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Alternative Dispute Resolution and the Right to Speedy Justice under Article 21 of the Constitution of India

BILAL HASAN¹

ABSTRACT

The right to speedy trial and expeditious justice has been recognised as an inalienable facet of the right to life and personal liberty guaranteed under Article 21 of the Constitution of India. The Indian judiciary, perennially burdened by an overwhelming docket, has increasingly turned to Alternative Dispute Resolution (ADR) mechanisms—arbitration, mediation, conciliation, and Lok Adalats—as constitutional instruments to operationalise this right. This article undertakes a doctrinal and jurisprudential examination of the interface between ADR and Article 21, tracing the evolution of the constitutional mandate of speedy justice through landmark judgments, legislative architecture, and institutional developments. It argues that ADR is not merely a procedural adjunct but a substantive constitutional imperative rooted in the guarantee of life and liberty. The article also critically appraises systemic constraints that impede the full realisation of ADR's constitutional promise and offers normative recommendations for reform.

Keywords: Article 21, Alternative Dispute Resolution, Speedy Trial, Arbitration, Mediation, Lok Adalat, Access to Justice, Judicial Delay.

I. INTRODUCTION

Article 21 of the Constitution of India declares that no person shall be deprived of his life or personal liberty except according to procedure established by law.³ This terse provision has, through decades of expansive constitutional interpretation, become the most litigated and judicially enriched article of the Constitution. In *Maneka Gandhi v. Union of India*,² the Supreme Court dismantled the earlier formalistic reading of Article 21 and held that the procedure contemplated must be fair, just, and reasonable. Consequentially, the right to life has been expanded to encompass a broad spectrum of rights, including the right to a speedy trial and access to justice.

The Indian judiciary is today staggering under the weight of more than five crore pending cases.³

¹ Author is an LL.M. Student at Amity Institute of Advanced Legal Studies, Noida, Uttar Pradesh, India.

² *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

³ Supreme Court of India, Annual Report 2022-23: pendency of cases across all levels exceeded 5 crore.

Decades-long litigation not only defeats the constitutional right of the litigant to speedy justice but renders the very system of governance suspect. Against this backdrop, Alternative Dispute Resolution mechanisms have emerged as both a practical solution to pendency and a constitutional necessity rooted in Article 21. This article examines the constitutional foundations of ADR in India, its legislative architecture, the jurisprudence of the Supreme Court and High Courts, and the challenges that must be surmounted for ADR to fulfil its constitutional promise.

II. THE CONSTITUTIONAL FOUNDATION: ARTICLE 21 AND SPEEDY JUSTICE

A. Article 21 and Its Evolving Jurisprudence

The metamorphosis of Article 21 from a procedural guarantee to a repository of substantive rights is one of the most significant chapters in Indian constitutional history. The Supreme Court in *Hussainara Khatoon v. State of Bihar*⁴ held for the first time that the right to a speedy trial is a fundamental right implicit in Article 21. Justice Bhagwati, writing for the court, observed that a procedure which does not ensure a reasonably quick trial cannot be regarded as "reasonable, fair and just."⁵ This judgment liberated thousands of undertrial prisoners languishing in jails for periods longer than the maximum sentence for their alleged offences—a constitutional affront that Article 21 could not sanction.

The right to speedy trial was further elaborated in *A.R. Antulay v. R.S. Nayak*,⁶ where the Supreme Court laid down a comprehensive set of guidelines for determining whether the right had been violated, including the nature of the charge, the length of delay, the reasons for delay, and the prejudice caused to the accused. The Court also extended the right beyond criminal proceedings to encompass civil litigation, recognising that unreasonable delay in civil justice equally deprives a person of the benefit of a legal right—an aspect of life and liberty protected by Article 21.

B. Access to Justice as a Constitutional Right

Access to justice is a precondition for the enforcement of all other rights. In *Anita Kushwaha v. Pushap Sudan*,⁷ the Supreme Court categorically held that access to justice is a part of the right guaranteed under Article 21. A legal system that is inaccessible by reason of cost, delay, or complexity violates the constitutional guarantee just as effectively as an arbitrary law. The Law

⁴ *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1360.

