



## Alternative Dispute Resolution (ADR) in civil disputes: Legal framework and judicial approach

Dr. Uma

Department of law, BPSMV, Khanpur kalan, sonipat, Haryana, India

### Abstract

The justice delivery system is the backbone of any democratic society. However, traditional court-based litigation has increasingly struggled to cope with the growing number of civil disputes. The increasing burden of civil litigation has revealed significant shortcomings in traditional court-based dispute resolution, particularly with respect to delay, cost, and procedural rigidity. Alternative Dispute Resolution (ADR) has therefore emerged as an effective mechanism for resolving civil disputes outside conventional judicial forums. ADR comprises various consensual and adjudicatory processes, including negotiation, mediation, conciliation, arbitration, and Lok Adalats.

This paper examines the conceptual foundation, historical evolution, procedural mechanisms, and statutory framework of ADR in civil matters, with particular emphasis on the Indian legal system. It also evaluates the advantages, challenges, and criticisms associated with ADR and compare its practice with other jurisdictions. It further analyses judicial attitudes through landmark case laws, evaluates practical challenges, and explores future reforms. The paper argues that ADR is not merely an alternative to litigation but an essential component of modern justice delivery, capable of promoting access to justice, social harmony, and efficient dispute resolution.

**Keywords:** Alternative Dispute Resolution (ADR), civil justice system, arbitration and mediation, judicial approach, access to justice

### Introduction

Disputes are an inevitable part of human interaction. Whenever individuals, businesses, or institutions engage with one another, differences of opinion and conflicts are bound to arise. In civil matters, such disputes generally relate to property, contracts, family issues, commercial transactions, and personal rights. Traditionally, courts have been the primary forum for resolving these disputes. While courts play a vital role in upholding the rule of law, the reality is that judicial systems across the world are overburdened.

In India, the problem of judicial delay is well known. Civil cases often take years, and sometimes decades, to reach final resolution. For many litigants, justice delayed truly becomes justice denied. High legal costs, procedural formalities, and emotional stress further aggravate the situation. These challenges have led to growing dissatisfaction with litigation as the sole means of dispute resolution.

The Supreme Court of India has repeatedly acknowledged the limitations of litigation as the sole means of dispute resolution. In *Hussainara Khatoun v. State of Bihar* (1979)<sup>[9]</sup>, the Court emphasized that speedy justice is a fundamental right under Article 21 of the Constitution. ADR mechanisms play a crucial role in fulfilling this constitutional mandate by offering timely and cost-effective alternatives to litigation. Alternative Dispute Resolution (ADR) offers a different approach. Instead of focusing on rigid procedures and winner-loser outcomes, ADR emphasizes dialogue, cooperation, and mutually acceptable solutions. By resolving disputes outside the courtroom, ADR reduces pressure on courts and provides parties with quicker, less expensive and more flexible remedies.

### Historical Evolution of ADR

Although ADR is often presented as a modern legal innovation, but ADR is not a modern invention its roots can

be traced back to ancient civilizations where informal dispute resolution was common. Long before formal courts existed, societies relied on informal mechanisms to settle disputes peacefully. Its roots extend into ancient for instance:

- In Ancient India, village councils (panchayats) resolved disputes through consensus, prioritizing restoration of communal harmony.
- In Ancient Greece and Rome, private negotiation and mediation held significant roles.
- In Medieval England, local customs and community elders mediated conflicts long before modern courts evolved.

### Development in the Modern Era

With the growth of nation-states and formal legal systems, courts gradually replaced informal mechanisms. However, as industrialization and commerce expanded, courts became increasingly congested. By the early 20th century, countries like the United States began actively promoting ADR to manage growing litigation.

In India, although traditional ADR practices continued informally, formal recognition came much later. The Arbitration Act of 1940 was one of the earliest legislative efforts. The real transformation occurred with the enactment of the Arbitration and Conciliation Act, 1996, which aligned Indian arbitration law with international standards and marked a turning point by incorporating the UNCITRAL Model Law.

In *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.* (2001)<sup>[8]</sup>, the Supreme Court recognized the legislative intent behind the 1996 Act to reduce judicial intervention and promote arbitration as a preferred dispute resolution mechanism.

### Conceptual Framework of Alternative Dispute Resolution

Alternative Dispute Resolution refers to a set of methods used to resolve disputes without resorting to formal court

proceedings. The word “alternative” does not imply opposition to courts but rather offers different paths to justice. The Supreme Court, in *Salem Advocate Bar Association v. Union of India (2005)* <sup>[13]</sup>, observed that ADR mechanisms are essential to reduce court congestion and promote amicable settlements.

