

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 3

2024

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Alternative Dispute Resolution Mechanism in India and Intervention of Judiciary in the Alternative Dispute Resolution Mechanism

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ABSTRACT

The Intervention of Judiciary in the Alternative Dispute Resolution can bring a lot of failure and challenges in the implementation of Alternative Dispute Resolution Mechanism in India. The Judiciary may impose the limitation on the ADR Process which may impact the parties from accepting the arbitrator decision as final, which can undermine the flexibility of the Alternative Dispute Resolution Mechanism. In this paper, we will also see how the involvement of judiciary in the ADR Mechanism has brought various debate over the insufficiency of the Dispute Mechanism function in India. Judicial oversight's effect on ADR's timeliness and effectiveness is another crucial factor. Although the goal of court intervention is to guarantee compliance and fairness, it frequently causes procedural obstacles and delays, which negates the goal of pursuing quicker resolutions outside of the established legal system. Moreover, the belief that alternative dispute resolution (ADR) is a legitimate substitute for litigation is undermined by overbearing judicial intervention, which may discourage parties from using ADR. In summary, even though the judiciary's participation in ADR attempts to protect legal norms and guarantee justice, its overreach may undermine the fundamental principles of ADR. Maintaining the autonomy, confidentiality, flexibility, and efficiency of alternative dispute resolution (ADR) processes necessitates striking a careful balance between upholding the fundamental values that set ADR apart from traditional litigation and judicial oversight.

Keywords: Role of Judiciary, ADR Mechanism, and ADR in Indian Context.

I. INTRODUCTION

(A) Definition of Alternative Dispute Resolution

In India, Alternative Dispute Resolution compress several forms of dispute mechanism such as arbitration, mediation, Conciliation, Negotiation and Lok Adalat. The word 'Arbitration' refers to the neutral person who hears the arguments and investigate the evidence from each side and then passes the arbitral award. The Arbitration is the mechanism for the dispute settlement

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which is different from the traditional court proceedings.² The term ‘Alternative Dispute Resolution’ refers to the ways by which people can resolve their disputes without following the traditional court methods. The ADR are general confidential in nature, less formal in comparison to the court and less stressful. The approach attempts to foster friendly agreements, accelerate settlements, and cut expenses. *“The ‘arbitration’ means any arbitration whether or not administered by permanent arbitral institution.”*³

The word ‘mediation’ means the process of talking to two separate people or groups involved in a disagreement to try to help them to agree or find a solution to their problems.⁴ A mediator, acting as a neutral third-party, assists parties in seeking a settlement to their inconsistency through mediation, a type of Alternative disagreement Resolution (ADR). The procedure is carried up in a confidential and secure manner with a focus on the needs, rights, and interests of the parties.

II. ROLE OF THE JUDICIARY IN ADR

The Indian judiciary has been shown to be inadequate in handling issues that are still pending because Indian courts are overflowing with lengthy cases that have not been resolved. The problem is far from being resolved because there are still a large number of ongoing cases, despite the establishment of more than a thousand fast-track courts that have already resolved millions of cases. By offering an assortment of ADR techniques as an alternative to regular litigation, the judiciary adds immensely to Alternative Dispute Resolution (ADR). ADR procedures including arbitration, mediation, and settlement conferences can result in a shorter period spent on the dispute resolution process, quick outcomes, and more inventive solutions that are based on the parties' core interests. The Indian judiciary receives scientifically established approaches from the Alternative Dispute Resolution mechanism, which lessens the workload on the courts. ADR offers several ways to settle disputes, including as negotiation, mediation, conciliation, arbitration, and lok Adalat.⁵

(A) Explanation of how the Intervention of the Judiciary

In section 5 of the Act, 1996, the legislature's intention regarding the limited scope of judicial intervention in arbitral proceedings was made very clear. This provision is comparable to both

² NEW YORK STATE UNIFIED COURT SYSTEM, https://ww2.nycourts.gov/ip/adr/What_Is_ADR.shtml (last visited Nov. 11, 2023).

³ The Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

⁴ CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/mediation> (last visited Nov. 11, 2023).

