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Development of ADR in India and Its Effects on Litigation

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Development of ADR in India and its Effects on Litigation

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Abstract

The Alternative Dispute Resolution is one of the processes of dispute resolution, which has received recognition in recent times. In India, owing to the ever-growing burden of case filing and litigations, and other associated problems such as procedural delay, increasing costs of litigation, it is necessary to develop an efficient method for dispute resolution outside the conventional court system. Processes of Alternative Dispute Resolution include arbitration, mediation, conciliation, negotiations, Lok Adalat and others. In the past several years, tremendous developments in the process of ADR have been made in India.

This research paper will analyze the developments and evolution of the Alternative Dispute Resolution in India. The impact of the ADR process on the process of litigation will be examined in detail. Attention will be paid to the legal provisions in relation to the process of ADR, such as the Arbitration and Conciliation Act, 1996; Section 89 of the Code of Civil Procedure, 1908; and Mediation Act, 2023. Additionally, this paper will assess the impact of ADR on reducing the burden on the court system, settlement of disputes and other aspects.

Keywords: *Alternative Dispute Resolution, ADR, Arbitration, Mediation, Conciliation, Lok Adalat, Litigation, Access to Justice, Mediation Act 2023, Dispute Resolution.*

Introduction

Alternate Dispute resolution is integral to any system of law as it guarantees the safety of rights and ensures social order. Traditionally, dispute resolution takes place through the court systems. Increasing litigation, procedural problems, high cost, and delays in administration of justice have put substantial strain on judicial institutions around the world. As a result of this, Alternative Dispute Resolution (ADR) has become an effective tool for dispute resolution through an alternative process. ADR provides parties with the facility of settling their disputes without

having to go through the traditional processes of courts and helps in maintaining cordial relationships between the parties.¹

India has seen a marked rise in the relevance of ADR in the recent decades due to various judicial changes, legislative developments, and increased demand for timely justice. The process of evolution of ADR shows that there is a shift in the approach to dispute resolution from being an adversary process to becoming more of a cooperative process.

- **Meaning and Concept of Alternative Dispute Resolution (ADR)**

Alternative Dispute Resolution denotes a set of approaches employed in resolving disputes without having recourse to the traditional legal system. It includes mechanisms like arbitration, mediation, conciliation, negotiations, and Lok Adalat. They give disputing parties the chance to find solutions to their problems either through discussions, consensus or with the help of third-party arbitrators. ADR is based on the premise that there is no need for every single conflict to have recourse to the formal processes of judicial determination in courtrooms. The underlying assumption is that some disputes are better handled using non-judicial approaches.

- **Need for ADR in Modern Legal Systems**

Current legal systems face numerous difficulties as a result of the escalating number of cases and consequently delay in resolving disputes. There have been millions of pending cases at different courts in India. This leads to high monetary costs in addition to causing emotional tension among the disputants.

Alternative Dispute Resolution has therefore come in handy as a remedy to this problem. This is because it is both faster and cheaper as compared to conventional procedures that take longer time and consume lots of resources. Besides, ADR is also effective especially in cases involving business, domestic, labor, and consumer relations, where it is not necessarily about securing a favorable judgment but rather preserving relationships between the disputants.

Evolution and Development of ADR in India

However, the development of Alternative Dispute Resolution (ADR) in India demonstrates an evolution from the traditional approach to solving disputes within communities to more defined and law-based process of alternative dispute resolution. While many people consider that Alternative Dispute Resolution is a relatively new concept, one should note that ADR was widely practiced in ancient

¹ Yadav, Anamika. "The Evolution and Development of ADR in India and Its Different Kinds." *Issue 5 Int'l JL Mgmt. & Human.* 3 (2020): 578.

Indian society, when many conflicts were solved by means of consensus and not in the context of court procedures.²

- **Historical Background of Dispute Resolution in India**

The practice of resolving disputes outside judicial systems was practiced in India from time immemorial. Village Panchayats, caste committees, and other such groups were very important for settling property disputes, family disputes, trading disputes, and matters concerning governance. These bodies laid stress on compromising and restoring peace rather than on any kind of adjudicatory process.³ In the colonial era, the establishment of courts of law brought about changes in this pattern, but informal ways of dispute resolution continued within communities. After Independence, there was a need to ensure that justice could be provided in a cost-effective manner, which brought into play new methods of resolving disputes through Lok Adalats.⁴

- **Growth of ADR after Economic Liberalization**

The economic liberalization policy introduced in 1991 played a crucial role in the growth of ADR in India. The industrialization process coupled with globalization and increase in commercial transactions contributed to an increasing number of disputes. Courts could not always solve disputes effectively due to the delays in procedure and increasing number of cases awaiting adjudication.⁵

India began engaging with the global community. There was a need to establish a framework of dispute resolution. It was essential to have means of resolving disputes quickly, confidentially, and commercially. As such, arbitration, mediation, and conciliation became preferred means of solving commercial disputes in India.