#### **ADR processes are generally**

- Voluntary
- Flexible
- Confidential
- Less formal
- Focused on settlement rather than confrontation

At its core, ADR recognizes that not all disputes require judicial intervention. Many conflicts can be resolved through communication, negotiation, and cooperation if the parties are given the right platform. ADR is particularly effective in civil matters, where maintaining relationships and achieving practical solutions are often more important than winning a legal battle.

### **Forms of Alternative Dispute Resolution**

#### **1. Negotiation**

Negotiation is the simplest and most commonly used form of ADR. It is an informal process in which parties directly engage with one another to resolve a dispute. It does not involve third-party intervention and allows parties to retain complete control over both the process and outcome.

Negotiation is widely utilized in commercial transactions, labor relations, and family disputes due to its flexibility and cost-effectiveness. However, its success depends largely on the parties' willingness to cooperate and negotiate in good faith. Although courts do not actively supervise negotiation, judicial recognition of negotiated settlements is well established. In *B.S. Krishnamurthy v. B.S. Nagaraj (2011)* <sup>[7]</sup>, the Supreme Court encouraged negotiated settlements in family disputes, emphasizing reconciliation over adversarial proceedings.

#### **Advantages of negotiation include**

- Complete control over the outcome
- Minimal cost
- Informal and flexible process

However, negotiation may fail if there is a power imbalance or lack of willingness to compromise.

#### **2. Mediation**

Mediation involves a neutral third party – the mediator – who facilitates communication between disputing parties and helps parties identify mutual interests. The mediator's role is limited to guiding discussions and helping parties explore mutually acceptable solutions. Unlike an adjudicator, the mediator does not impose solutions; rather, they help parties generate options and agree on a settlement. Mediation is valued for its confidentiality, voluntary nature, and focus on underlying interests rather than rigid legal claims. It is particularly effective in disputes involving ongoing relationships, such as matrimonial and partnership conflicts. Mediation has gained judicial endorsement as an effective dispute resolution tool. In *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd. (2010)* <sup>[5]</sup>, the Supreme Court laid down categories of cases suitable for

mediation and emphasized the duty of courts to refer appropriate cases to ADR under Section 89 of the Civil Procedure Code. The Court clarified that mediation is particularly appropriate for family disputes, matrimonial matters, and community conflicts where emotional factors play a significant role.

#### **Key features of mediation**

- Confidential proceedings
- Voluntary participation
- Focus on interests rather than legal positions
- Preservation of relationships

Because mediation is non-binding, its success depends largely on the cooperation of the parties.

### **3. Conciliation**

Conciliation is similar to mediation but the conciliator takes a more active role in shaping settlement proposals. The conciliator may suggest terms and evaluate issues, often bridging gaps between parties. A conciliator may propose settlement terms and actively assist parties in narrowing their differences.

Under Indian law, conciliation is governed by the by Part III of the Arbitration and Conciliation Act, 1996 <sup>[1]</sup>, which provides guidelines for the conciliator's role and powers. A settlement agreement reached through conciliation holds the same legal status as an arbitral award, thereby ensuring enforceability.

In *Haresh Dayaram Thakur v. State of Maharashtra (2000)* <sup>[10]</sup>, the Supreme Court highlighted that conciliation proceedings are confidential and settlement agreements reached therein have statutory recognition. The Court observed that conciliation encourages voluntary settlement by allowing the conciliator to play a proactive role in resolving disputes.

Conciliation is particularly useful in commercial and contractual disputes.

### **4. Arbitration**

Arbitration is the most formal ADR mechanism. In arbitration, parties submit their dispute to one or more arbitrators who hear both sides and render a binding decision known as an arbitral award. Arbitration blends elements of litigation and ADR; it resembles a private trial with procedural flexibility. Arbitration combines flexibility with finality. While procedures are less rigid than court trials, the outcome is enforceable like a court decree.

#### **Types of arbitration**

- Domestic arbitration
- International commercial arbitration
- Institutional vs. ad hoc arbitration

Arbitration is particularly prevalent in commercial and contractual disputes, International trade matters where parties seek expert decision-makers and expedited processes. Despite its advantages, and arbitration has sometimes been criticized for becoming as expensive and time-consuming as litigation.

The Supreme Court, in *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. (2011)* <sup>[6]</sup>, clarified which disputes are arbitral and held that disputes involving rights in personam are generally amenable to arbitration.

Further, in *ONGC Ltd. v. Saw Pipes Ltd.* (2003) <sup>[12]</sup>, the Court expanded the scope of “public policy” as a ground for setting aside arbitral awards, emphasizing the balance between judicial oversight and arbitral autonomy. More recently, *Vidya Drolia v. Durga Trading Corporation* (2020) <sup>[15]</sup> reaffirmed the pro-arbitration stance of Indian courts while laying down a clear test for arbitrability.