⁵ P.N. Bhagwati, J., in *Hussainara Khatoon* (supra), observed that the right to a speedy trial flows directly from Art. 21 of the Constitution.

⁶ *Abdul Rehman Antulay v. R.S. Nayak*, AIR 1992 SC 1701.

⁷ *Anita Kushwaha v. Pushap Sudan*, (2016) 8 SCC 509 (access to justice as an element of Art. 21).

Commission of India recognised as early as 1958⁸ that judicial delays were systemic, yet the rate of institutional reform remained painfully slow.

The National Litigation Policy of 2010⁹ acknowledged that the government itself was the single largest litigant and committed to reducing frivolous litigation. However, structural pendency continued to mount. It is in this context that ADR—offering faster, cheaper, and party-driven resolution—assumes the character of a constitutional instrument rather than a mere procedural alternative.

III. THE LEGISLATIVE ARCHITECTURE OF ADR IN INDIA

A. Section 89 of the Code of Civil Procedure, 1908

Section 89 of the Code of Civil Procedure, 1908¹⁰ constitutes the foundational statutory provision for court-referred ADR in civil proceedings. Inserted by the Amendment Act of 1999 and operationalised in 2002, Section 89 empowers civil courts to refer disputes to arbitration, conciliation, mediation, judicial settlement, or Lok Adalat wherever the court perceives elements of a possible settlement.¹¹ The Supreme Court in *Salem Advocate Bar Association v. Union of India*¹² upheld the constitutional validity of Section 89 and issued model rules for mediation. In *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.*¹³, the Court issued authoritative guidelines on which categories of disputes were suitable for ADR reference under Section 89, bringing much-needed clarity to its application.

B. The Arbitration and Conciliation Act, 1996

The Arbitration and Conciliation Act, 1996¹⁴ is the principal statute governing arbitration and conciliation in India, modelled substantially on the UNCITRAL Model Law. It envisions a regime of minimal judicial interference, party autonomy, and expeditious resolution of commercial disputes. The Act has been amended significantly in 2015, 2019, and 2021¹⁵ to address concerns about delays and judicial over-reach that had eroded its effectiveness.

⁸ Law Commission of India, 14th Report on Reform of Judicial Administration (1958).

⁹ National Litigation Policy, Government of India, 2010.

¹⁰ Code of Civil Procedure, 1908, s. 89 (as amended by the Civil Procedure Code (Amendment) Act, 1999 and 2002).

¹¹ Section 89, Code of Civil Procedure, 1908, empowers courts to refer disputes to ADR including mediation and conciliation.

¹² *Salem Advocate Bar Association v. Union of India*, (2005) 6 SCC 344.

¹³ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

¹⁴ The Arbitration and Conciliation Act, 1996 (Act No. 26 of 1996).

¹⁵ The Arbitration and Conciliation (Amendment) Act, 2015 (Act No. 3 of 2016); Arbitration and Conciliation (Amendment) Act, 2019 (Act No. 33 of 2019); Arbitration and Conciliation (Amendment) Act, 2021 (Act No. 3 of 2021). ¹⁸The Arbitration and Conciliation (Amendment) Act, 2019, inserting Part IA (ss. 43A–43M) providing for the Arbitration Council of India.

The 2015 Amendment introduced time limits for completion of arbitral proceedings (twelve months extendable by six months), fast-track procedures, and restrictions on grant of interim stays. The 2019 Amendment established the Arbitration Council of India¹⁸ as an independent institutional body for grading arbitral institutions and promoting arbitration culture. Key landmark cases have shaped the Act's interpretation: *BALCO v. Kaiser Aluminium Technical Services Inc.*¹⁶ harmonised the seat-venue distinction, while *Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd.*¹⁷ upheld the validity of two-tier arbitration agreements.