- **Legislative Development of ADR**

There have been many changes in the legislation pertaining to the ADR process in India over the years. The passing of the Arbitration and Conciliation Act in 1996 is an example of such change. It is in line with the UNCTRAL Model Law and aims at creating an up-to-date arbitration system. The Act unifies the law with regard to domestic arbitration, international commercial arbitration, and conciliation. Section 89 of the Code of Civil Procedure, 1908 provides for

² Srivastava, Snehil, and Janmejay Singh. "The rise of adr & current situation in india." *Jus Corpus LJ* 1 (2020): 50.

³ Singhal, Radhika. "History and Evolution of ADR Jurisprudence in India." *Issue 2 Indian JL & Legal Rsch.* 5 (2023): 1.

⁴ Arora, Sarthak, Gaayan Arora, and Yashvi Arora. "Evolution and Growth of Alternative Dispute Resolution in India with Special Emphasis on Mediation." *Indian JL & Legal Rsch.* 2 (2021): 1.

⁵ Nga, Pham Thanh. "Alternative Dispute Resolution (ADR): A new trend of economic conflicts settlement." *ADR Strategies: Navigating Conflict Resolution in the Modern Legal World* 70 (2022).

referring certain cases for dispute resolution through arbitration, conciliation, mediation, judicial settlement, or through Lok Adalat.⁶

The Legal Services Authorities Act of 1987 has also contributed significantly to ADR by institutionalizing Lok Adalat. Mediation Act, 2023, which offers a detailed legal basis for mediation, is another recent development in the field.

Legal Framework Governing ADR in India

The success and development of alternative methods of dispute resolution in India depend on the fact that there is a well-established law in place which offers statutory backing to different forms of dispute resolution processes. Numerous acts of legislation have come into existence in recent times which encourage the practice of arbitration, conciliation, mediation, and Lok Adalat as alternatives to traditional litigations.⁷

- **Arbitration and Conciliation Act, 1996**

The main statutory instrument dealing with arbitration and conciliation in India is the Arbitration and Conciliation Act, 1996. The Act was enacted on the model of UNCITRAL Model Law and provided an impetus towards the development of arbitration law in India by bringing it into conformity with international standards. It is designed to govern the matters of domestic arbitration, international commercial arbitration, and conciliation.⁸

Party autonomy, limited judicial intervention, and finality of awards are some of the key principles of the Act. Attempts have been made to make arbitration in India efficient, credible, and transparent through later amendments made to the Act, including the amendment in 2015, 2019, and 2021.

- **Section 89 of the Code of Civil Procedure, 1908**

Section 89 of the Code of Civil Procedure, 1908 came up in an attempt to facilitate settlement of the issues pending through any means other than litigations. Under the provision, courts have the power to direct such cases for determination through any of the following methods if they think it possible for a settlement to take place between the parties involved.

These are: arbitration, conciliation, mediation, judicial settlement, and Lok Adalat. This provision serves as an effort on part of the legislature to facilitate dispute settlement through peaceful means and ease the burden of congested

⁶ Lindblom, Per Henrik. "ADR—The Opiate of the Legal System?." *European Review of Private Law* 16.1 (2008).

⁷ Sharma, Rishi. "Resolving Corporate Conflicts outside the Courtroom: A Study of ADR Mechanisms and the Companies Act in India." *Available at SSRN 4814779* (2024).

⁸ Bachhuka, Tanisha Pavankumar. "Setting aside of Arbitral Awards under the Arbitration and Conciliation Act 1996." *Issue 1 Int'l J.L Mgmt. & Human.* 7 (2024): 1853.

courts. The section has played an important role in the development of mediation in Indian courts.⁹

- **Lok Adalats and Permanent Lok Adalats**

Lok Adalat is a form of dispute resolution mechanism provided under the Legal Services Authorities Act, 1987. It is meant to provide quick and inexpensive access to justice through the process of mediation and compromise. The most common categories of disputes that get settled via Lok Adalats are civil cases, domestic matters, motor accident cases, labor disputes, and compoundable offenses.¹⁰

Permanent Lok Adalats are meant to settle disputes pertaining to public utilities including transport, post, and electricity. While Lok Adalats have no power to adjudicate, Permanent Lok Adalats do have a little power of adjudication in cases where the dispute cannot be settled.

