



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

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

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ALTERNATIVE DISPUTE RESOLUTION: BETWEEN EFFICIENT JUSTICE AND REAL JUSTICE

~ SANSKRITI MISHRA

INTRODUCTION

One of the most vital systems for any democracy is that of the system of dispensation of justice. However, with the increase in the workload of the court over the years, delay in proceedings, increase in litigation cost, and complexity of procedure, accessibility of justice by common people has been made extremely difficult¹. In India, in particular, the problem of backlog of cases is a matter of concern with millions of cases pending in courts for many years, some even for decades.² In this context, Alternative Dispute Resolution (ADR) serves as a highly efficient tool that can help resolve disputes in quick, cheap, and flexible manner.

Alternative Dispute Resolution is the process of dispute resolution outside the conventional process of litigation.³ The different kinds of ADR processes include arbitration, mediation, negotiation, and conciliation.⁴ Alternative Dispute Resolution not only aims at reducing workload on courts but also encourages parties to find settlement to their disputes through cooperative means.⁵ Nowadays, ADR is regarded not just as an alternative but also as an integral part of the system of justice.

¹ Marc Galanter & Jayanth K. Krishnan, “*Bread for the Poor*”: Access to Justice and the Rights of the Needy in India, 55 Hastings L.J. 789, 790–92 (2004).

² Nat'l Judicial Data Grid, Pending Cases Dashboard, <https://njdg.ecourts.gov.in> (last visited May 21, 2026).

³ Black's Law Dictionary 91 (10th ed. 2014).

⁴ Avtar Singh, *Law of Arbitration and Conciliation* 5–8 (11th ed. 2018).

⁵ S.K. Chawla, *Law of Arbitration and Conciliation* 14–16 (3d ed. 2017).

Over the past few decades, ADR has seen a tremendous growth worldwide. In India also, legislative and judicial support for ADR has grown significantly through the Arbitration and Conciliation Act, 1996, Section 89 of the Code of Civil Procedure, the Commercial Courts Act, and more recently the Mediation Act, 2023.⁶

While there are several benefits of ADR, there have been some controversies surrounding it raised by experts in the field. The first one being the possibility of institutionalizing ADR too much, which might result in the failure of fulfilling its true objective.⁷ In addition to this, there is skepticism among the people about how settlement oriented procedures can be just.

The current research paper explores the growth, importance, issues, and future scope of ADR with particular emphasis on its application in India. The development of ODR and the contemporary debate regarding efficiency versus justice in dispute resolution mechanisms are discussed in detail.

MEANING AND NATURE OF ALTERNATIVE DISPUTE RESOLUTION

Alternate Dispute Resolution means resolution of disputes outside formal proceedings of the court.⁸ In contrast to conventional methods of litigation, alternate dispute resolution procedures are relatively informal, party-focused, and flexible in character.⁹ Alternate dispute resolution focuses on finding a mutually amicable solution without involving lengthy legal battles.¹⁰ The major forms of ADR are:

Arbitration

Arbitration refers to a method whereby both parties involved in the disagreement submit the issue to a third neutral party called an arbitrator whose decision will be binding on both of them. The use of arbitration is very common in business transactions because of its advantages.

⁶ Arbitration and Conciliation Act, No. 26 of 1996, § 89 Code of Civil Procedure, 1908, Commercial Courts Act, No. 4 of 2016, Mediation Act, No. 32 of 2023.

⁷ Owen M. Fiss, *Against Settlement*, 93 Yale L.J. 1073, 1075–76 (1984).

⁸ S.K. Chawla, *Law of Arbitration and Conciliation* 10–12 (3d ed. 2017).

⁹ Avtar Singh, *Law of Arbitration and Conciliation* 4–6 (11th ed. 2018).

¹⁰ Arbitration and Conciliation Act, No. 26 of 1996, § 7.

Mediation

Mediation involves a neutral mediator who assists parties in reaching a voluntary settlement. Unlike arbitration, the mediator does not impose a decision.¹¹ Mediation focuses on dialogue, cooperation, and preservation of relationships.

Conciliation

The concept of conciliation resembles that of mediation, though here the conciliator can be more proactive in suggesting ways for the settlement of differences among the disputing parties.¹²

Negotiation

Negotiation is a very basic approach for the resolution of disputes, where parties enter into direct discussion with one another for solving the issue without any third party involvement.¹³ Some important characteristics associated with ADR include party autonomy, confidentiality, flexibility, and consensual resolution.¹⁴ These characteristics set ADR apart from litigation.