C. Lok Adalats under the Legal Services Authorities Act, 1987

The Legal Services Authorities Act, 1987¹⁸ provides for the establishment of Lok Adalats (People's Courts) as a forum for amicable settlement of disputes. A Lok Adalat is constituted under Section 19 of the Act¹⁹ and may be organised at the national, state, district, and taluk levels. The National Legal Services Authority (NALSA) reported that Lok Adalats settled over 1.5 crore cases in the year 2022–23 alone,²⁰ demonstrating their remarkable reach and efficacy. The award of a Lok Adalat is deemed to be a decree of a civil court²¹ and is final and binding on the parties, with no appeal lying to any court against it.²² This finality, combined with the absence of court fees (which are refunded upon settlement), renders Lok Adalats particularly effective instruments of access to justice for marginalised and economically disadvantaged litigants—a direct realisation of the constitutional guarantee under Article 21. Courts have repeatedly emphasised that the Lok Adalat system is not merely an adjunct to the formal justice delivery system but an independent forum rooted in the constitutional ethos of equal justice.²³

D. The Mediation Act, 2023

The most significant recent legislative development is the enactment of the Mediation Act, 2023,²⁴ which received Presidential assent on 15 September 2023. The Act provides a standalone statutory framework for mediation in India, fulfilling a long-felt need identified by

¹⁶ *BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552.

¹⁷ *Centrotrade Minerals & Metal Inc. v. Hindustan Copper Ltd.*, (2017) 2 SCC 228.

¹⁸ The Legal Services Authorities Act, 1987 (Act No. 39 of 1987).

¹⁹ The Legal Services Authorities Act, 1987, s. 19.

²⁰ National Legal Services Authority (NALSA), Annual Report 2022–23.

²¹ *P.T. Rajan v. T.P.M. Sahir*, (2003) 8 SCC 498 (holding that Lok Adalat awards are decrees of civil courts and final).

²² The Legal Services Authorities Act, 1987, s. 21(2): No appeal shall lie to any court against the award of the Lok Adalat.

²³ *State of Gujarat v. Union of India*, (2020) SCC OnLine Guj 2704 (emphasising role of Lok Adalat in reducing pendency).

²⁴ The Mediation Act, 2023 (Act No. 32 of 2023), received Presidential assent on 15 September 2023.

the Law Commission²⁵ and legal scholars. The Statement of Objects and Reasons explicitly recognises that mediation reduces the burden on courts and promotes early resolution of disputes.²⁶

Among its landmark features, the Act mandates pre-litigation mediation for civil and commercial disputes before the institution of a suit,²⁷ a concept that had already been introduced for commercial disputes under Section 12A of the Commercial Courts Act, 2015.²⁸ Settlement agreements reached through mediation are binding and enforceable as decrees of court.²⁹ While mandatory prelitigation mediation has been critiqued as potentially placing an additional procedural burden on litigants,³³ its constitutional justification is clear: by enabling early resolution without recourse to courts, it concretely advances the right to speedy justice under Article 21.

IV. JUDICIAL PRONOUNCEMENTS ON ADR AND ARTICLE 21

A. The Constitutional Imprimatur of ADR

The Supreme Court has on numerous occasions recognised ADR not merely as an optional pathway but as a constitutional necessity. In *Afcons Infrastructure* (supra), the Court emphasised that the constitutional mandate of timely justice obliges courts to actively encourage ADR. The Court observed that Section 89 CPC reflects the constitutional imperative to provide quicker, cheaper, and more effective resolution of disputes. Similarly, in *Salem Advocate Bar Association* (supra), the Court not only upheld Section 89 but also directed High Courts to frame rules for mediation, thereby institutionalising ADR as part of the court system.

In *State of Punjab v. Jalour Singh*,³⁰ the Supreme Court reiterated that delay in justice constitutes a denial of justice and that mechanisms such as Lok Adalats serve as constitutional tools to alleviate this denial. The Court's early jurisprudence in *Guru Nanak Foundation v. Rattan Singh & Sons*³¹ deprecated the practice of using court proceedings to frustrate legitimate ADR awards, recognising the integrity of consensual dispute resolution.

²⁵ 28Law Commission of India, Report No. 238: Amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions (2011).

²⁶ Statement of Objects and Reasons, The Mediation Act, 2023.

²⁷ Mediation Act, 2023, s. 6: Pre-litigation mediation is mandatory for civil and commercial disputes before institution of suit.

²⁸ Commercial Courts Act, 2015 (Act No. 4 of 2016), s. 12A (mandatory pre-institution mediation and settlement).

