



# The Indian Journal for Research in Law and Management

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

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## ARBITRATION AND MEDIATION IN INDIA: A MODERN METHOD OF DISPUTE RESOLUTION

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### INTRODUCTION

The Indian judicial system suffers from excessive pendency of cases, leading to a growing burden on courts and slowing the pace of litigation and judicial proceedings. As a result, disputes often continue for years, causing significant wastage of time, money, and resources. These drawbacks of traditional court litigation have contributed to the growth of Alternative Dispute Resolution (ADR) mechanisms in India. Such mechanisms provide a faster, more efficient, and less formal method of dispute resolution. This blog discusses the significance, advantages, and challenges of ADR mechanisms such as arbitration and mediation in India.

### UNDERSTANDING ARBITRATION AND MEDIATION

ADR mechanisms such as arbitration and mediation have gained significant importance, with more people opting for such mechanisms over traditional court litigation in recent years due to their cost-effective and flexible nature. Arbitration refers to the process in which the disputing parties submit their dispute to a neutral third party known as an arbitrator. The arbitrator delivers a decision formally known as an arbitral award. Arbitration is defined under Section 2(1)(a) of The Arbitration and Conciliation Act, 1996<sup>1</sup>.

Mediation, on the other hand, is a more informal process of settling disputes between parties. In this process, the neutral third party, known as the mediator, facilitates the voluntary resolution of disputes. Unlike arbitration, the mediator does not impose a binding decision upon the parties. Mediation is governed by the Mediation Act, 2023<sup>2</sup>.

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<sup>1</sup> Arbitration and Conciliation Act, 1996, Act No. 26 of 1996, § 2(1)(a) (India).

<sup>2</sup> Mediation Act, 2023, Act No. 32 of 2023, § 3(h) (India).

## **NEED FOR ADR IN INDIA**

The increase in commercial and contractual disputes, along with their growing complexity, has increased the importance of ADR mechanisms in India. In commercial matters, lengthy court proceedings can make dispute resolution difficult, particularly where ongoing business relationships are involved, as prolonged proceedings may lead to strain in business relationships. This has increased the need for dispute resolution mechanisms that can address commercial disputes in a more practical manner.

The growing relevance of ADR mechanisms reflects the changing needs of India's legal and commercial environment.

## **GROWTH AND IMPORTANCE OF ADR IN INDIA**

The use of arbitration and mediation in India has grown significantly, particularly in commercial and contractual matters. They are preferred because of their faster, cost effective, and flexible nature when compared to traditional court litigation. Recent surveys on dispute resolution practices in India also reflect the growing preference for arbitration among ADR mechanisms.<sup>3</sup> Furthermore, these mechanisms provide confidentiality, making them more suitable for commercial disputes.

The importance of Alternative Dispute Resolution mechanisms has also been acknowledged under Section 89 of the Civil Procedure Code, 1908<sup>4</sup>, which promotes settlement of disputes outside courts. India's ADR framework is also largely based on the UNCITRAL Model Law<sup>5</sup>, aiming to promote efficient and uniform arbitration practices. Despite their growing importance, ADR mechanisms in India continue to face several practical challenges.

## **CHALLENGES IN ARBITRATION AND MEDIATION**

One of the biggest challenges faced by ADR mechanisms in India is the lack of proper awareness about such mechanisms. Many people hold preconceived notions and scepticism towards arbitration and mediation, often considering them to be inferior to traditional court litigation. In rural and less developed areas, awareness regarding ADR mechanisms still

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<sup>3</sup> Federation of Indian Corporate Lawyers & Centre for Trade and Investment Law, Survey of Dispute Resolution in India, 2023: Growth and Future of Alternate Dispute Resolution in India (2023), [https://images.assettype.com/ficl/2023-05/1ad5446e-8d5b-4fc7-99fb-ea07ce09daf9/FICL\\_Survey\\_of\\_Dispute\\_Resolution\\_in\\_India.pdf](https://images.assettype.com/ficl/2023-05/1ad5446e-8d5b-4fc7-99fb-ea07ce09daf9/FICL_Survey_of_Dispute_Resolution_in_India.pdf).

<sup>4</sup> Code of Civil Procedure, 1908, Act No. 5 of 1908, § 89 (India).

<sup>5</sup> See U.N. Comm'n on Int'l Trade Law, UNCITRAL Model Law on International Commercial Arbitration, U.N. Doc. A/40/17, annex I (1985), *as amended by* U.N. Doc. A/61/17, annex I (2006).

remains comparatively low. Concerns regarding bias of arbitrators or mediators also continue to exist.

Other reasons include the lack of trained arbitrators and mediators in the country, along with high costs of certain arbitration proceedings. In certain cases, arbitration proceedings may become lengthy due to procedural delays or unnecessary judicial intervention, defeating the purpose of speedy justice. Although provisions relating to ADR mechanisms exist in India, challenges regarding their effective implementation still persist.

## **RECENT DEVELOPMENTS**

Recent legal developments in ADR reflect the increasing recognition and promotion of such mechanisms in India. One of the major developments is the enactment of the Mediation Act, 2023<sup>6</sup>, which provides statutory recognition to mediation. It further promotes out of court settlement and encourages institutional mediation. The establishment of the India International Arbitration Centre also shows the growing importance of institutional arbitration and strengthening of the ADR framework in India. Furthermore, the use of artificial intelligence and online dispute resolution (ODR) platforms are gradually changing how disputes are resolved in India. Such technological developments make dispute resolution mechanisms more accessible and convenient for parties. These developments show the growing importance of ADR mechanisms within the Indian legal system.

## **CONCLUSION**

Arbitration and mediation continue to gain importance due to their efficient approach towards dispute resolution. Despite their growing relevance, several practical challenges continue to exist in their implementation. Therefore, proper implementation and increased awareness regarding ADR mechanisms are important in India. The growing burden on courts and increasing pendency of cases further highlight the need for ADR mechanisms in India. Thus, strengthening such mechanisms is important for efficient dispute resolution within the Indian legal system.

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<sup>6</sup> Mediation Act, 2023, Act No. 32 of 2023 (India).