EVOLUTION AND GROWTH OF ADR

The practice of solving disputes without resorting to litigation has some historical background. In ancient societies, there also existed alternative mechanisms for settling disputes through informal discussions and compromise solutions.¹⁵ For instance, Indian village panchayats and other traditional institutions used to resolve disputes among members of the society through dialogue and negotiation.¹⁶ Modern ADR emerged due to certain shortcomings in formal litigation systems.¹⁷

¹¹ Mediation Act, No. 32 of 2023, § 3(h).

¹² Arbitration and Conciliation Act, No. 26 of 1996, pt. III.

¹³ Roger Fisher et al., *Getting to Yes: Negotiating Agreement Without Giving In* 15–18 (3d ed. 2011).

¹⁴ M. Jagannadha Rao, *Concepts of ADR* 25–28 (2005).

¹⁵ M. Jagannadha Rao, *Concepts of ADR* 3–5 (2005).

¹⁶ N.R. Madhava Menon, *Our Legal System* 245–47 (2004)

¹⁷ S.K. Chawla, *Law of Arbitration and Conciliation* 1–3 (3d ed. 2017).

The most significant contribution made to ADR theory can be attributed to the idea of "multi-door courthouse" proposed by Professor Frank Sander in 1976.¹⁸ At that time, during the Pound Conference, Sander suggested providing disputants with different dispute resolution options depending on the nature of their disputes.

In recent decades, the United States became the country where ADR institutionalization took place. Commercial globalization, rising costs of litigation, and the congestion of courts prompted both business corporations and governments to embrace alternative dispute resolution.¹⁹

Studies carried out between 1981 and 2022 show significant growth of ADR scholarship and institutional practice.²⁰ Such fields as commercial arbitration, family mediation, labor disputes, healthcare disputes, and construction disputes have seen an intensive use of ADR procedures. The field of Online Dispute Resolution appears to be one of the fastest-growing areas of research within ADR scholarship.²¹

IMPORTANCE OF ADR IN INDIA

India's judicial system faces enormous pressure because of the huge number of pending cases.²² Delays in adjudication often discourage people from seeking legal remedies. In many civil disputes, parties spend years waiting for final judgments.²³ ADR therefore plays an important role in improving access to justice.

Reduction of Judicial Burden

Among other benefits of ADR, it makes litigation much easier. By channeling cases to mediation, arbitration, and conciliation, courts are free to deal with serious and difficult cases.²⁴ According to Section 89 of the Code of Civil Procedure, parties to a dispute may settle the matter through

¹⁸ Frank E.A. Sander, Varieties of Dispute Processing, in *The Pound Conference: Perspectives on Justice in the Future* 65 (A. Leo Levin & Russell R. Wheeler eds., 1979).

¹⁹ Carrie Menkel-Meadow, Ethics in ADR Representation, 4 *Geo. J. Legal Ethics* 589, 590–92 (1991).

²⁰ Xiong Ni et al., Mapping the Knowledge Domain of ADR Studies (1981–2022), 15 *J. Disp. Resol.* 45, 46–49 (2023).

²¹ Ethan Katsh & Orna Rabinovich-Einy, *Digital Justice: Technology and the Internet of Disputes* 1–5 (2017).

²² Nat'l Judicial Data Grid, Pending Cases Dashboard, <https://njdg.ecourts.gov.in>.

²³ *Salem Advocate Bar Ass'n v. Union of India*, (2005) 6 S.C.C. 344.

²⁴ *Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. (P) Ltd.*, (2010) 8 S.C.C. 24.

alternative dispute resolution.²⁵ Courts usually refer cases to mediation in cases where there is a dispute between families, property cases, commercial issues, and consumer complaints.²⁶

Speedy Resolution

Processes involved in ADR are much faster compared to litigation. Arbitration involves simpler procedures with limited appeals. Disputes can be settled very quickly through mediation. Speedy resolution of disputes is critical in business for ensuring economic development.²⁷

Cost Effectiveness

Litigation expenses in India can become financially burdensome because of court fees, lawyer fees, procedural delays, and repeated hearings. ADR usually reduces these costs because proceedings are less formal and comparatively shorter.²⁸

Preservation of Relationships

Unlike adversarial litigation, mediation and negotiation encourage cooperation between parties. This is particularly useful in family disputes, workplace conflicts, and commercial relationships where parties may wish to continue interactions even after the dispute.²⁹

Confidentiality

ADR proceedings are generally confidential. Businesses often prefer arbitration because sensitive commercial information remains private.³⁰

Arbitration in India

²⁵ Code of Civil Procedure, 1908, § 89.

²⁶ *Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. (P) Ltd.*, (2010) 8 S.C.C. 24.

²⁷ Avtar Singh, *Law of Arbitration and Conciliation* 10–14 (11th ed. 2018).