- **Mediation Act, 2023**

The Mediation Act, 2023 can be considered a landmark in the evolution of ADR in India since it gives a well-established legal basis for mediation. According to the act, mediation is viewed as an independent and well-structured means of resolving disputes. Further, it seeks to facilitate the process of achieving settlements by way of mediation.¹¹

The legislation entails provisions regarding pre-litigation mediation, enforcement of mediated agreements, online mediation, and institutional mediation processes. In other words, the legislation intends to foster dialogue and encourage the resolution of disputes via mediation rather than litigation. Thus, the enactment of the Mediation Act, 2023 is indicative of India's commitment to developing ADR.

Major Forms of ADR in India

- **Arbitration**

Arbitration is the most common form of ADR used, especially when there are issues related to commercial and contract law. Arbitration involves the submission of disputes by the parties to one or more neutral arbitrators, who listen to the issue in question and make a binding ruling called the arbitral award. Arbitration is regulated by the Arbitration and Conciliation Act of 1996.

⁹ GN, Pooja. "An Analytical Study on Effectiveness of Section 89 of Code of Civil Procedure." *Available at SSRN 4468327* (2023).

¹⁰ Sharma, Nikita. "Comparative Study on the Concept of Lok Adalat with reference to the settlement of disputes under the alternative dispute resolution mechanism." *Issue 6 Indian JL & Legal Rsch.* 4 (2022): 1.

¹¹ Mahawar, Ayushi. "Applicability and Scope of the Mediation Act 2023: An in-Depth Analysis." *Jus Corpus LJ* 4 (2023): 249.

An important strength of arbitration lies in its flexibility and confidentiality. It gives parties the right to select the arbitrators, the procedures, and the forum in which arbitration will take place. The finality and enforceability of arbitral awards make arbitration a favorable option compared to legal processes, especially when dealing with business transactions.¹²

- **Conciliation**

The method of conciliation is one of the non-adjudicative procedures in which a third party neutral, called a conciliator, assists the parties in negotiating a settlement. While the arbitrator decides the dispute and issues an award for its resolution, the conciliator helps the disputing parties reach an agreeable solution without making any decisions.

The method involves voluntary, private, and cooperative negotiations. This type of settlement method becomes beneficial when the disputing parties have a business relationship that needs preservation while settling a dispute. The agreement arrived at via the process of conciliation also enjoys legality and enforceability similar to an arbitration award made by consensus.¹³

- **Mediation**

Mediation refers to a procedural method whereby an impartial mediator aids the disputing parties in problem identification, communication enhancement, and generation of possible solutions. The mediator has no authority to make any decision on the issue in dispute; rather, the aim is to help the parties to reach a consensus voluntarily.

The significance of mediation as a means of dispute resolution in India has increased significantly because of its efficacy in settling domestic, business, consumer, and property disputes. It is a cooperative approach, and therefore, it tends to produce more sustainable solutions. The passing of the Mediation Act, 2023 has added to the legal framework surrounding mediation.¹⁴

- **Negotiation and Lok Adalats**

Negotiation is considered the simplest and least formal ADR method, where both parties talk directly to each other to find a solution agreeable to them and without involving any third party. Negotiation offers maximum flexibility, as well as the opportunity for both parties to have total control over the outcome of the process. The majority of cases are often settled through negotiations prior to the commencement of litigation processes.¹⁵

¹² Yadav, Anamika. "The Evolution and Development of ADR in India and Its Different Kinds." *Issue 5 Int'l JL Mgmt. & Human.* 3 (2020): 578.

¹³ Kumar, Rahul, and Priyanshu Kumar Tripathy. "Future of ADR in India: "Alternative" to "Appropriate" Dispute Resolution." *Part 1 Indian J. Integrated Rsch. L.* 2 (2022): 1.

¹⁴ Motiwal, O. P. "Alternative dispute resolution in India." *J. Int'l Arb.* 15 (1998): 117.

¹⁵ Khan, Sarfaraz Ahmed. *Lok adalat: an effective alternative dispute resolution mechanism.* APH Publishing, 2006.

Lok Adalats can be considered one of India's finest models of dispute resolution created under the Legal Services Authorities Act of 1987. Such Adalats settle disputes by compromise and conciliation, and they are especially effective for civil, motor accidents, family, and other disputes that are capable of being settled. Lok Adalats provide prompt, cheap, and final decisions on disputes, which help reduce litigation processes considerably.