²⁹ Mediation Act, 2023, ss. 19–21 (settlement agreement is final, binding, and enforceable as a decree of court).

³³See Pranav Sachdeva, "Mandatory Pre-Litigation Mediation in India: A Critical Appraisal" (2021) 33 National Law School of India Review 45.

³⁰ *State of Punjab v. Jalour Singh*, (2008) 2 SCC 660.

³¹ *Guru Nanak Foundation v. Rattan Singh & Sons*, AIR 1981 SC 2075: the Supreme Court deprecated the tendency to file objections to awards to delay proceedings.

B. ADR and Access to Justice for Marginalised Sections

The constitutional commitment to speedy justice has a particularly acute dimension for socially and economically vulnerable groups. As the Supreme Court held in *NALSA v. Union of India*,³² the State is constitutionally obligated to ensure equal access to justice for all, including marginalised communities. Lok Adalats, by providing free, informal, and expeditious dispute resolution, directly serve this constitutional mandate. The absence of court fees and the informality of proceedings remove structural barriers that would otherwise deny these groups effective access to justice.

C. Limits of Judicial Review over ADR Awards

One of the significant jurisprudential developments in Indian ADR law has been the progressive curtailment of judicial intervention in arbitral awards—consistent with the constitutional objective of finality and certainty. The Supreme Court in *M/s Emkay Global Financial Services Ltd. v. Girdhar Sondhi*³³ held that challenges to arbitral awards under Section 34 of the Arbitration Act should be decided expeditiously and without protracted proceedings. This judicial restraint is itself a constitutional imperative: if the courts' appellate jurisdiction over ADR outcomes results in years of further litigation, the constitutional purpose of speedy resolution through ADR is defeated.

V. CRITICAL ANALYSIS: CHALLENGES AND SYSTEMIC CONSTRAINTS

A. Institutional Gaps

Despite the expansive legislative framework, ADR in India faces serious institutional constraints. The dearth of trained and accredited mediators and conciliators remains a critical bottleneck.³⁴ Although the Mediation Act, 2023 provides for the establishment of the Mediation Council of India and registration of mediators, the infrastructure for mass deployment of professional mediators is still nascent. Similarly, while the Arbitration Council of India was envisaged by the 2019 Amendment to grade arbitral institutions and promote institutional arbitration, progress has been slow.

B. The Problem of Enforcement

A recurring challenge is the enforceability of ADR outcomes. Arbitral awards are frequently challenged before courts under Section 34 of the Arbitration Act, often on tenuous grounds,

³² *NALSA v. Union of India*, (2014) 5 SCC 438 (recognising rights of transgender persons as part of Art. 21).

³³ *M/s Emkay Global Financial Services Ltd. v. Girdhar Sondhi*, (2018) 9 SCC 49.

³⁴ See generally, P.C. Rao & William Sheffield (eds.), *Alternative Dispute Resolution: What It Is and How It Works* (1997).

resulting in years of additional litigation. The Supreme Court in multiple decisions has deplored such dilatory tactics and attempted to limit the grounds of challenge, but the culture of preferring litigation over settlement remains entrenched. The Mediation Act's provision making settlement agreements enforceable as court decrees is a step forward, but its practical efficacy will depend on the willingness of courts to resist collateral challenges.

C. Inadequate Public Awareness

The success of ADR as a constitutional instrument presupposes an informed citizenry aware of its availability and advantages. Studies have repeatedly shown that large sections of the Indian population, particularly in rural areas, are unaware of mechanisms such as Lok Adalats, mediation centres, and online dispute resolution portals.³⁵ This informational asymmetry reproduces inequality in access to justice and undermines the constitutional guarantee of Article 21. Legal literacy campaigns, paralegal training, and integration of ADR awareness into legal aid programmes under the Legal Services Authorities Act are indispensable.