²⁸ S.K. Chawla, *Law of Arbitration and Conciliation* 18–20 (3d ed. 2017).

²⁹ Roger Fisher et al., *Getting to Yes: Negotiating Agreement Without Giving In* 22–25 (3d ed. 2011).

³⁰ Arbitration and Conciliation Act, No. 26 of 1996, § 75.

Arbitration has become one of the most significant forms of ADR in India, especially in commercial disputes.³¹ The Arbitration and Conciliation Act, 1996 was enacted to modernize arbitration law in accordance with the UNCITRAL Model Law.³²

Over the years, India has introduced several amendments to improve the efficiency of arbitration. Courts have increasingly emphasized minimal judicial interference in arbitral proceedings.³³

Institutional arbitration has also gained importance in India. Institutions such as the Mumbai Centre for International Arbitration (MCIA) and Delhi International Arbitration Centre (DIAC) aim to strengthen India's position as a global arbitration hub.³⁴ However, arbitration in India still faces several challenges:

- delays in arbitral proceedings,
- high arbitration costs,
- excessive judicial intervention in some cases,
- lack of trained arbitrators,
- Moreover, inconsistent enforcement practices.³⁵

Despite reforms, arbitration sometimes becomes almost as time-consuming and expensive as litigation itself. This raises concerns regarding whether arbitration is truly fulfilling its original objective of providing efficient justice.

MEDIATION AND THE HUMANIZED APPROACH TO JUSTICE

Of all forms of ADR, mediation is viewed as the most humane and collaborative form. It considers interests, emotions, and relationships rather than just legal rights.³⁶ Recently, mediation has

³¹ Avtar Singh, *Law of Arbitration and Conciliation* 1–5 (11th ed. 2018).

³² Arbitration and Conciliation Act, No. 26 of 1996; UNCITRAL Model Law on International Commercial Arbitration, G.A. Res. 40/72, U.N. Doc. A/RES/40/72 (Dec. 11, 1985).

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

³⁴ *Bharat Aluminium Co. v. Kaiser Aluminium Tech. Servs. Inc.*, (2012) 9 S.C.C. 552.

³⁵ Law Comm'n of India, Report No. 246 on Amendments to the Arbitration and Conciliation Act, 1996, at 10–15 (2014).

³⁶ Roger Fisher et al., *Getting to Yes: Negotiating Agreement Without Giving In* 20–25 (3d ed. 2011).

received much attention in India. Courts are encouraging parties to settle their disputes through mediation centers affiliated with district courts and High Courts.³⁷

The promulgation of Mediation Act, 2023 is a major move in establishing mediation as an important ADR mechanism in India.³⁸ It seeks to promote pre-litigation mediation and enforcement of mediated settlement agreements.

Family disputes, matrimonial issues, child custody, workplace disputes, and disputes between neighbors are among issues well suited to mediation due to the existence of continuing relationships.³⁹ There have been various criticisms of mediation as an institution in recent years. Carrie Menkel-Meadow criticizes the institutionalization of mediation.⁴⁰ In her view, excessive formalization and control of mediation by courts lead to a loss of the original flexibility and participative aspect of mediation.⁴¹

That is, instead of facilitating a process of dialogue, mediation may become yet another procedural mechanism aimed at reaching an agreement. This discussion is pertinent as ADR was initially promoted as a more humane approach to resolving disputes compared to litigation.

EFFICIENCY VERSUS JUSTICE: THE CENTRAL DEBATE

One of the most significant academic debates surrounding ADR concerns the relationship between efficiency and justice.⁴² Supporters of ADR argue that speedy and consensual settlements themselves promote justice because delayed justice effectively amounts to denial of justice.⁴³ In countries like India where courts are heavily burdened, ADR provides practical solutions for ordinary litigants.⁴⁴

³⁷ *Salem Advocate Bar Ass'n v. Union of India*, (2005) 6 S.C.C. 344.

³⁸ Mediation Act, No. 32 of 2023.

³⁹ M. Jagannadha Rao, *Concepts of ADR* 40–45 (2005).

⁴⁰ Carrie Menkel-Meadow, *Pursuing Settlement in an Adversary Culture*, 19 Fla. St. U. L. Rev. 1, 3–5 (1991).

⁴¹ *Id.* at 38.

⁴² Carrie Menkel-Meadow, *Pursuing Settlement in an Adversary Culture*, 19 Fla. St. U. L. Rev. 1, 2–4 (1991)

⁴³ *Hussainara Khatoon v. State of Bihar*, (1980) 1 S.C.C. 81.