Impact of ADR on Litigation

- **Reduction of Court Backlog**

One of the significant benefits offered by ADR lies in its contribution to making the work of courts easier. The Indian judiciary continues to have pending disputes, which delay the settlement of disputes. Through ADR, numerous disputes have been settled without involving the courts. This reduces the amount of work that the judiciary has to carry out since not all cases will end up being handled by the courts.¹⁶

Through mediation, arbitration, conciliation, and Lok Adalats, appropriate cases are referred to such methods. This has ensured faster settlement of disputes since the judiciary can concentrate on more challenging issues.

- **Speedy and Cost-Effective Justice**

The litigation process usually takes a lot of time and involves a lot of appeals and other legal procedures, which come at great expense. In contrast, ADR processes are more convenient since they are faster and less expensive than litigation. The procedures used in ADR are easier than in court.

In addition to making the process of resolving legal problems quicker, ADR lowers the cost of litigation due to lack of procedure. The lack of procedure and direct involvement of the parties make ADR an effective way to solve legal disputes.

- **Promotion of Amicable Settlement**

Contrary to adversarial approaches, which generally increase hostilities among the disputing parties, ADR is centered on cooperation and consensus building. Approaches like mediation, conciliation, and negotiation promote cooperation by ensuring that all disputing parties find common ground upon which to negotiate amicable settlements.¹⁷

By facilitating such amicable settlements, ADR helps preserve relations among people, within families, and among businesses that could have been harmed by litigation.

¹⁶ Stipanowich, Thomas J. "ADR and the "Vanishing Trial": the growth and impact of "Alternative Dispute Resolution"." *Journal of Empirical Legal Studies* 1.3 (2004): 843-912.

¹⁷ Naseem, Fozia, et al. "Evaluating the Impact of ADR Mechanism in Reducing the Backlog of Civil Disputes on Judiciary." *Pakistan Journal of Criminal Justice* 5.1 (2025): 61-70.

Judicial Interpretation and Landmark Cases

- **Salem Advocate Bar Association v. Union of India**¹⁸

This is a highly influential case wherein the Supreme Court analyzed the constitutionality and enforcement of Section 89 of the Code of Civil Procedure, 1908. In this context, the Court considered ADR as an indispensable instrument that helps decrease delay in the justice system and urged judges to refer cases amenable to ADR mechanisms. This decision was instrumental in implementing Section 89 and in encouraging mediation, arbitration, and conciliation in India.

- **Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.**¹⁹

The case has been termed as one of the landmark judgments on ADR in India. It gave clarity on the scope and application of Section 89 of the Civil Procedure Code and laid down guidelines with regard to the nature of cases appropriate for ADR. The Court held that it was desirable to encourage the process of mediation and other forms of dispute settlements wherever possible.

- **M.R. Krishna Murthi v. New India Assurance Co. Ltd.**²⁰

In this instance, the Supreme Court pointed out the increasing relevance of mediation as a mode of resolving disputes. According to the Court, mediation has the capability to revolutionize the system of delivering justice through consensual resolution of disputes and minimizing litigation. The Court suggested that an institutional arrangement be created for mediation, stressing the necessity of trained mediators and centers of mediation throughout the country.

¹⁸ *Salem Advocate Bar Association v. Union of India*, (2005) 6 SCC 344.

¹⁹ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

²⁰ *M.R. Krishna Murthi v. New India Assurance Co. Ltd.*, (2020) 15 SCC 493.

Conclusion

Thus, the introduction of ADR into the Indian dispute resolution process marks an important step towards greater efficiency and accessibility to a more participatory model. Based on the time-tested tradition of amicable resolution of disputes, the modernization of which took place due to legislative innovations, ADR has become an effective way to resolve disputes in addition to the regular judicial procedures. Various forms of ADR such as arbitration, mediation, conciliation, negotiation, and Lok Adalat have helped the disputing parties avoid costly lawsuits.

Such measures as the promulgation of the Arbitration and Conciliation Act of 1996, amendment of the Code of Civil Procedure, 1908, by introducing Section 89, and adoption of the Mediation Act of 2023 show the legislature and judiciary's readiness to promote consensual conflict resolution. ADR has become an important tool for resolving the problem of backlog of cases in courts, achieving speedy and inexpensive resolution of disputes, settling disputes peacefully, and providing justice access to citizens.

Despite all this, however, obstacles in the form of lack of awareness, inadequacy of trained professionals, enforcement difficulties, and hesitance by disputing parties in choosing ADR remain a problem for its success. Overcoming these obstacles through improved institution-building, law school initiatives, technology, and judiciary support are vital for the further development of ADR.

Conclusion: In summary, ADR has greatly impacted the process of litigation in India and holds great potential to develop into a pillar of the contemporary justice system in India.

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