



# 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.

---

## LEGAL ASPECTS OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN INDIA

~ *Yash Sharma*

### ABSTRACT

Due to the significant judicial backlog, Alternative Dispute Resolution (ADR) has now become a key part of justice delivery in India. The paper gives a detailed legal overview of ADR in India, looking at the ways it began in ancient times and ended up in statutes. It studies the legal foundations and working methods of main ADR options, namely arbitration, mediation, conciliation, negotiation, judicial settlement and Lok Adalats. Looking at the top judgments from India reveals the important role the courts have played in changing how ADR is seen and adopted in the country. It also talks about the benefits of ADR, especially that it can be less expensive and faster, but also highlights issues such as people not knowing about it and the involvement of courts. It also studies recent changes in the law, for example the Arbitration and Conciliation Act, 1996 and the Mediation Act, 2023, as well as new methods like Online Dispute Resolution, to forecast the path ADR will head in India.

### INTRODUCTION

Through Alternative Dispute Resolution (ADR), problems are handled through processes that are not part of the usual court system and aim to solve cases more quickly, cheaply and peacefully. Because the judicial system in India has more than 4.4 crore cases pending as of 2023, with half of them in the district courts, this approach is especially important there. A heavy caseload leads to justice being delayed and puts a lot of pressure on the system. Because of this, ADR gives people a useful alternative to the courts, improves access to justice, makes the system more efficient and helps encourage solutions at the negotiating table. The main ideas that guide ADR are voluntariness, confidentiality, neutrality, flexibility, good faith and timeliness. ADR stands out from traditional litigation that is adversarial and concerned with

proving rights and wrongs, since ADR is based on working together and compromise. More people and organizations are resorting to ADR in India, since its formalization is crucial to solving serious problems in the justice system and make ADR an important backbone for affordable and swift justice.

## **A LOOK AT ADR'S ORIGINS, GROWTH AND THE IDEAS GUIDING IT IN INDIA**

In India's history, alternate dispute mechanisms have a long tradition. In ancient India, there were texts such as the Vedas and Dharmashastras that encouraged people to use negotiation, mediation and arbitration. People living in villages depended on impartial leaders or groups like Kulas, Shrenis and Panchayats to settle their disputes and their decisions were usually enforced by law. Royal courts in the Maurya and Gupta Empires chose dharmasthas or amatyas to settle conflicts using key Dharma principles. Sharia law principles were applied under Islamic rule and Qazis were responsible for handling conflicts. This connection over the years reflects a traditional use of settlements outside courts.

When the British came, they changed the system so that lawsuits were tried according to formal rules rather than through ADR. Yet, British courts realized early on that arbitration was useful and incorporated it into laws like the Bengal Regulations from 1772 and 1780. Initially, when the Code of Civil Procedure (CPC) was passed in 1859<sup>1</sup>, it had provisions for arbitration but these were removed in 1882. English law was used as a model to create the Indian Arbitration Act, 1899<sup>2</sup> which set guidelines for arbitration but only in presidency towns. The CPC was revised in 1908<sup>3</sup> so that courts could once again refer cases to alternative dispute resolution. The 1940 Arbitration Act<sup>4</sup> took the place of other acts to establish a broad system for domestic arbitration. But, in the case of *M/S Guru Nanak Foundation*<sup>5</sup> the Supreme Court criticized it. *Rattan Singh & Sons* praised for their "highly complex" language and for long comments, making the law "hard to understand" for those not paying attention. Due to the critique, India adopted the UNCITRAL Model Law on International Commercial Arbitration in 1985<sup>6</sup>.

---

<sup>1</sup> Code of Civil Procedure, 1859 (Act V of 1859) (India).

<sup>2</sup> Indian Arbitration Act, 1899 (Act VIII of 1899) (India).

<sup>3</sup> Code of Civil Procedure, 1908 (Act V of 1908) (India).

<sup>4</sup> Arbitration Act, 1940 (Act X of 1940) (India).

<sup>5</sup> *Guru Nanak Found. V. Rattan Singh & Sons*, (1981) 4 S.C.C. 634 (India).

<sup>6</sup> UNCITRAL, Model Law on Int'l Commercial Arbitration (adopted 1985), G.A. Res. 40/72, U.N. Doc. A/40/17, Annex I (1985).

There was a lot of formalized legal development following India's independence. By adopting the Arbitration (Protocol and Convention) Act, 1937<sup>7</sup> and the Foreign Award (Recognition and Convention) Act, 1961<sup>8</sup>, laws, India clearly expressed its support for international arbitration. At its end, these activities led to the ratification of the Arbitration and Conciliation Act, 1996 which combined various previous acts into one law following UNCITRAL's guidelines. At the same time, the Legal Services Authorities Act, 1987<sup>9</sup> introduced Lok Adalats which were now officially recognised as having the same legal authority as judgments made in civil courts. In 2002, the Code of Civil Procedure (Amendment) Act<sup>10</sup> authorized courts to send cases pending before them to ADR conditions.