⁴⁴ *Salem Advocate Bar Ass'n v. Union of India*, (2005) 6 S.C.C. 344.

The Indian judiciary has repeatedly emphasized the importance of speedy justice. Long delays in courts often increase emotional stress, financial burden, and uncertainty for parties.⁴⁵ ADR mechanisms therefore help in reducing procedural complications and encouraging faster settlements. Commercial entities especially prefer arbitration and mediation because lengthy litigation can negatively affect business relationships and economic activities.⁴⁶ In family disputes also, mediation is often considered more suitable because adversarial litigation may further damage personal relationships.⁴⁷

However, critics of ADR argue that excessive emphasis on settlement may sometimes compromise fairness and substantive justice.⁴⁸ Owen Fiss, in his famous article “Against Settlement,” argued that courts perform functions that go beyond merely resolving disputes between parties. Judicial decisions help in development of legal principles, protection of constitutional values, and ensuring public accountability.

Unlike court judgments, many ADR proceedings remain confidential.⁴⁹ As a result, important legal issues may never become part of public jurisprudence. Critics therefore argue that privatization of justice through ADR can sometimes weaken transparency and public accountability.⁵⁰ When disputes are resolved privately, society loses the opportunity to establish legal precedents that may guide future conduct.

Another concern relates to unequal bargaining power between parties. In mediation or negotiation, economically or socially weaker parties may feel pressured to accept settlements that are not entirely fair. This concern becomes particularly relevant in family disputes, workplace conflicts, consumer disputes, and cases involving large corporations.

For example, a financially dependent spouse in matrimonial mediation may agree to unfavorable terms merely to avoid prolonged litigation. Similarly, employees may accept unfair settlements because they lack the financial resources to continue lengthy legal proceedings against employers.

⁴⁵ *Hussainara Khatoon v. State of Bihar*, (1980) 1 S.C.C. 81.

⁴⁶ *Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. (P) Ltd.*, (2010) 8 S.C.C. 24.

⁴⁷ M. Jagannadha Rao, *Concepts of ADR* 40–45 (2005).

⁴⁸ Owen M. Fiss, *Against Settlement*, 93 *Yale L.J.* 1073, 1075–76 (1984).

⁴⁹ *Arbitration and Conciliation Act*, No. 26 of 1996, § 75.

⁵⁰ Owen M. Fiss, *supra* note 8, at 1085.

In such situations, settlement may technically resolve the dispute but may not necessarily deliver substantive justice. Scholars have also criticized the increasing institutionalization of ADR. Carrie Menkel-Meadow argues that ADR was originally envisioned as a more humane and participatory process that focused on dialogue and mutual understanding. However, once ADR became integrated into formal court systems, the focus gradually shifted toward efficiency and disposal of cases. As a result, mediation in some situations risks becoming another procedural formality where settlement is encouraged primarily to reduce judicial burden rather than to genuinely address the concerns of parties. This creates a tension between quantitative justice, which focuses on disposal rates, and qualitative justice, which emphasizes fairness and participation.

At the same time, it cannot be denied that litigation itself is not free from flaws. Traditional court proceedings are often expensive, time-consuming, and emotionally exhausting.⁵¹ Therefore, completely rejecting ADR would also be unrealistic. The challenge lies in ensuring that ADR mechanisms remain voluntary, fair, and accessible while preserving their original objective of providing cooperative and meaningful dispute resolution.⁵²

The answer perhaps lies in balancing both objectives. ADR should not entirely replace litigation because courts remain essential for protection of rights, constitutional remedies, and public accountability. At the same time, ADR provides valuable alternatives for disputes where cooperation, confidentiality, and flexibility are more beneficial than adversarial adjudication.⁵³ Therefore, ADR and litigation should function as complementary mechanisms rather than competing systems.

ONLINE DISPUTE RESOLUTION: THE FUTURE OF ADR

Technological advancement has significantly transformed dispute resolution systems in recent years. Online Dispute Resolution (ODR) refers to the use of digital technology and online

⁵¹ Marc Galanter & Jayanth K. Krishnan, *"Bread for the Poor": Access to Justice and the Rights of the Needy in India*, 55 *Hastings L.J.* 789, 790–95 (2004).

⁵² S.K. Chawla, *Law of Arbitration and Conciliation* 20–25 (3d ed. 2017).

⁵³ Avtar Singh, *Law of Arbitration and Conciliation* 10–15 (11th ed. 2018).

platforms for resolving disputes.⁵⁴ ODR combines legal processes with technological tools in order to provide faster and more accessible justice delivery.

