



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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Arbitration and Mediation in India:

A System Still Waiting to Be Used

by Shrikumar Pillai

India does not lack laws for settling disputes outside court rather it had developed its own method long back when formalized legal system was not in vogue. It has an arbitration statute amended three times, a dedicated mediation statute, a statutory Lok Adalat structure, and an institution of national importance built to attract international arbitration. ***What it lacks is use.*** Two documents published in 2026 make that hard to ignore: the 165th Report of the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice (7 August 2026), and *The Next Era of ADR*, published by EY India with Aarna Law on 11 September 2026 after surveying over 120 legal professionals.

The numbers

As on 13 April 2026, the Standing Committee was told that 93,885 cases were pending before the Supreme Court, about 64 lakh before the High Courts, and 4.87 crore before the District and Subordinate Courts — roughly 5.6 crore in all (165th Report, para 1.1) a staggering no indeed.

In the WJP Rule of Law Index 2025 India ranked 86th of 143 countries overall, 114th on civil justice and 89th on criminal justice. It also found civil justice weakened in 68% of countries including India, partly because alternatives to court, such as arbitration/mediation are absent or used minimally. Presently, India has about 21 judges per million, against the 50 recommended by the Law Commission in its 120th Report.

How the law developed

Settlement by agreement is not an import. Panchayats and guild bodies decided disputes and bound the parties by custom; colonial legislation added statutory form, not legal authority. The first

substantive Indian enactment was the Indian Arbitration Act, 1899, modelled on the English Arbitration Act 1889 and confined to the Presidency Towns. The Arbitration Act, 1940 held the field until the Arbitration and Conciliation Act, 1996 replaced it — the 76th Law Commission Report having found it dated, the law fragmented across three statutes, and the UNCITRAL Model Law of 1985 offering a template a liberal India needed. The 1996 Act was amended in 2015, 2019 and 2021. A fourth round, the draft Amendment Bill of 2024 following the Viswanathan Committee report, remains a consultation draft not introduced in Parliament. The Arbitration Council of India is yet to be formalised.

Arbitration: institutions without caseloads

Based on Parliament committee report, the India International Arbitration Centre, established in June 2022 to compete with SIAC, HKIAC and the LCIA, had handled about 17 cases in nearly three years (para 2.5). The Delhi International Arbitration Centre, set up in 2009 under the Delhi High Court, has administered over 12,000. The Committee diagnosis for the underutilization, is administrative: government and PSU contracts default to ad hoc clauses because institutional arbitration is never considered at the drafting stage.

The EY survey suggests the reluctance is not ideological. Seventy-two per cent of respondents prefer institutional or hybrid mechanisms and 77% are optimistic about arbitration's future. But 38% named non-enforcement of awards and 28% judicial intervention as key challenges — the two problems the Committee itself flags at paragraphs 2.14 to 2.15.

Mediation: a statute half in force

The Mediation Act, 2023, notified on 15 September 2023, covers pre-litigation, online and community mediation, makes mediated settlements enforceable, and subsumes conciliation within mediation. But it is being brought into force in stages. The provisions on conduct of proceedings, service providers, community mediation and Section 63 await notification, pending a functional Mediation Council of India (paras 3.6 to 3.8). Three years on, that has not happened. Meanwhile, pre-institution mediation under the Commercial Courts Act, 2015 has produced roughly 4,000 settlements in five years (para 3.5). The Committee wants it made mandatory, with cost penalties on parties who refuse to participate

or treat it as a formality. Whether sanctions can manufacture good faith is arguable; that a mandatory step with no consequence is not required.

Lok Adalats: the part that works

Forum	Period#	Pre-litigation disposed	Pending disposed	Value settled
National	2026 (to March)	3,46,87,917	59,51,139	~₹23,779 crore
State	FY 2024-25	8,05,731	5,39,083	~₹1,917 crore
e-Lok Adalat	2026 (to March)	7,24,977	1,537	—

#The forums use different period bases, so the rows are not comparable.

Cumulatively they disposed of over 43.36 crore cases between 2021 and March 2026. The Committee cautions that quality of settlement matters as much as volume, and wants guidelines on case selection and better data. Resourcing is the other issue: NALSA has 29 of 45 sanctioned posts filled, and its ₹550 crore allocation for 2026-27 is about half its projected requirement of ₹1,058.87 crore.

Technology, and what follows

Virtual hearings are now routine, and 65% of those EY surveyed found technology effective. Policy lags practice: NITI Aayog's ODR Policy Plan (2021) remains the framework, SAMADHAAN and the RBI's payments mechanism operate piecemeal, and no statute addresses ODR directly. The Committee's worry is distributional — uneven connectivity outside cities can narrow access even as it widens elsewhere.

Four things to do for ADR to firmly establish : a) Notify the rest of the Mediation Act to a timeline. b) Put institutional arbitration clauses into standard government and PSU contracts, which would do more for IIAC than any outreach. c) Define the statutory limits of judicial intervention. d) Lastly, treat ADR as a career rather than post-retirement work.

Conclusion

The courts have been supportive. *Avitel Post Studioz Ltd v. HSBC PI Holdings (Mauritius) Ltd*, (2021) 4 SCC 713, held that fraud does not oust arbitral jurisdiction; *Bombay Slum Redevelopment Corporation Pvt. Ltd. v. Samir Narain Bhojwani* (2024) deprecated prolix challenges to awards and reiterated the narrow compass of Sections 34 and 37. The framework is sound. But seventeen cases, four thousand settlements, a statute part-notified and a council un-constituted are not the marks of a system in demand. The gap is follow-through, duller to legislate than a new Act.

Citations

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