## **A DETAILED LOOK AT THE MAIN TYPES OF ALTERNATE DISPUTE RESOLUTION PRACTICED IN INDIA**

Because India has many ADR processes, each one is different in how it is conducted and how binding agreements are, so parties can decide on the best way to settle their differences. Alternative dispute resolution in India mostly involves arbitration which is often used to address disputes in business and contracts. It involves more structure than mediation and it has rules similar to those found in regular court. Usually, the parties sign a binding agreement or an arbitration clause in a contract before the dispute happens. An arbitrator or a group of arbitrators listens to what each party has to say. A person chosen to be an arbitrator does not need to be a lawyer; sometimes, someone with the right expertise (like an engineer for construction issues) is chosen instead. The arbitration panels or sole arbitrators decide the case through an arbitral award which is usually given within a few days or up to a week. Private opinions are not part of the public record. Arbitration law in India is based on the Arbitration and Conciliation Act, 1996<sup>11</sup> which oversees both domestic and international arbitration cases. According to Section 7, an arbitration agreement means either writing it down or signing a separate contract to settle disputes and it clearly spells out that the parties intend to arbitrate and the scope of the issues at dispute. Courts have the authority under Section 8 to send parties to arbitration if an arbitration clause is valid which prevents them from bringing the case to court. Tribunals set up in arbitration are given wide powers such as hearing both parties, collecting evidence, ruling judgments and enforcing interim rewards or orders. On the

---

<sup>7</sup> Arbitration (Protocol and Convention) Act, 1937 (Act VI of 1937) (India).

<sup>8</sup> Foreign Awards (Recognition and Enforcement) Act, 1961 (Act 45 of 1961) (India).

<sup>9</sup> Legal Services Authorities Act, 1987 (Act No. 39 of 1987) (India).

<sup>10</sup> Code of Civil Procedure (Amendment) Act, 2002 (Act No. 22 of 2002) (India).

<sup>11</sup> Arbitration and Conciliation Act, 1996, Act No. 26 of 1996, §§ 5, 7, 8, 18, 34, 36, 61–81 (India).

expiration of the challenging period mentioned in Section 34, arbitral awards are given force as court decrees by Section 36. There are grounds within Section 34 for canceling an arbitration decision, when someone was not able to take part, the agreement to arbitrate was lacking, proper notice was not given, arbitrators dealt with a disagreement not mentioned in the submission or the method of arbitration differed from the agreement of the parties. According to Section 5 which embodies the concept of minimal court involvement, courts are allowed to take action in arbitration strictly under the conditions set by the Act.

Conciliation is much like mediation because it brought in a third party who tries to help both parties reach an agreement amicably. Conciliation does not force any obligation on parties and only the ones they approve are binding. Part III (Sections 61-81) of the Arbitration and Conciliation Act, 1996<sup>12</sup> deals with the legal basis for conciliation in India. Indian law and the UNCITRAL model describe the conciliator as having more power than a mediator, since they are allowed to offer settlement recommendations and even rewrite the details of a potential solution, while a mediator mostly helps people communicate. A settlement agreement from conciliation holds the same weight and impact as an arbitrator's award on agreed terms and it can be enforced as a court order.

In mediation, a neutral mediator guides the parties to negotiate an agreement that is agreeable to both parties, instead of going to court. Mediators are people who know how to handle negotiations. Significantly, traditionally only parties could decide whether to follow the mediation agreement or turn it down. People use it for juvenile felonies as well as federal government negotiations, among other scenarios. Mediation focuses on negotiation and making compromises which helps parties to remain cooperative and ensure their relationships are preserved. Thanks to the new Mediation Act, 2023<sup>13</sup>, mediation has seen strong legal support and increased infrastructure in India. Section 1 says that the rules in the Act apply to every mediation performed in India, no matter where it involves parties from. Under Section 5, people or companies should first try mediation to settle their disputes before starting any civil or commercial case unless urgent temporary help is sought. As stated in Section 27, mediated settlement agreements (MSAs) must be honored just like court rulings, giving a final concluding effect to mediation cases. The Act accepts online mediation as valid and enforceable which is stated in Section 30. Mediation has to be finished in most cases within 120 days and an extension of 60 days might be granted to finish it timely, as Section 18 states. The Mediation

---

<sup>12</sup> *Id.*

<sup>13</sup> The Mediation Act, 2023, Act No. 32 of 2023, §§ 1, 5, 18, 22, 27, 30, 31 (India).