ODR became especially important during the COVID-19 pandemic when physical court functioning was restricted.⁵⁵ Virtual hearings, online mediation sessions, and digital arbitration proceedings became increasingly common across different jurisdictions. Even after the pandemic, many institutions continued using digital dispute resolution because of its convenience and efficiency.

Today, ODR is widely used in e-commerce disputes, consumer complaints, banking conflicts, insurance claims, and small-value commercial disputes. Online marketplaces and digital payment systems generate a large number of disputes involving parties situated in different geographical locations. In such situations, traditional litigation may not always be practical or economically feasible.⁵⁶

ODR offers several important advantages. First, it increases accessibility because parties can participate from different locations without physically appearing before courts or tribunals. Second, it significantly reduces costs related to travel, infrastructure, and procedural formalities. Third, ODR saves time because scheduling and communication become easier through digital platforms.

India has also witnessed growing interest in ODR initiatives. NITI Aayog has actively supported development of digital dispute resolution mechanisms to strengthen access to justice and improve ease of doing business. Several private ODR platforms have emerged in India to resolve disputes relating to digital payments, fintech services, and e-commerce transactions.⁵⁷

However, ODR also raises important concerns regarding digital divide, data privacy, cybersecurity, technological literacy, and fairness in virtual proceedings. In rural and economically

⁵⁴ Ethan Katsh & Orna Rabinovich-Einy, *Digital Justice: Technology and the Internet of Disputes* 3–5 (2017).

⁵⁵ Richard Susskind, *Online Courts and the Future of Justice* 1–4 (2019).

⁵⁶ United Nations Comm'n on Int'l Trade Law (UNCITRAL), Technical Notes on Online Dispute Resolution, U.N. Doc. A/CN.9/888 (2016).

⁵⁷ NITI Aayog Report on ODR in India.

weaker regions, lack of internet access and digital awareness may prevent effective participation in online dispute resolution processes.⁵⁸

Further, virtual proceedings may reduce emotional communication and personal interaction between parties, especially in sensitive disputes involving family relationships or mental distress. Therefore, while ODR provides efficiency, it must be implemented carefully to ensure fairness and inclusiveness.⁵⁹ Despite these challenges, ODR is likely to become an integral part of future justice systems, particularly for low-value and high-volume disputes where traditional litigation is impractical.

CONCLUSION

The development of Alternative Dispute Resolution has been one of the most critical developments in the contemporary legal system. Considering the fact that judicial delays and pendency have always been serious problems in India, ADR becomes a perfect tool in ensuring justice.⁶⁰ Flexibility, confidentiality, cost effectiveness and speed of ADR process make ADR an important component in resolving all types of disputes in commercial and business transactions, familial disputes, consumer disputes and even disputes in online transactions.⁶¹

However, ADR processes have received a lot of criticism as well. Issues regarding unequal power imbalance, settlement pressures, privatization of justice and institutionalizing of mediation are among the many issues being studied by researchers.⁶² Even though ADR process manages to make the process more efficient, efficiency cannot be a primary objective for the process of justice. Fairness, transparency and participation should always remain the main objectives of any dispute resolution mechanism.

⁵⁸ NITI Aayog, *Designing the Future of Dispute Resolution: The ODR Policy Plan for India* 18–22 (2021).

⁵⁹ Carrie Menkel-Meadow, *Mediation, Arbitration, and Alternative Dispute Resolution*, in *The Oxford Handbook of Empirical Legal Research* 596–98 (2010).

⁶⁰ Nat'l Judicial Data Grid, *Pending Cases Dashboard*, <https://njdg.ecourts.gov.in>.

⁶¹ Avtar Singh, *Law of Arbitration and Conciliation* 10–15 (11th ed. 2018).

⁶² Owen M. Fiss, *Against Settlement*, 93 *Yale L.J.* 1073, 1075–87 (1984); Carrie Menkel-Meadow, *Pursuing Settlement in an Adversary Culture*, 19 *Fla. St. U. L. Rev.* 1, 3–10 (1991).

Finally, the issue of online dispute resolution proves that the whole idea of dispute resolution is developing along with other aspects of our society. With due care, online dispute resolution can be quite effective in India. Of course, there are also many problems, which should be discussed.

In the end, the process of ADR should never be seen as a total replacement of the conventional way of resolving disputes through litigation processes. It should rather serve as a complimentary process in the delivery of justice processes as the judiciary continues to have an important place for the promotion of constitutional rights and creation of precedents, among others.

The development of a good and efficient legal system should thus incorporate both efficient dispute settlement and substantive justice. As for India, the effectiveness of ADR in the future will depend not just on legislation but also public knowledge about ADR, institutions of law, judicial recognition of ADR and training of mediators and arbitrators, among others.

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