⁵ THE TIMES OF INDIA, <https://timesofindia.indiatimes.com/readersblog/lawpedia/what-is-alternative-dispute-order-50952/> (last visited Nov.12, 2023).

the English Arbitration Act and Article 5 of the UNICIRAL Model Law. The Arbitration and Conciliation Act's Section 5 begins with a non-obstante clause that grants the Act of 1996's provisions precedence over other statutes. This feature makes the Act particularly unique for the hassle-free, seamless, and speedy resolution of any dispute by an arbitrator. The Hon'ble Apex Court mentioned in *Videocon Industries Ltd. v. Union of India* that court intervention is expressly prohibited outside of circumstances that are specifically mentioned in the Act itself. "No judicial authority" is a very broad term. Furthermore, the use of the phrase "must intervene" helps to guarantee that there is no room for judicial discretion. A certain amount of judicial intervention is allowed, but it should only serve to support and foster an atmosphere that is conducive to the arbitral process. The judiciary's function is more of an administrative support system than a traditional judicial one. Rather than acting as an adjudicator in an arbitral proceeding, an administrative role is played. In the process, it was made sure that arbitration is not totally immune to judicial oversight.⁶

III. LACK OF WILLINGNESS TO ENGAGE WITH ALTERNATIVE DISPUTE MECHANISM

ADR procedures give parties a more economical and expedient means of resolving conflicts than do traditional court procedures. But even with all of its benefits, there is still a general reluctance to participate in ADR. This may occur for a number of reasons, including a lack of understanding or experience with ADR processes or parties believing that litigation will be more efficient and effective. Parties may also favor the ability to obtain a judgment and the formality of court proceedings. In general, unwillingness to participate in ADR can impede success because parties may not recognize its advantages and may not give its process a chance to settle their differences.

(A) Explanation of the Lack of Willingness to engage with ADR

There are a number of reasons why Indians are reluctant to use Alternative Dispute Resolution (ADR), including a lack of infrastructure, awareness, and reputable arbitral institutions. Lack of funding is the main explanation of ADR's slow growth in India, which has led to a dearth of ADR centers, especially in smaller cities and towns. The spread of alternative dispute resolution (ADR) in India has also been hampered by the absence of infrastructure and reliable arbitral institutions, even after the 1996 adoption of the Arbitration and Conciliation Act.⁷ There have been initiatives in India that aim to improve the effectiveness and functionality of ADR mechanisms in response to these difficulties. The Indian government has taken steps to make

⁶ *Videocon Industries Ltd v. Union of India and others* [2011] 8 S.C.R. 569

⁷ IAM, <https://www.iam-media.com/article/the-rise-of-adr-in-india> (last visited Nov. 13, 2023).

sure that the Indian legal system and the international ADR framework perform jointly seamlessly. Furthermore, Online Dispute Resolution (ODR) is becoming more and more popular in India as a convenient and affordable substitute, particularly due to the limitations imposed on the court system by the COVID-19 pandemic.⁸ Parties ought to exercise caution when refusing to participate in alternative dispute resolution (ADR) as courts typically expect parties to consider ADR and may view a failure to engage as unreasonable conduct, potentially leading to costs and sanctions. Yet, there are exceptions where a refusal to participate in ADR may be deemed reasonable.⁹

(B) Importance of Willingness ADR

Promoting effectiveness, speed, amicability, cost-effectiveness, and accessibility in resolving disputes in India calls for a willingness to participate in Alternative Dispute Resolution (ADR). Litigation, the traditional method of resolving disputes, is a drawn-out process that overburdens the judiciary and causes unnecessary postponements in the administration of justice.¹⁰ ADR procedures like mediation, conciliation, and arbitration provide more effective and efficient ways to settle conflicts. Nonetheless, a number of obstacles, such as a lack of finance, infrastructure, reliable arbitral organizations, and awareness, have hindered the expansion of ADR in India.¹¹ Notwithstanding these obstacles, initiatives are being made to advance and enhance the application of ADR procedures in India, such as the establishment of ODR (Internet Dispute Resolution) as a competitive substitute for traditional dispute settlement. The Indian government has also taken action to guarantee that the Indian legal system and the global ADR framework operate together seamlessly. In conclusion, efforts are being made to address the issues and encourage the use of alternative dispute resolution (ADR) mechanisms in India. Engagement with ADR is crucial for fostering effective, affordable, and accessible dispute resolution in the nation.