Council of India (MCI) is established by Section 31 to oversee and manage the mediation system, including registering and accrediting mediators. The principle of confidentiality is given strong importance in Section 22, making sure that people involved with mediation cannot divulge or share what was discussed and are not allowed to record the sessions in any way.

In most cases, negotiation is stated as the prime method for handling disputes and is often the first way people work to solve them. Negotiation is simple and very informal, often happening between disputing parties without needing a third person to get involved. The major benefit is that those involved in the dispute handle both the process and the final decision. Because it is flexible, it is not like more fixed methods. Even though there is no special law for negotiation in India, the process tends to stay the same and is an important way to settle disputes.

One special feature of ADR in India is the Lok Adalat which relates to a “people’s court” system. It acts as a place where disputes may be settled with understanding, using persuasion and other informal strategies like negotiation and mediation. By law, the Legal Services Authorities Act, 1987<sup>14</sup>, ensures that Lok Adalats have recognition. They are run by retired judges or experienced lawyers following the ideas of fairness, justice and conscience. The decision (award) of a Lok Adalat is permitted by law, the same as a civil court decree according to Section 21 of the Legal Services Authorities Act, 1987<sup>15</sup> and cannot be appealed. For smaller conflicts, these courts do very well with cases like marriage issues, land cases, motor accident claims and concerns related to public utilities. Matters brought to Lok Adalats may be presented before court proceedings or during a trial, but cases involving non-compoundable crimes and matters about divorce are not allowed. Section 18(1) of the Legal Services Authorities Act, 1987<sup>16</sup>, tells us what they can do.

Alternative dispute resolution includes judicial settlement as described in Section 89 of the Civil Procedure Code<sup>17</sup>. During the hearing, the judge tries to help the parties settle the dispute in a friendly way. Should a mutually acceptable agreement be set through judicial settlement, it is considered a decree as stated in the Legal Services Authorities Act, 1987. ADR in India comes in various forms, from informal bargaining outside any law (negotiation) to formal arbitration processes with binding results and also includes mediation and Lok Adalats. Because of this diversity, parties can choose methods for dispute resolution that suit their own

---

<sup>14</sup> The Legal Services Authorities Act, 1987, Act No. 39 of 1987, §§ 18, 21 (India).

<sup>15</sup> *Supra* note 9.

<sup>16</sup> *Supra* note 9.

<sup>17</sup> Code of Civil Procedure, 1908, Act V of 1908, § 89 and Or. X, R. 1–A (India).

preferences for control, goal setting and enforcing their agreements, indicating that the law system values many ways of handling disputes.

## **THE WAYS AND RULES FOR USING ADR THAT HAVE BEEN DECIDED BY THE COURTS AND THE INDIAN GOVERNMENT**

As there are too many cases for the Indian court system to handle, the judiciary has turned to Alternative Dispute Resolution (ADR) as an effective way to ease the pressure. The emphasis on being proactive can be seen in encouragement from judges, changes in statutes and key court rulings that changed the ADR field. There is a massive challenge in India's judicial system because a huge number of cases need to be resolved in every court, from the Supreme Court down. As of the end of December 2024, the Supreme Court had over 83,000 active cases and High Courts had to handle over 6.2 million cases as of January 20, 2025. There are about 50 million cases being handled by district courts and more than 180,000 of these have remained unresolved for over 30 years. The huge number of cases means justice is held up and the judiciary is placed under significant strain, making it difficult for it to manage new cases well. According to estimates, at the current method of discarding things in 2018, it would need more than 324 years to catch up with the excess waste. There are many reasons for the backlog in pending cases such as fewer judges per citizen (only 21 compared to over 150 in the U.S.), the legal system that permits lots of interim cases and scarcity of courtrooms and digital facilities. Moreover, because it is a party in so many cases, the government adds to the crowded courts and delays the system. Here, ADR plays an important role by helping to clear the judicial backlog by handling a significant number of cases outside the traditional court systems, so courts can work on the more difficult cases themselves. Alternative dispute resolution outside the court system makes the Indian judiciary more efficient and effective.

The adoption of ADR has been promoted by the Indian judiciary through several key judgments that organized the law and encouraged everyone to use it. The *Afcons Infrastructure Ltd. V. Cherian Varkey Construction Co. P. Ltd.*<sup>18</sup> Case had a major impact on implementing Section 89 of the CPC, 1908 which allows parties to settle disputes outside court. The Court pointed out that the old Section 89(1) made trial judges go through a series of steps to reformulate settlement terms just before sending a case to ADR. Using this approach puts the ADR court system at risk of being pointless since arbitrators would not have to follow set court rules.

