doesn't bind them by law. While in arbitration two parties fight and a decision is made, in mediation they agree to talk and find a solution that lets them keep a positive relationship. By the Arbitration and Conciliation Act, 1996 and Sections 35 and 36, an arbitral award can be enforced and is treated like a civil court decree¹³. Mediation agreements do not

¹⁰ Indian Council of Arbitration, About ICA, <https://www.icaindia.co.in>.

¹¹ Singapore International Arbitration Centre, Annual Report 2023, <https://www.siac.org.sg>.

¹² *Salem Advocate Bar Ass'n v. Union of India*, (2005) 6 SCC 344.

¹³ The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996, §§ 35–36 (India).

become enforceable until the court makes it so, by including them in an order or decree. Mediation agreements covered under the Mediation Act, 2023 may be allowed to be enforced by the law if recognized formally¹⁴. The methods are also differentiated by their costs and estimated duration. Arbitration is more expensive than normal due to its fees, but usually charges less than filing a lawsuit. Using mediation tends to cost less and takes less time, usually averaging one sitting or just a few weeks. However, arbitration may take a number of months to settle. Just as in court, arbitration involves using strict procedures for evidence and calling witnesses. Because mediation is comfortable and flexible, this helps people discover creative options. Maintaining a relationship is better done through mediation than by initiating a court process. If you need a final order implemented and care for confidentiality, arbitration is a better choice. The nature of the case, the intention of the group and how well everyone works together tend to drive the choice.

LATEST ADVANCES

Thanks to online tools, arbitration and mediation have gained in popularity in India recently. As a result of the COVID-19 pandemic, dispute resolutions now happen more often online. Many prefer online dispute resolution (ODR) now because it allows quick resolution, low costs and is convenient. Thanks to Presolv360 and Sama, stakeholders in ADR can handle issues and fix matters using tech platforms without the court's involvement early on. Advances in technology have improved arbitration and mediation by relying on AI for document screening, using virtual case systems, presenting evidence with digital technology and storing cases on the internet. The nation's top court has stated that online hearings are permitted and stresses how they help reach justice for hundreds of people scattered around India who need urgent help. When the Supreme Court introduced the Re: Guidelines for Court Functioning Through Video Conferencing During COVID-19¹⁵, it also made virtual ADR hearings more acceptable. The government and court systems have worked hard to help ADR become a standard process. The creation of the IIAC, the introduction of the Draft Mediation Bill (later passed and made law) and the addition of pre-trial mediation to acts such as the Consumer Protection Act, 2019 demonstrate the nation's increasing support for resolving disputes without going to trial. Judges have repeatedly advised using mediation and conciliation because it relieves the courts and speeds up resolving problems¹⁶.

¹⁴ The Mediation Act, 2023, No. 29, Acts of Parliament, 2023, § 20 (India).

¹⁵ Re: Guidelines for Court Functioning Through Video Conferencing During COVID-19, (2020) 4 SCC 580.

¹⁶ Afcons Infrastructure Ltd. V. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24.

Policy actions are also speeding up the development of ADR in India, together with digital platforms and court assistance. The Department of Legal Affairs, Ministry of Law and Justice and the judiciary are increasingly cooperating to promote ADR by training people across the country at workshops and programs. The main focus is to standardize the best methods in ODR and provide quality checks for all service providers. In addition, ADR is growing because Digital India helped increase internet and digital literacy. The improved infrastructure lets people in remote or semi-urban areas use technology to use good quality dispute resolution mechanisms. Banks and other financial institutions are now placing ODR clauses in loan documents and policies for resolving customer disputes, showing a major effort at introducing ODR into agreements. GIFT City in Gujarat, established with Indian support, was built to give important financial services the same status as special economic zones. Arbitration institutions are being urged to establish locations there under less-strict rules. The country's move fits its desire to match other global markets such as Singapore and London. Globally, India's agreement to the Singapore Convention on Mediation (which has not been approved) indicates its wish to comply with global mediation standards. After being adopted, these settlement agreements can be enforced in all the countries that have signed on which greatly increases the reliability of cross-border mediation. Additionally, case review assisted by artificial intelligence, keeping evidence in blocks and making documents automatically are catching on in the Indian ADR sector. They give us faster, transparent and unbiased solutions for the screening and administration process. As the innovations in ADR develop, the Indian framework is supposed to enable faster, fairer and more equitable resolutions—launching a new age of justice in India.

PROBLEM AND CRITICISM

Promising benefits of settling disputes faster through arbitration and mediation are not easily achieved in India because there are many obstacles. A significant problem is that arbitral cases often take too much time. Since the 2015 amendment of the Arbitration and Conciliation Act, 1996, awards by the tribunal are required to be passed within twelve months, but courts often extend these time limits with little review, slowing the process¹⁷. These approaches put a spotlight on Sections 34 and 37 of the Act, as parties can become evasive or use the court's help in ways that delay final settlement. Mediation, however, does not result in strong enforceability. Until the creation of the Mediation Act, 2023, India had no law authorizing

¹⁷ Arbitration and Conciliation Act, No. 26 of 1996, § 29A, amended by Arbitration and Conciliation (Amendment) Act, 2015, No. 3, Acts of Parliament, 2016 (India).

mediation as an enforceable means apart from requiring them as part of litigation or for contracted agreements¹⁸. Nonetheless, there are still complaints that the outcomes of private mediation won't stand unless they are recorded in consent decrees. Mediators do not require anyone to come to an agreement which makes mediation less effective if just one of the parties wants change. Even now, there are worries that private mediation results are not guaranteed unless they become consent decrees. As mediation is voluntary, it will not work for major or difficult cases unless the parties really want to reach an agreement. There is also a major challenge because there aren't enough trained mediators and arbitrators to support all cases. Although both the Indian Institute of Arbitration and Mediation and the International Centre for Alternative Dispute Resolution have started training, these are not broadly accessible and still have unequal standards¹⁹. ADR is sometimes seen by legal practitioners as coming after litigation which prevents it from being more widely accepted. To offer their full contribution to Indian justice, ADR systems must overcome these important systemic and cultural challenges.

CONCLUSION

Over recent decades, both arbitration and mediation—two important aspects of Alternative Dispute Resolution—have changed a lot in India. They assure users that their approaches are both efficient and save money in dealing with conflict outside the usual courtroom. With continuous legislative reforms, daily court backing and joining global efforts, the legal and organizational set-up has advanced. Even so, there are many difficulties—including slow processes and few enforceable laws—that keep justice schemes from working well. To improve ADR in India, a variety of reforms are suggested. In the first place, tribunals need to stick more closely to the timelines given in the Arbitration Act which can speed up cases. Also, diverse awareness and development activities should be broadened and ADR should become part of the legal education system. Thirdly, successful implementation of the Mediation Act, 2023 will rely on always carrying out the law and overseeing the actions of private mediators. Changing how litigants, lawyers and judges think about ADR can greatly ease the court's workload and improve access to justice.

¹⁸ The Mediation Act, No. 27 of 2023, Acts of Parliament, 2023 (India); see also *Afcons Infrastructure Ltd. V. Cherian Varkey Construction Co.*, (2010) 8 SCC 24 (India).

¹⁹ See Indian Institute of Arbitration & Mediation, <https://www.arbitrationindia.org>; International Centre for Alternative Dispute Resolution, <https://icadr.ac.in>.