

# Alternative Dispute Resolution in India: A Brief Overview Justice Delayed is Justice Denied. - William E. Gladstone

Dr.Mamata Kyatannanavar

Vidyodaya law College, Tumakuru, India

DOI: <https://doi.org/10.51244/IJRSI.2025.120800057>

Received: 05 Aug 2025; Accepted: 11 Aug 2025; Published: 04 September 2025

## ABSTRACT:

The Indian court system is very stringent. There have been extraordinary efforts to develop strategies aimed at less costly, more effective and more satisfying resolution of conflict, including more wide and proper use of mediation and other “alternative dispute resolution” (ADR) methods. The research paper studies how the Indian society has adopted ADR system and how it made the positive sign of cost and time savings and plentiful other benefits of some court and their clients. In India, provisions relating to ADR, the role of legal practitioners during ADR procedure in India.

**Keywords:** Stringent; Legal practitioners; Disputes; Society

## INTRODUCTION

“Our Indian Constitution under Article 21 Right to speedy trial is a right to life and personal liberty of every citizen guaranteed, which ensures just, fair and reasonable procedure. Conflict in the Court like a cancer. The sooner it is resolved the better for all the parties concerned in particular and society in general.”<sup>1</sup>

“The chronicle of ADR can be traced to our historical path. The idea of Lok Adalats (People’s Court) is an advanced contribution of India to the World’s Jurisprudence. In India, it was a long practice and past of ADR process like Mediation and Lok Adalat being practiced in the Indian society at the grass-root level, these are called Panchayats. The ancient concept of solving an issue or dispute through Arbitration, Conciliation, Mediation, or Negotiation known as the decision of “Nyaya Panchayat” is abstracted and exists in the process of Lok Adalat”.

## Meaning and Modes Of ADR

In today's context, ADR can be elucidated as the most amicable form of dispute resolution. A well-suited panacea to costly and time-consuming litigation or discord resolution. Litigation is utterly complex for a layman whereas ADR is a client friendly technique where a client fully understands his case and can track its progress.

An alternative for the cumbersome and needless litigation is provided by ADR. In general, a third party or independent person such as an ADR practitioner; mediator, negotiator, or conciliator is set to reach a proportionate and plausible decision making. ADR often exhaust a dispute at its initial stage and prevents the litigants to seek courts assistance.

## Pre- Independence: British Rule

During the British rule in India Many legislations were introduced and a vital change came in the administration of India. In the year 1772, the courts were empowered to consider the disputes to arbitration either at the request of the parties or by its own discretion powers. Then after a decade, in the era of 1859 The

<sup>1</sup> P.M. BAKSHI: THE CONSTITUTION OF INDIA, UNIVERSAL LAW PUBLISHING CO. NEW DELHI. 2012

Code of Civil Procedure was enacted, under sections 312 to 327 of the Act mentioned arbitration but in 1882 the sections relating to arbitration was repealed.<sup>2</sup>

In 1899 The Indian Arbitration Act, 1899 was enacted to give effect to alternate dispute mechanism in India. The act was purely based on the English legislation.

And then in 1908, CPC was again amended and section 89 with second schedule gave wide powers to the courts to refer the disputes to ADR mechanism. Then, The Indian Arbitration Act, 1899 and section 89 read with second schedule of Code of Civil Procedure, 1908 were two effective legislation to deal with arbitration.<sup>3</sup>

Thereafter, in 1937 Geneva Convention was signed and adopted by India and a parallel legislation was introduced in the form of The Arbitration (Protocol and Convention) Act, 1937. In 1940, The Indian Arbitration Act, 1899 and section 89 with second schedule of CPC was repealed and replaced by The Arbitration Act, 1940.

In local levels Panchayats were very effective in resolving the disputes in villages in India.

### **Post- Independence Era**

The Arbitration (Protocol and Convention) Act, 1937 was to enforce the foreign awards and The Arbitration Act, 1940 for referring disputes to ADR mechanism were presently in force in India. Then in 1961, India became signatory to the New York Convention and The Foreign Award (Recognition and Convention) Act, 1961 was enacted.

In 1981, in M/S Guru Nanak Foundation vs. Rattan Singh & Sons, the Supreme Court described the Arbitration Act, 1940 in off- quoted passage. It observed that "the way in which the proceedings under the act are conducted and without an exception challenged in courts, has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the act have become highly technical and accompanied by unending prolixity, at every stage providing a legal trap to the unwary."

In 1985, the UNCITRAL model law was adopted and signed by India on International commercial arbitration.<sup>4</sup>

In 1996, finally The Arbitration (Protocol and Convention) Act, 1937; The Arbitration Act, 1940 and The Foreign Award (Recognition and Convention) Act, 1961 was repealed and consolidated in a single piece of legislation following the UNCITRAL model law, the Act was called the Arbitration and Conciliation Act, 1996. to make the Act more effective and efficient Section- 89 with Order- X (Rule- 1A to 1C) was re-introduced in CPC in 2002. The Act of 1966 was amended twice in 2015, 2019 and 2021.