IV. LACK OF ENFORCEABILITY OF ALTERNATIVE DISPUTE RESOLUTION OUTCOMES

The inability of the results of Alternative Dispute Resolution (ADR) mechanisms to be enforced stands in direct opposition to their benefits over court procedures. Parties to a dispute may not

⁸ NITI AAYOG, <https://www.niti.gov.in/sites/default/files/2023-03/Designing-The-Future-of-Dispute-Resolution-The-ODR-Policy-Plan-for-India.pdf> (last visited Nov. 13, 2023).

⁹ EXCHANGE CHAMBERS, <https://www.exchangechambers.co.uk/unreasonable-refusal-to-engage-in-adr/> (last visited Nov. 13, 2023).

¹⁰ LEGAL AFFAIRS GOV, https://legalaffairs.gov.in/sites/default/files/Arbitration_Mediation.pdf (last visited Nov. 13, 2023).

¹¹ United States Agency for International Development, <https://2017-2020.usaid.gov/sites/default/files/documents/1868/200sbe.pdf> (last visited Nov. 14, 2023).

always abide by the terms of the agreement reached through alternative dispute resolution (ADR), even though ADR is intended to resolve disputes outside of the courtroom and offers quicker, less expensive, and more contentious settlements. There is no assurance that an ADR's binding decision will be upheld in court, even if it is. The enforceability of ADR outcomes can be attributed to a number of factors, such as insufficient arbitration or mediation agreements, judicial officials' lack of experience with ADR, or deficient legal infrastructures. The susceptible nature of ADR agreements to non-compliance erodes the system's credibility and contributes to ADR's failure.

(A) Explanation of Enforceability in ADR

The process of making sure that agreements and resolutions reached through alternative dispute resolution (ADR) are enforceable by law is known as enforceability in ADR. ADR clauses must fulfill specific requirements and contain all relevant information in order to be enforceable.¹² Key elements of ADR enforceability include (i) Unambiguous language: ADR clauses must expressly outline all relevant terms and conditions, such as the nature of the ADR process, the parties concerned, and the extent of the dispute. (ii) Notification of dispute: The clause acts as a catalyst for the ADR process by requiring notification that a dispute has arisen. (iii) Free and voluntary entry: In order for an ADR clause to be enforceable, the parties involved must voluntarily and freely enter into the agreement.¹³ (iv) Legal arguments: If disputes emerge regarding ADR clauses, one party may file a motion for ADR enforcement to ask the court to compel participation. The facts of the agreement between the parties and the specifics of the ADR clause must be explained in the statement of facts accompanying this motion. The specifics of a disagreement and each party's claims might also be covered. The legal justifications for the enforceability and binding nature of the ADR clause are included in the legal argument. The judge's discretion, the court may decide to maintain the ADR clause or declare it unenforceable, opening the door for litigation, after reviewing the motion.¹⁴ To guarantee that the results of alternative dispute resolution (ADR) processes are enforceable under law and can be followed through the legal system, enforceability is essential. These supports preserving the integrity and potency of alternative dispute resolution (ADR) processes.

¹² LAWSHELF EDUCATIONAL MEDIA, <https://lawshelf.com/videocoursesmoduleview/adr-enforcement-module-5-of-5> (last visited Nov. 14, 2023).

¹³ LEXOLOGY, <https://www.lexology.com/library/detail.aspx?g=521ae3bc-d961-4a0f-a3bf-e61db18c8353> (last visited Nov. 15, 2023).

¹⁴ BAKER DONELSON, <https://www.bakerdonelson.com/Is-Your-ADR-Clause-Enforceable-10-10-2013> (last visited Nov. 15, 2023).

(B) Reasons for the Lack of Enforceability and Comparison of enforceability in ADR and Litigation

Certain parties may disregard or violate the process's outcome because DR mechanisms frequently lack the enforcement power of the legal system. The judicial system can impose judgments because alternative dispute resolution (ADR) is predicated on voluntary agreement. Furthermore, the standard A process does not entail the same degree of discovery and evidence presentation as litigation, which can complicate efforts to assure decision-making accuracy. Yet, for those who are prepared to negotiate in good faith and adhere to the agreed terms, alternative dispute resolution (ADR) can still be beneficial. When choosing which form of dispute resolution to use, it is crucial to consider the advantages and disadvantages of each strategy. In contrast, litigation typically entails a more formal and structured procedure, with court orders and judgments having inherent legal enforceability. In comparison to alternative dispute resolution (ADR), litigation has a higher degree of enforceability due to the binding nature of court decisions and the capacity to enforce judgments through court processes. But because it can help resolve disputes quickly, maintain contractual obligations, and avoid the time-consuming and expensive nature of litigation, alternative dispute resolution (ADR) is frequently preferred. ADR is still used in many situations, such as federal agency enforcement programs, contractual disputes, and administrative complaint resolutions, despite the difficulties with enforceability. The goals of ADR are to resolve conflicts more quickly and affordably, to produce better results, and to foster stronger relationships.¹⁵