---

<sup>18</sup> *Afcons Infrastructure Ltd. V. Cherian Varkey Constr. Co. (P.) Ltd.*, (2010) 8 S.C.C. 24 (India).

Afcons Infrastructure Inc rejected this literal understanding and ruled that all the court needed to do was present the arguments of both sides and check if an extra-judicial agreement was possible. The decision described consent rules for arbitration, conciliation, Lok Adalat and mediation: while the first two require agreement, the Court said forms of mediation did not, though this view was contestable for mediation. The Court saw that in Section 89(2), the words “judicial settlement” and “mediation” appeared in the wrong order in clauses (c) and (d). It then directed that the two terms be exchanged when reading the law. Because of this ruling, courts could more easily refer disputes to ADR which contributed to a rapid rise of ADR in India and helped alleviate their stress of overloaded courts. Opting to match Section 89 with Order 10 Rule 1-A of the CPC<sup>19</sup>, as well as relying on practical understanding instead of a strict interpretation, along with the amendment made in 2023, show the Court’s aim to streamline dispute resolution by increasing access to justice and making sure procedures are effective.

Bhatia International v. Bulk Trading S.A.<sup>20</sup> played a major role in developing international arbitration law in India. This case discussed if disputes involving foreign parties can be resolved using arbitration under the Indian Arbitration and Conciliation Act, 1996 and specifically looked at how Section 2(2) of the Act defines when Part I comes into play for international commercial arbitrations. The Court stated that Part I of the A&C Act which usually covers domestic arbitrations and requests for interim relief, would be applied in international arbitrations held in India unless the parties wished otherwise. Because of this view, parties who took part in an arbitration seated in India could apply to Indian courts for interim relief in matters that were not in India. This open interpretation started many discussions and was therefore re-evaluated by the Bharat Aluminum Company (BALCO)<sup>21</sup> case that eventually narrowed it down. In 2012, the Kaiser Aluminum Technical Services case<sup>22</sup> and in 2015 the Arbitration and Conciliation (Amendment) Act<sup>23</sup> was passed to make Indian law line up more with international rules in foreign-seated arbitrations by letting courts have less control. So, Bhatia International made a difference in immediate cases and helped bring about changes in India’s legislation so that its arbitration law became more in line with what is used internationally.

---

<sup>19</sup> *Supra* note 17.

<sup>20</sup> Bhatia Int’l v. Bulk Trading S.A., (2002) 4 S.C.C. 105 (India).

<sup>21</sup> Bharat Aluminum Co. V. Kaiser Aluminum Tech. Servs., Inc., (2012) 9 S.C.C. 552 (India).

<sup>22</sup> (2012) 9 S.C.C. 552.

<sup>23</sup> Arbitration and Conciliation (Amendment) Act, 2015, No. 3 of 2016 (India).

The Supreme Court gave its decision in the case of Bharat Aluminum Company (BALCO) v Kaiser Aluminum Technical Services<sup>24</sup> as it changed the way arbitration law is understood in India, mainly for disputes that have international implications. Before this, Bhatia International opened the door for Indian courts to get involved in arbitrations held outside the country, but the new ruling reversed that allowing only virtual interventions. The BALCO case changed how Indian courts handle foreign-seated arbitrations by giving them much less authority. The Court explained that the way an arbitration is handled should follow the legal principles of the country where the arbitration takes place. Consequently, Indian courts should not get involved in arbitrations that are held in other countries, to honor the laws of the chosen location and keep Indian rules in line with global trends. The Court made clear that Indian courts cannot issue interim relief when arbitration takes place in another country; parties are advised to seek this from the court of the seat or the tribunal handling the arbitration. By making this decision, it was hoped that courts would not intervene, the parties would retain their independence during the process and no unjustified delays would happen. It will only apply to arbitration agreements that are made after September 6, 2012. Many welcomed the BALCO judgment because it solved a significant issue for arbitration practitioners in India who wanted UNCITRAL Model Law processes which involve limited involvement by judges.

The court's ruling in the Renuagar Power Co. Ltd. V. General Electric Co. Case<sup>25</sup> created a major precedent for international commercial arbitration and enforcing foreign arbitral awards in India. The 1987 Supreme Court decision backed the right to arbitration provided in the Foreign Awards (Recognition and Enforcement) Act, 1961<sup>26</sup>, explaining that General Electric Co. (GEC) had no intention of abandoning the process of arbitration, in spite of Renuagar filing a case in court. In another judgment in 1993, the Supreme Court reaffirmed that the International Chamber of Commerce (ICC) arbitral award against Renuagar was enforceable. The Supreme Court focused on the meaning of "public policy" when applying Section 7(1)(b)(ii) of the Foreign Awards Act, 1961 which states grounds for enforcement refusal. The Court pointed out that "public policy" used here means only the rules of Indian public policy and not the rules in other countries. The key point is in line with the New York Convention which wants arbitral awards minimally affected by the courts. The court explained that despite Indian public policy, compound interest as awarded in the settlement contract was lawful and

---

<sup>24</sup> (2012) 9 S.C.C. 552.