**5. Lok Adalat**

Lok Adalat is a unique ADR mechanism in India. Lok Adalats (People’s Courts) are statutory forums for amicable settlement of disputes. They operate under the Legal Services Authorities Act, 1987. It aims to provide accessible and expeditious justice, particularly to economically disadvantaged sections of society. Lok Adalats have played a crucial role in resolving large numbers of civil disputes, particularly motor accident claims, matrimonial issues, and land disputes. Lok Adalats resolve both pending and pre-litigation disputes through amicable settlement. Awards passed by Lok Adalats are final and binding, with no provision for appeal.

**Key features**

- Decisions are final and binding
- No court fees

Feature	Traditional Litigation	ADR
Forum	Courts	Private panels, mediators, arbitrators
Procedure	Formal, rigid	Flexible, party-centric
Cost	High	Generally lower
Time	Long delays	Typically, faster
Privacy	Public record	Confidential
Control	Judge/State controls process	Parties control process
Outcome Enforcement	Court decree	May need enforcement (arbitration awards are enforceable)

While litigation ensures formal adjudication and precedent, it often fails to meet the needs of commercial and interpersonal disputes that thrive on swift and pragmatic solutions. As litigation remains essential for the development of jurisprudence and adjudication of complex legal issues, ADR provides an effective alternative for resolving civil disputes where efficiency and settlement are prioritized. ADR should not replace courts entirely but function as a complementary system that strengthens access to justice.

**Legal Framework Governing ADR in India**

**1. Constitutional Mandate**

The Indian Constitution guarantees access to justice as part of Article 14 (equality before the law) and Article 21 (right to life and personal liberty). ADR promotes access to justice by reducing barriers posed by litigation. Article 21 of the Constitution guarantees the right to speedy justice. In *Hussainara Khatoon v. State of Bihar* (1979) <sup>[9]</sup>, the Supreme Court interpreted this right expansively, indirectly supporting the adoption of ADR mechanisms.

**Key statutes include:**

- **Arbitration and Conciliation Act, 1996:** Governs arbitration and conciliation, harmonized with UNCITRAL Model Law.
- **Legal Services Authorities Act, 1987** <sup>[2]</sup>: Establishes Lok Adalats and provides free legal services to the marginalized.

- **Flexible procedures**

Lok Adalats have been instrumental in reducing court backlogs and delivering speedy justice, especially in rural and economically weaker sections. The Court emphasized that Lok Adalats promote participatory justice and play a vital role in reducing litigation burden.

Lok Adalats function under the Legal Services Authorities Act, 1987. Their effectiveness was affirmed in *State of Punjab v. Jalour Singh* (2008) <sup>[14]</sup>, where the Supreme Court held that Lok Adalat awards are final, binding, and enforceable as decrees of civil courts.

**ADR and Traditional Litigation: A Comparative View**

Traditional litigation and ADR differ significantly in their approach and outcomes. Litigation is adversarial, formal, and judge-controlled. ADR, on the other hand, is cooperative, informal, and party-centric. While litigation is necessary for setting legal precedents and handling serious legal questions, ADR is better suited for resolving disputes where time, cost, and relationships matter.

**Comparing ADR with traditional litigation reveals contrasting paradigms**

- **Specific Provisions in Civil Procedure Code (CPC):** Sections promoting court-referred settlement talks, mediation, and pre-litigation settlement.

In *Salem Advocate Bar Association v. Union of India* (2005) <sup>[13]</sup>, the constitutional validity of Section 89 CPC was upheld, reinforcing legislative support for ADR.

**2. Judicial Support for ADR**

Indian courts have consistently encouraged ADR mechanisms. Judicial pronouncements emphasize the importance of mediation, arbitration, and Lok Adalats in reducing case backlog and emphasizing ADR’s importance in efficient justice delivery. Judges frequently refer cases to mediation and Lok Adalats, recognizing their role in reducing pendency and promoting amicable settlement and Courts have also reinforced the finality and enforceability of ADR outcomes, particularly arbitration awards.

**ADR in Practice: Implementation and Challenges**

ADR mechanisms in India are facilitated by:

- Permanent Lok Adalat
- District Legal Services Authorities
- Institutional arbitration bodies (e.g., ICC, SIAC, Indian Council of Arbitration)

Despite institutional support, ADR implementation faces practical barriers.

**1. Implementation Issues**

- **Lack of Awareness:** Litigants often lack knowledge of ADR options.