But the historical step was taken with this enactment of Indian Arbitration Act 1940, which was solely based upon the English Arbitration Act. It dealt with mainly domestic arbitration.

### **The Constitution of India:**

After the independence, Constitution of India was adopted, wherein, Article 21 declares that no person shall be deprived of his life or his personal liberty except according to procedure established by law. And the procedure must be "reasonable, fair and just." Supreme Court of India in landmark case held that right to speedy trial is

---

<sup>2</sup>[HTTP://COURTS.STATE.DE.US/COURTS/SUPERIOR%20COURT/ADR/ADR/ADR\\_HISTORY.HTM](http://courts.state.de.us/courts/superior%20court/ADR/ADR/ADR_HISTORY.HTM)

<sup>3</sup> [HTTP://WWW.ADRGROUP.CO.UK/HISTORY.HTML](http://www.adrgroup.co.uk/history.html)

<sup>4</sup> [WWW.INDIALAWINFO.COM/BAREACTS/ARBC.HTML](http://www.indialawinfo.com/bareacts/arbc.html)

part and parcel of right to life or personal liberty.<sup>5</sup>

### **The Code of Civil Procedure, 1908:**

By Civil Procedure Code Amendment Act 1999, Section 89 (Settlement of Dispute outside Court) and Rules 1A to 1C, Order 10 (Direction of Court to opt for any one mode of ADR after first hearing of suit) were inserted which has made it incumbent upon courts where there exists elements of settlement to call upon the parties at their option to agree for one or other ADR methods.

### **Arbitration and Conciliation Act, 1996:**

The Act has been enacted on basis of UNCITRAL Model Law on International Commercial Arbitration, 1985 and Conciliation Rules, 1980 with an important feature to harmonize the concept of Arbitration and Conciliation of different legal systems of the world and to have its universal application. The main object of act is to encourage settlement of dispute amicably via Arbitration, Conciliation at domestic and international level. It permits Mediation, Conciliation or other procedures during arbitral proceedings to encourage settlement of disputes. This Act also gives settlement agreement reached by parties as a result of proceedings the status of court judgment under section 73 of this Act. Recently, Arbitration and Conciliation (Amendment) Act, 2015, gave legal recognition to Arbitration Agreement entered into by communication through electronic means, which is a positive initiative towards the promotion of ODR in effective manner.

### **Information and Technology Act, 2000:**

The concepts of writing and signature have been recently significantly modernized to provide greater certainty to online contracts and thereby facilitate e-commerce. The most important step to this end was taken on international level by adopting the UNCITRAL Model Law on Electronic Commerce in 1996. Then, UNCITRAL Model Law on Electronic Signatures 2001 was adopted. Those legislative changes resulted in "a global reform of writing requirement" The Information and Technology Act, 2000 being based on UNCITRAL Model Law of e-commerce was enacted in India to facilitate e-commerce and gives legal recognition to e-transactions. Section 4, 5, 10-A, 11-15 of the Act reflects the legal recognition to electronic records and signature.

### **Indian Evidence Act, 1872:**

What if the agreements entered into through e-communication are not admissible as evidence in courts of law? For this purpose Section 65-A and 65-B were inserted which has made electronic evidence as secondary copy to be admissible in courts of law subject to the satisfaction of requirements mentioned in section 65-B.

## **Types of ADR In India**

### **Arbitration**

Arbitration, an alternative dispute resolution mechanism (ADR), is often described as "a binding voluntary alternative dispute resolution process by a private forum chosen by the Parties". It is inherently expected, that: If the Parties with their eyes wide open have consented to refer the matter to the arbitration, then normally the finding of the Arbitrator should be accepted without demur. Apparently, after the pronouncement of the arbitral award the Court(s) are expected to discharge a mere "supervisory role",

In *ONGC vs Saw Pipes*, one of the first detailed judgment(s) analysing and interpreting Section 34 and *Associate Builders vs DDA*, that had the benefit of the *ONGC* judgment (supra), the Supreme Court painstakingly defined and re-defined, the limited scope of interference with arbitral awards.

### **Mediation**

Mediation is an Alternative Dispute resolution where a third neutral party aims to assist two or more disputants

---

<sup>5</sup> D.D. BASU: INTRODUCTION TO THE CONSTITUTION OF INDIA, LEXIS NEXIS, 2018

in reaching agreement. It is an easy and uncomplicated party centered negotiation process where third party acts as a mediator to resolve dispute amicably by using appropriate communication and negotiation techniques. This process is totally controlled by the parties. Mediator's work is just to facilitate the parties to reach settlement of their dispute. Mediator doesn't impose his views and make no decision about what a fair settlement should be.

### **Conciliation**

Conciliation is a form of arbitration but it is less formal in nature. It is the process of facilitating an amicable resolution between the parties, whereby the parties to the dispute use conciliator who meets with the parties separately to settle their dispute. Conciliator meet separately to lower the tension between parties, improving communication, interpreting issue to bring about a negotiated settlement. There is no need of prior agreement and cannot be forced on party who is not intending for conciliation. It is different from arbitration in that way.