<sup>25</sup> Renuagar Power Co. Ltd. V. Gen. Elec. Co., (1984) 4 S.C.C. 679 (India).

<sup>26</sup> *Supra* note 8.

followed the guidelines of contracts and law. The Court ruled that the “judgment-date rule” applies which means that the currency amount should be converted to dollars using the rate from the date the court rendered its judgment. As a consequence of the RenuSagar case, foreign arbitral awards can be enforced in India which has strengthened the nation’s commitment to arbitrations.

This area of law relies on Section 89 of the Code of Civil Procedure, 1908<sup>27</sup> which was brought into effect in 1999 and amended after that. Courts can direct pending cases to arbitration, conciliation, judicial settlement (including Lok Adalat) or mediation if they believe there are aspects of a settlement both sides can agree on. The prime aim of Section 89 is to encourage settlements that are friendly, peaceful and work for both sides which helps reduce cases in court and ensures quick results. According to the original wording of Section 89(1), courts had to first create terms for a settlement after noticing settlement elements, instead of proceeding to ADR. This literal understanding of the term was criticized in the Afcons Infrastructure case<sup>28</sup> since involving a judge to settle the agreement would make the ADR step pointless, pushing processes forward for a longer period. Afcons saw the Supreme Court switch from the literal approach, saying that only the core of any dispute and the parties’ possible agreement on out-of-court settlement are required before sending the matter to arbitration. The judgment recognized and corrected an error in Section 89(2) brought about by the Draftsman, who interchanged the terms “mediation” and “judicial settlement” in clauses (c) and (d). It was pointed out by the Court that Section 89 must be used along with Order 10 Rule 1-A of the CPC which means courts must set out ADR methods after the pleading stage but before the main issues are fixed. In 2023, Section 89 CPC was replaced by the Mediation Act in accordance with the suggestions given after the Afcons Infrastructure case. Now, the court can refer a matter to arbitration, mediation, Lok Adalat or try to find a compromise as the law is amended, according to what it considers the most suitable method. It dealt with the problem of settling terms before an ADR step and sorted out the mix-up between going for settlement and mediation. It was recorded in the Patil Automation (P) Ltd. V. Rakheja Engineers (P) Ltd. Case<sup>29</sup> that the use of Section 89 CPC was not common because parties now preferred mediation of their own choice. Because the public is turning to quicker methods outside of court, ADR procedures like Section 12-A of the Commercial Courts Act, 2015<sup>30</sup>, mandating

---

<sup>27</sup> *Supra* note 17.

<sup>28</sup> (2010) 8 S.C.C. 24.

<sup>29</sup> Patil Automation (P.) Ltd. V. Rakheja Eng’rs (P.) Ltd., (2022) SCC OnLine SC 1028 (India).

<sup>30</sup> Commercial Courts Act, 2015, Act No. 4 of 2016, § 12–A (India).

mediation by parties without the courts, are now being implemented. Apart from court referrals, a legislative change in Section 12-A of the Commercial Courts Act, 2015<sup>31</sup>, has made it compulsory to try mediation before filing a lawsuit for most commercial conflicts of a specific value (but not before seeking urgent preliminary relief). This means courts are moving to make ADR a priority even before involving the court which can help resolve cases early and reduce pressure on the judges. Its continued efforts prove that the judiciary cares about helping all individuals gain access to justice. By making ADR available, courts help people and communities settle disputes in a better and less expensive way and those who find access to the traditional legal system challenging often benefit. ADR focuses on working together and making concessions which judicial referrals motivate. This way, disagreements are handled carefully to avoid hurting relationships which encourages a stable and lasting conclusion.