V. LIMITED SCOPE OF ADR MECHANISM

When the judiciary intervenes, the narrow purview of ADR mechanisms might also be a factor in the process' failure. ADR procedures might only be useful in specific circumstances, like disagreements involving parties with roughly equal bargaining power or those involving strictly defined issues with well-defined legal standards. ADR might not always be suitable or sufficient to settle complicated cases involving numerous parties, difficult legal problems, public policy disputes, or disagreements that call for legal recourse. ADR could assist the parties in coming to a settlement, but the terms of the agreement might not always be enforceable or useful. A fair and equal settlement may be difficult for the parties to achieve if they have unequal bargaining power.

(A) Description of the Limited Scope of ADR Mechanism

¹⁵ HARVARD BUSINESS REVIEW, <https://hbr.org/1994/05/alternative-dispute-resolution-why-it-doesnt-work-and-why-it-does> (last visited Nov. 16, 2023).

Mechanisms for alternative dispute resolution, or ADR, are a commonly recognized way to settle conflicts outside of the conventional court system. These procedures, which include negotiation, mediation, and arbitration, have several advantages including affordability, quick resolution, and secrecy. However, the reach of ADR mechanisms is constrained by a number of issues, including the potential for power struggles between parties, the unenforceability of their rulings, and the incapacity to settle complicated disputes. Thus, the court's involvement is to guarantee that alternative dispute resolution (ADR) processes are successful and efficient in settling conflicts. But if this kind of intervention overreaches its bounds and tramples on the autonomy process, it can cause the parties to become dissatisfied and ultimately cause ADR to fail.

(B) Reasons for Limited Scope

There are several reasons why ADR mechanisms frequently have a narrow scope. One explanation for this could be that there is limited space for ADR because the parties may already have started legal proceedings. Furthermore, some disputes—like those involving employment—may be deemed inappropriate for alternative dispute resolution (ADR). Some matters may be judged too significant for alternative dispute resolution (ADR), such as those concerning public policy or criminal cases. In addition, lack of incentives, power disparities, or unwillingness to participate in the process could prevent parties from reaching a settlement through alternative dispute resolution (ADR). Therefore, its narrow application may make alternative dispute resolution (ADR) ineffective in some circumstances.

(C) Comparison of the Scope of ADR Mechanism and Litigation

ADR's scope and litigations differ in a variety of methods, such as the kinds of disputes it can handle, the formality level, the speed at which it can be resolved, and the possibility of enforcement. ADR procedures like mediation, arbitration, conciliation, and negotiation provide a quick, adaptable, private, and relationship-preserving way to settle disagreements. They can handle a variety of conflicts, such as those involving intellectual property, the environment, families, businesses, and civil rights. However not all disputes can be resolved through alternative dispute resolution (ADR). Some disputes, like those involving criminal cases or public policy, might be considered too significant for ADR. Litigation, on the other hand, is characterized by a more formal and structured process and results in court orders and judgments that are legally enforceable.¹⁶ As a whole, alternative dispute resolution (ADR) processes have

¹⁶ WHITECODE VIA MEDIATION & ARBITRATION CENTRE, <https://viamediationcentre.org/readnews/NjQx/LIMITATIONS-OF-ALTERNATIVE-DISPUTE-RESOLUTION> (last visited Nov. 17, 2023).

a narrower scope than litigation, despite the fact that they provide a faster, more flexible, and informal approach to conflict resolution. ADR might not be appropriate for every kind of dispute, and its decisions might be harder to implement. Still, many nations, including India, are developing and promoting alternative dispute resolution (ADR) mechanisms as a substitute for traditional litigation.¹⁷

VI. COMPLEXITY OF THE LEGAL FRAMEWORK

The legal environment that ADR procedures function in can be exceedingly complicated. Even for seasoned professionals, navigating the legal system can be challenging due to its many layers of laws. Conflict resolution may become more difficult because of misunderstandings and confusion brought on by this complexity. Furthermore, since legal rulings and interpretations may run counter to the tenets of alternative dispute resolution, the judiciary's involvement can occasionally complicate matters further. Moreover, the legal framework frequently imposes stringent guidelines and regulations that must be adhered to, which restricts the adaptability and flexibility needed for successful ADR. As a result, ADR may struggle to operate successfully due to the complexity of the legal system, which could result in failure.