### **Lok Adalat**

Lok Adalat is called 'People's Court' presided over by a sitting or retired judicial officer, social activists or members of Legal profession as the chairman. National Legal Service Authority (NALSA) along with other Legal Services Institutions conducts Lok Adalats on regular intervals for exercising such jurisdiction.

Any case pending in regular court or any dispute which has not been brought before any court of law can be referred to Lok Adalat. There is no court fees and rigid procedure followed, which makes the process fast. If any matter pending in court of referred to the Lok Adalat and is settled subsequently, the court fee originally paid in the court when the petition filed is also refunded back to the parties.

Parties are in direct interaction with the judge, which is not possible in regular courts. It depends on the parties if both the parties agree on case long pending in regular court can be transferred to Lok Adalat. The persons deciding the cases have the role of statutory conciliators only, they can only persuade the parties to come to a conclusion for settling the dispute outside the regular court in the Lok Adalat.

Legal Services Authorities (State or District) as the case may be on receipt of an application from one of the parties at a pre-litigation stage may refer such matter to the Lok Adalat for which notice would then be issued to the other party. Lok Adalats do not have any jurisdiction to deal with cases of non-compoundable offenses<sup>6</sup>

### **Judicial Pronouncement**

Landmark cases such as *Tata Sons v. The Advanced Information Technology Association*[38] and *Maruti Udyog Limited v. Maruti Software Pvt. Ltd.* Wherein WIPO, the Arbitration and Mediation center was made the medium to solve the Domain name dispute.

In *State of Maharashtra v. Dr. Praful B. Desai* Supreme Court held that video-conferencing could be resorted to for taking evidence of witnesses by stating that recording of evidence satisfies the object of Section 273 of the Code of Criminal Procedure that evidence be recorded in the presence of the accused.

In *Trimex*, the Hon'ble Supreme Court held the online arbitration agreement is the most important document of arbitration and since parties do not meet personally but rather virtually, it is pertinent that the agreement clearly defines all particulars of dispute resolution mechanism. There must be meeting of minds and the agreement must be according to Section 7 of the Arbitration and Conciliation Act 1996.

In *Shakti Bhog Food Ltd. v. kola Shipping Ltd.*, communication and acceptance by telex, telegram and other mode of communication has been accepted as valid mode of communication. There is a win-win situation in the ADR system for the parties whereas in the litigation procedure there is a win-lose situation.

---

<sup>6</sup> [HTTPS://SINGHANIAN.IN/ALTERNATIVE-DISPUTE-RESOLUTION-IN-INDIA-A-BRIEF-OVERVIEW/](https://singhanian.in/alternative-dispute-resolution-in-india-a-brief-overview/)

Through the ADR system the result is final and the award has been passed by the Sole Arbitrator or Arbitral Tribunal.

### **Advantages of mediation**

Mediation is participative and the parties directly participate in the negotiation. Parties have control over the mediation. They have the right to decide whether or not to settle the dispute and the terms of the settlement.

- Mediation procedure is very speedy, efficient, and cost- effective.
- Mediation is a private process.
- Communication between the parties is better and effective.
- Mediation helps to maintain, improve and restore relationships between the parties.
- Mediation process is voluntary because the parties are at liberty to opt-out of it at any stage. If any party feels that the mediation process is not helping him, he can opt out of it.
- Mutually beneficial settlement is reached out in mediation.
- The process of mediation always considers the long-term and underlying interests of the parties at each stage of the dispute resolution process.

### **Advantages of lok adalats**

The Apex Court, emphasizing the importance of Lok Adalats has observed:

“Lok Adalats have been created to restore access to remedies and protections to lower the burden of petty cases in the regular courts. Experience has shown that not only huge numbers of cases are settled through Lok Adalats, but this system also has definite advantages, some of which are listed below:

- Speedy justice and saving from the lengthy court procedures.
- Justice at no cost.
- Solving problems of back-log cases.
- Maintenance of cordial relations.”<sup>7</sup>

### **CONCLUSION**

Alternative Dispute Resolution mechanism (ADR) is not a substitution of litigation, rather it would be used to make our traditional court systems work more efficiently and effectively. This system express the effective Alternative Dispute Resolution mechanisms to ease the present burden of judicial functioning. The pending cases are increasing day by day; however, judiciary alone is not responsible for the same. It must be noted that the backlog is a product of “inadequate judge population ratio” . The government has to play a vital role in this direction. In this view that in order to make Alternative Dispute Resolution Mechanisms more effective and taking it out of very narrow and limited area of application and widening the area of its operation. Further the lawyers have to play a very active and positive role and they should never forget that dispute is a problem, which needs to be solved and not contest, which needs to be won.

---

<sup>7</sup> [HTTPS://WWW.MONDAQ.COM/INDIA/LITIGATION-MEDIATION-ARBITRATION/654324/ALTERNATE-DISPUTE-RESOLUTION-ADR-IN-INDIA](https://www.mondaq.com/india/litigation-mediation-arbitration/654324/ALTERNATE-DISPUTE-RESOLUTION-ADR-IN-INDIA)