## **THE PROS AND CONS OF ADR SEEN FROM A LEGAL POINT OF VIEW**

Unlike litigation, alternative dispute resolution is valuable and comes with many benefits, yet it does have limitations, mainly in India. One of the main advantages of ADR is that it can save money since it often involves paying fewer lawyer fees, dealing with few court costs and ending quickly which reduces expenses overall. This effort fixes the issue of slow courts in India. An ADR process usually takes only weeks or a few months to finish, much shorter than the many months or years needed for court action in India, due to the busy and tricky nature of Indian courts. Because of its speed, the process benefits those involved in business disputes, since prompt resolution is very important. ADR and the results obtained there are usually shrouded in confidentiality, unlike in public court cases. Privacy makes it easier for companies to preserve their image and prevent leaking important information which results in a more welcoming atmosphere for negotiations. ADR gives both sides more freedom to decide how the dispute should be handled. Selecting their mediator or arbitrator, setting timeframes and agreeing on the terms allows the parties to find solutions that work specifically for their needs which supports teamwork and encourages more unusual, beneficial contentions. When dealing with family matters or business partnerships over time, ADR especially prompts people to focus on negotiating and making compromises. Alternative dispute resolution can maintain and further solidify relationships that might be harmed by the fight-minded approach in courtrooms. Most of the time, ADR systems achieve a higher level of dispute resolution. Because ADR

---

<sup>31</sup> *Id.*

encourages cooperation, both parties can hope to reach an arrangement they both gain from. Mediation is known to work well since it is informal and usually leads to solutions Everyone can accept.

There are still some problems with ADR, even though it has many positives. A key restriction is that Supreme Court decisions usually are not followed in future cases. No one can use ADR to form or confirm a legal principle or decision. Although courts develop legal principles, ADR mainly works to solve the immediate conflict which makes it a less appropriate method when cases need legal clarification or new principles. ADR may not provide the wide range of legal remedies available from going to court. Mediated settlement agreements in the past could not be easily enforced against a party who chose not to follow them, but that changed with the Mediation Act, 2023<sup>32</sup> which makes MSAs court decrees. Some choices for remedies tend to be restricted in binding arbitration compared to what is offered in courts. While speaking face-to-face in ADR, it is possible for stronger parties to have more influence and have their needs better met. If a party can dominate the bargaining because they are so much stronger, it is possible that they can push the other side to accept an unfair outcome. Since mediators are trained for their role, the issue of uneven power is still a worry. Because most people are not aware or have access to ADR mechanisms, especially in rural and semi-urban settings, many still depend heavily on the busy regular legal system. Infrastructure to support ADR is lacking in a lot of regions. Though arbitration is advertised as faster, there are still issues with delays during the proceedings in India. Common reasons are due to complex procedures, lack of cooperation from involved parties, frequent postponements and the right to challenge arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996<sup>33</sup>. Though changes were made in 2015<sup>34</sup> and 2019<sup>35</sup> to add timelines, putting them into practice is not consistent. Even though Section 5 of the Arbitration and Conciliation Act, 1996 aims for little court involvement, Indian courts have often stepped in during arbitral proceedings (for issues like appointing arbitrators, requesting temporary relief and contesting awards). Extensive judicial interference can cause disputes to continue for a long time and oppose the basic benefit of arbitration. There is a serious shortage of people with the proper training and experience in handling ADR in India. Because India does not have a broad accreditation system for mediators and arbitrators, there is sometimes a discrepancy in decisions, less certainty about ADR's value and doubts

---

<sup>32</sup> *Supra* note 13.

<sup>33</sup> *Supra* note 11.

<sup>34</sup> *Supra* note 23.

<sup>35</sup> Arbitration and Conciliation (Amendment) Act, 2019, No. 33 of 2019 (India).

about the skills or fairness of mediators and arbitrators. The Arbitration and Conciliation Act, 1996 allows arbitral awards to be enforced, yet sometimes there are still practical problems and delays with this. Also, there are parts of society that enjoy the adversarial court process which may slow down the use of more non-adversarial methods like mediation. Flexibility and autonomy, key points in ADR, may have both good and bad effects. These aspects let the parties select the methods they need and choose a neutral facilitator, but they do not guarantee self-regulation. Since the world is short of skilled mediators and arbitrators, the possibility that a strong side could force an unfair result on a weaker side is a substantial concern. So, ADR relies heavily on having skilled people and a fair system of regulations to be effective.

### **PROBLEMS AND CRITICISMS FACED IN USING ADR IN INDIA**

While ADR has achieved a lot and is recognized, its use in India keeps encountering various problems that hold it back. A clear grasp of these issues is necessary to see whether ADR makes sure everyone can access justice. Many people do not understand their rights because they are not publically aware or knowledgeable of the law. Many people in rural and semi-urban locations are uninformed about their rights and about using ADR instead of going to court. Many people not understanding personal law leads to the overuse of the already overwhelmed court system. Attempts by organizations like the National Legal Services Authority (NALSA) to increase legal knowledge do not easily reach the rural communities. Cultural and language differences also add to the problem. Access to ADR is lacking in several parts of the world.