(A) Explanation of the Framework

The goal of India's Alternative Dispute Resolution (ADR) framework is to give parties a different way to resolve conflicts outside of the traditional court litigation process. In India, alternative dispute resolution (ADR) processes include negotiation, conciliation, arbitration, settlement conferences, and mediation. In India, alternative dispute resolution (ADR) encompasses a broad spectrum of conflicts, including those involving the law, commerce, families, labor, intellectual property, and the environment. The Indian government has taken a number of steps to enhance the efficiency, reliability, and functionality of alternative dispute resolution (ADR) mechanisms, guaranteeing that they work in harmony with the country's legal system. ADR is now accepted throughout the nation as a formal, statutory method for resolving ongoing legal disputes.¹⁸

(B) Discussion of the Complexity of the Legal Framework

One major problem with the judiciary's intervention in alternative dispute resolution (ADR) mechanisms is the complexity of the legal framework. The intricacies of alternative dispute

¹⁷ FEDERAL ELECTION COMMISSION, <https://www.fec.gov/legal-resources/enforcement/alternative-dispute-resolution/> (last visited Nov. 17, 2023).

¹⁸ GLOBAL LEGAL INSIGHTS, <https://www.globallegalinsights.com/practice-areas/litigation-and-dispute-resolution-laws-and-regulations/india> (last visited Nov. 18, 2023).

resolution (ADR) mechanisms can further complicate an already complex legal system that is difficult for the public to understand. When there is disagreement over the agreement, which undermines the entire purpose of ADR, the judiciary frequently becomes involved in the process. Court intervention may result in a lack of trust in the system and discourage parties from utilizing ADR procedures in the future. Furthermore, the judiciary's involvement may lengthen and cost the process, which could cause the ADR mechanisms to fail.

(C) Impact of the Legal Framework on ADR Mechanism

The landscape of resolution of disputes in India is greatly influenced by the legal framework of alternative dispute resolution. ADR procedures like mediation, settlement conferences, conciliation, arbitration, and negotiation are available under a number of statutes, including the Arbitration and Conciliation Act, 1996, and are acknowledged by the Indian legal system as an alternative to traditional court litigation. The legal framework gives the ADR process a strong foundation by guaranteeing the enforceability of its conclusions. In India, alternative dispute resolution (ADR) encompasses a broad spectrum of conflicts, including those involving the law, commerce, families, labor, intellectual property, and the environment.¹⁹ ADR processes offer a substitute and supplement to traditional court litigation by providing an effective, economical, flexible, private, and relationship-preserving method of resolving disputes. Even though alternative dispute resolution (ADR) is becoming more and more popular in India, there are still obstacles to be solved, including a lack of infrastructure, finance, and reliable arbitral organizations in smaller towns and cities. The legal framework governing alternative dispute resolution (ADR) in India is a significant factor in the country's dispute resolution environment, and continuous efforts are made to enhance the efficiency, dependability, and functionality of ADR mechanisms.²⁰

VII. CONCLUSION

ADR processes offer a substitute and supplement to traditional court litigation by providing an effective, economical, flexible, private, and relationship-preserving method of resolving disputes. Even though alternative dispute resolution (ADR) is becoming more and more popular in India, there are still obstacles to be solved, including a lack of infrastructure, finance, and reliable arbitral organizations in smaller towns and cities. The legal framework governing alternative dispute resolution (ADR) in India is a significant factor in the country's dispute resolution environment, and continuous efforts are made to enhance the efficiency,

¹⁹ Global Legal Insights, <https://www.globallegalinsights.com/practice-areas/litigation-and-dispute-resolution-laws-and-regulations/india> (last visited Nov. 19, 2023).

²⁰ *Id.* at 15.

dependability, and functionality of ADR mechanisms. Judiciary culture also fosters mistrust and animosity, which can make dispute resolution even more difficult. It is ultimately up to them to decide whether or not they want to include the judiciary in the alternative dispute resolution (ADR) process, and to consider the advantages of doing so before committing.