- **Quality of Mediators/Conciliators:** Training and accreditation standards vary.
- 2. Cultural and Institutional Barriers**
- **Cultural Resistance:** Preference for litigation due to perceptions of finality and authority.
  - **Enforcement Issues:** Especially in mediated settlements lacking formal enforceability leading misconception that ADR is informal or inferior
  - **Resource Constraints:** ADR infrastructure in rural and remote areas remains weak.
  - **Delay** in enforcement of arbitral awards

Addressing these challenges requires coordinated efforts by the government, judiciary, and legal institutions along with policy reforms, professional training, and public education initiatives.

### Criticisms and Limitations of ADR

Despite widespread advocacy, ADR is not devoid of criticism:

- **Power Imbalances:** Risk of unfair settlements due to power imbalance, weaker parties may be coerced into unfavorable settlements.
- **Limited Public Accountability:** Confidentiality can obscure fairness.
- **Quality Variance:** Mediators/arbitrators with inadequate expertise may compromise outcomes.
- **Risk of Fragmentation:** ADR may circumvent legal norms and consistency in jurisprudence.
- **Over-Commercialization of Arbitration:** Costly institutional arbitration can mimic litigation in expense.
- **Lack of transparency**

These concerns highlight the need for safeguards and ethical standards in ADR practice.

### Reform and Future Directions

To enhance ADR effectiveness:

- **Standardize Accreditation:** Professionalize training and certification.
- **Legislative Refinement:** Strengthen enforceability of mediated agreements.
- **Awareness Campaigns:** Educate public and legal fraternity about ADR benefits.
- **Digital Platforms:** Expand Online Dispute Resolution (ODR) to democratize access and cross-border dispute resolution.

Government, judiciary, legal institutions, and civil society must collaborate to mainstream ADR without undermining legal safeguards. With proper reforms, ADR can become the primary mode of civil dispute resolution. The Supreme Court in *M.R. Krishna Murthi v. New India Assurance Co. Ltd.* (2019) <sup>[11]</sup> recommended expanding ADR mechanisms to improve access to justice.

### Conclusion

Alternative Dispute Resolution is a transformative force in civil justice systems, offering a pragmatic alternative to traditional litigation. Its strengths speed, cost-effectiveness, flexibility, and confidentiality address core limitations of court processes. India's legal framework and judicial advocacy demonstrate strong institutional support for ADR.

However, for ADR to fulfill its promise, systemic reforms, enhanced professional standards, and cultural acceptance are necessary.

### ADR is guided by principles of

- Party autonomy
- Confidentiality
- Procedural flexibility
- Voluntary participation

These principles distinguish ADR from adversarial litigation. In an era where access to justice is a global concern, ADR is not merely an adjunct to litigation but a necessary complement, adapting dispute resolution to the needs of diverse societies. Alternative Dispute Resolution has transformed the way civil disputes are resolved. It offers a humane, efficient, and accessible alternative to traditional litigation. In a country like India, where courts are overburdened, ADR is not just an option but a necessity. By promoting dialogue, cooperation, and mutual understanding, ADR aligns justice with social harmony. With continued reforms and public confidence, ADR can play a central role in delivering meaningful justice in civil matters.

ADR has evolved into a central pillar of civil dispute resolution in India. Supported by legislative enactments and judicial interpretation, ADR mechanisms address the fundamental challenges of delay, cost, and access to justice. Case law demonstrates a consistent judicial commitment to promoting ADR while ensuring fairness and accountability. Strengthening ADR institutions and public confidence will be essential for sustaining its role in the future of civil justice.

### References

1. Arbitration and Conciliation Act, 1996 (India).
2. Legal Services Authorities Act, 1987 (India).
3. Code of Civil Procedure, 1908 (India).
4. United Nations Commission on International Trade Law. UNCITRAL Model Law on International Commercial Arbitration, 1985 (as amended in 2006).
5. *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.
6. *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd.*, (2011) 5 SCC 532.
7. *B.S. Krishnamurthy v. B.S. Nagaraj*, (2011) 15 SCC 539.
8. *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*, (2001) 6 SCC 356.
9. *Hussainara Khatoon v. State of Bihar*, (1979) 3 SCC 463.
10. *Haresh Dayaram Thakur v. State of Maharashtra*, (2000) 6 SCC 179.
11. *M.R. Krishna Murthi v. New India Assurance Co. Ltd.*, (2019) 4 SCC 307.
12. *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705.
13. *Salem Advocate Bar Association v. Union of India*, (2005) 6 SCC 344.
14. *State of Punjab v. Jalour Singh*, (2008) 2 SCC 660.
15. *Vidya Drolia v. Durga Trading Corporation*, (2020) 12 SCC 1.