Roadbumps in the procedure are a major challenge during arbitration. In despite of being designed as a rapid process, arbitration frequently becomes slow in India. Commonly, these delays happen because of difficult procedures, non-collaboration by parties, many postponements and the ability to appeal arbitration decisions under Section 34 of the Arbitration and Conciliation Act, 1996<sup>36</sup> which can cause the case to stretch out. Though amendments made in 2015<sup>37</sup> and 2019<sup>38</sup> introduced timelines, these have not been enforced in the same way everywhere.

Although the Arbitration and Conciliation Act, 1996 encourages “minimal intervention” by judges (Section 5), there are still worries about judicial actions in disputes. Many times, the Indian courts have taken action in arbitral procedures, for instance, by deciding who will be

---

<sup>36</sup> *Supra* note 11.

<sup>37</sup> *Supra* note 23.

<sup>38</sup> *Supra* note 35.

the arbitrator, issuing temporary relief and settling disputes over arbitral awards. By acting in ways outside their authority, judges may prolong cases which conflicts with what arbitration aims to achieve and weakens trust in ADR tools. Having judges control arbitral decisions is valuable to keep things fair, but if they get involved too closely, arbitration may lose its power.

There is a major lack of experienced and qualified professionals in ADR in India. Contract-based systems and not extensive training and certification, are the main way ADR professionals are recognized in India. Without professionalization, the outcomes may change from one case to another, trust in ADR methods could decrease and some believe the mediators are unprofessional. While a few institutions offer VCSA training, it needs to be offered everywhere in the country to be really useful.

It is sometimes difficult to enforce arbitral awards, even though legal provisions exist supporting their enforceability. Expense can be a problem for some, especially when it comes to institutional arbitration, so not everyone might turn to these methods. Some in society still see cultural resistance to choosing mediation over court process, choosing instead the harsh nature and unambiguous rules of traditional court. Also, the small number of ADR services in rural and semi-urban areas prevents many from using them. All of these difficulties show that using ADR more widely is difficult because it has its own set of problems. These problems come mainly from unawareness, ineffective procedures, societal opposition and weaknesses within the organization. If the difficulties within ADR are not solved, it will keep acting as a second choice and not live up to the expectations as a genuine alternative.

## **DEVELOPMENTS IN RECENT YEARS, ONLINE DISPUTE RESOLUTION (ODR) AND PROSPECTS FOR THE FUTURE**

The government and courts in India have introduced many laws and policies to support ADR. Progressive amendments were made to the Arbitration and Conciliation Act, 1996<sup>39</sup>, in 2015<sup>40</sup>, 2019<sup>41</sup> and 2020<sup>42</sup> in order to speed up the arbitration process, ensure the fairness of arbitral decisions, lower the involvement of the courts and make it easier to enforce awards. In addition, these amendments aimed at supporting institutional arbitration and making the law more in line with worldwide norms. An noteworthy is the recent release of the Draft Arbitration and

---

<sup>39</sup> *Supra* note 11.

<sup>40</sup> *Supra* note 23.

<sup>41</sup> *Supra* note 35.

<sup>42</sup> Arbitration and Conciliation (Amendment) Ordinance, 2020, No. 14 of 2020 (India).

Conciliation (Amendment) Bill, 2024, from the Ministry of Law and Justice.<sup>43</sup> The draft intends to promote institutional arbitration, decrease the influence of courts and ensure arbitral cases finish promptly. Some of the key proposals are setting up Alternative Arbitral Appellate Tribunals (AAT's) for appeal, having emergency arbitration officially accepted by law and setting deadlines for appointing arbitrators. By doing this, the Bill makes it clear what is meant by seat and venue in arbitration and allows courts to send back part of an award that has been set aside.

The Mediation Act, 2023<sup>44</sup> is a major law that provides a step-by-step guide for mediation services in India. Among its important points is that everyone must try mediation before suing, agreements from mediation can be converted into court orders, online mediation is permitted and the Mediation Council of India (MCI) is created to oversee the mediation field. Legal Services Authorities Act, 1987<sup>45</sup>, still authorizes Lok Adalats under statutory law.

In 2022, the India International Arbitration Centre (IIAC) was created and the Arbitration Council of India (ACI) was put into action in 2023, both focusing on supporting institutional arbitration and offering learning opportunities in ADR.<sup>46</sup> It is the role of the MCI, part of the Mediation Act of 2023<sup>47</sup>, to handle domestic and international mediation, determine guidelines for certifying mediators and maintain an electronically accessible database of MSAs.

Thanks to technology, many people are starting to solve their disputes through Online Dispute Resolution (ODR) platforms. Thanks to information and communication technology, online dispute resolution (ODR) is now more convenient and efficient for everyone involved. Because of the Information Technology Act, 2000<sup>48</sup>, electronic records can be used in legal proceedings and the Mediation Act, 2023<sup>49</sup>, clearly acknowledges online mediation. It is believed AI will help automate aspects of arbitration and improve accuracy, as AI software can go through a lot of information, summarize documents and make predictions about outcomes. AI supports people by being an impartial virtual mediator, assisting in discussions and proposing ways to come to an agreement. Lately, ADR is being more frequently used for Intellectual Property and commercial disputes in tech and pharmaceutical industries, often through WIPO Arbitration

---

<sup>43</sup> Press Information Bureau (Ministry of Law and Justice, India), Inviting Comments on the Draft Arbitration and Conciliation (Amendment) Bill, 2024 (Oct. 18, 2024).

<sup>44</sup> *Supra* note 13.

<sup>45</sup> Legal Services Authorities Act, No. 39 of 1987, §§ 12, 20 (India).

<sup>46</sup> India International Arbitration Centre Act, No. 17 of 2019, § 4 (India).

<sup>47</sup> *Supra* note 13.

<sup>48</sup> The Information Technology Act, No. 21 of 2000, § 4, INDIA CODE (2000).

<sup>49</sup> *Supra* note 13.

and Mediation Centre.<sup>50</sup> The Reserve Bank of India has also made policies for ODR in the field of digital payments.<sup>51</sup> The combined effect of new policies, regulations and the latest technologies is showing India's interest in becoming a leading arbitration center worldwide.

## **RECOMMENDATIONS**

To bring the ADR ecosystem in India to its fullest, important areas need close attention and effort. Fostering public awareness and understanding of legal matters by conducting public awareness campaigns across all areas, but particularly in rural and semi-urban regions, is the first necessary step in spreading knowledge about ADR. In addition, the field should be professionalized and accredited which requires the creation of a national accreditation system for mediators and arbitrators, with strict training and ethical standards. Another important step is to build and invest in strong institutional ADR centers in underdeveloped areas to make ADR more accessible to people. The fourth point is that regularly using reviews and updates to fix issues in ADR laws will help preserve the proper role of the courts, ensure correct enforcement of awards and address new problems that arise. Using technology by further integrating ODR platforms and experimenting with ethical and practical applications of Artificial Intelligence in dispute resolution leads to better efficiency, costs less and makes it more available. In the end, encouraging people in the legal system to use non-adversarial methods of dispute resolution calls for educating professionals, judges and the community about the advantages of cooperation. The improvements and updates made in these areas can strengthen ADR which will in turn help India's justice system become more available and satisfactory for everyone.

## **CONCLUSION**

Changes in Alternative Dispute Resolution in India point to a major shift in how justice is delivered nationwide. From the beginning of its history to the present-day laws, ADR has come to be a vital part of the legal system that helps ease the problem of many cases waiting in court. Significant judgments like *Afcons Infrastructure Ltd. Against Cherian Varkey Construction Co. P. Ltd.*<sup>52</sup> and *Bhatia International*<sup>53</sup> show the legal developments in this area. The case *Bulk Trading S.A.*<sup>54</sup>, *Bharat Aluminum Company (BALCO)* involved ADR relies on the impact of

---

<sup>50</sup> World Intellectual Property Org., WIPO Arbitration and Mediation Center – Background (2024).

<sup>51</sup> Reserve Bank of India, Circular DPSS.CO.PD No.116/02.12.004/2020-21, Online Dispute Resolution (ODR) System for Digital Payments (Aug. 6, 2020).

<sup>52</sup> (2010) 8 S.C.C. 24.

<sup>53</sup> (2002) 4 S.C.C. 105.

<sup>54</sup> (2002) 4 S.C.C. 105.

Kaiser Aluminum Technical Services<sup>55</sup> and Renusagar Power Co. Ltd. V. General Electric Co.<sup>56</sup> Which have played a key role in establishing ADR rules, making ADR more transparent and accepting international norms in India. Due to the Arbitration and Conciliation Act, 1996<sup>57</sup>, its amendments and the more recent Mediation Act, 2023<sup>58</sup>, the government is devoted to promoting ADR, ensuring agreements can be enforced and using technology to support this field. Although facing issues such as people not being aware of ADR, legal procedures that take a long time and intervention by judges, the outlook for ADR in India is bright, supported by the wider use of ODR and AI and the rise of targeted applications across industries. To reach India's goal to be a leader in arbitration and make sure that ADR really helps resolve disputes, careful work on the law, developing institutions, encouraging more education for individuals and growing the skillset of arbitrators is very important. Focusing on these essential areas helps India develop its ADR framework, so that justice is quicker, fairer and available to all.

---

<sup>55</sup> (2012) 9 S.C.C. 552.

<sup>56</sup> (1984) 4 S.C.C. 679.

<sup>57</sup> *Supra* note 11.

<sup>58</sup> *Supra* note 13.