D. Constitutional Concerns: Voluntariness and Coercion

Critics of mandatory ADR—particularly compulsory pre-litigation mediation under Section 12A of the Commercial Courts Act and Section 6 of the Mediation Act, 2023 argue that compelling parties to mediate before they can access courts may itself violate Article 21 by placing procedural barriers on the right to approach courts. While the Supreme Court has not squarely addressed this question in the context of the Mediation Act, 2023, the general principle that access to courts is a fundamental right suggests that any mandatory ADR scheme must ensure that parties are not indefinitely excluded from judicial redress. The constitutionality of such schemes arguably survives scrutiny only where the ADR process is time-bound, affordable, and genuinely voluntary in spirit.

VI. COMPARATIVE AND INTERNATIONAL PERSPECTIVES

India's turn to ADR as a constitutional necessity is mirrored in global trends. The UNCITRAL Model Law on International Commercial Conciliation, 2002, and the Singapore Convention on Mediation, 2019,³⁶ reflect international consensus that mediation is a preferred mode of commercial dispute resolution. India's ratification of the Singapore Convention remains pending, but the enactment of the Mediation Act, 2023, aligns domestic law with its requirements. Comparative study of jurisdictions such as Singapore, the United Kingdom (with

³⁵ P.M. Bakshi, "ADR and the Constitution of India" in P.C. Rao (ed.), *ADR in India* (2001).

³⁶ UNCITRAL Model Law on International Commercial Conciliation, 2002; Singapore Convention on Mediation, 2019.

its Pre-Action Protocols and the emphasis on ADR in the Civil Procedure Rules), and the United States (with its robust mediation culture) reveals that the integration of ADR into the constitutional and procedural fabric of justice delivery is both feasible and productive.

The Right to Information Act, 2005 provides a useful parallel: just as transparency in governance was elevated to a constitutional value under Article 21, access to speedy and affordable dispute resolution through ADR must be treated as a constitutional entitlement rather than a policy preference. This normative shift—from ADR as procedural convenience to ADR as constitutional mandate—is the central argument of this article.³⁷

VII. RECOMMENDATIONS FOR REFORM

On the basis of the foregoing analysis, the following normative recommendations are proposed:

First, the Supreme Court should issue a comprehensive practice direction, in the manner of the mediation model rules following *Salem Advocate Bar Association*, requiring all trial courts to conduct a mandatory ADR orientation session at the first date of hearing in civil suits, with mechanisms to track referral and settlement rates.

Second, Parliament should expedite the establishment and operationalisation of the Mediation Council of India under the Mediation Act, 2023, with a mandate to accredit mediators within a defined timeframe and to regulate the quality and ethics of mediation practice.

Third, the National Legal Services Authority should expand its network of permanent Lok Adalats and integrate online dispute resolution platforms to extend access to citizens in geographically remote areas, in fulfilment of the constitutional mandate under Article 21.

Fourth, law schools should incorporate ADR as a compulsory component of the curriculum, producing a generation of lawyers and judges trained in the culture of settlement—a prerequisite for any sustainable ADR ecosystem.

Fifth, the ground of "patent illegality" in Section 34(2A) of the Arbitration Act—a uniquely Indian ground for challenging domestic awards—should be narrowly interpreted by courts to prevent its misuse as a vehicle for delay, consistent with the constitutional imperative of expeditious justice.

VIII. CONCLUSION

The right to speedy justice under Article 21 is not a hollow aspiration; it is a live constitutional

³⁷ See *Sarla Mudgal v. Union of India*, AIR 1995 SC 1531 (highlighting need for a uniform dispute resolution culture).

guarantee that the State is obligated to make effective. The Indian justice system's chronic backlog is not merely an administrative inconvenience but a systemic violation of fundamental rights. ADR mechanisms—arbitration, mediation, conciliation, and Lok Adalats—represent the most viable constitutional response to this crisis.

The legislative framework, particularly the Arbitration and Conciliation Act, 1996 (as amended), the Legal Services Authorities Act, 1987, and the landmark Mediation Act, 2023, provides a robust normative foundation. The judiciary has progressively recognised ADR as a constitutional instrument. What remains is the task of implementation: building institutions, training professionals, educating citizens, and cultivating a legal culture that values early, consensual, and dignified resolution of disputes over protracted adversarial litigation.

The constitutional vision of *Hussainara Khatoon*—that every person is entitled to a fair, just, and speedy resolution of their legal disputes—can be fully realised only when ADR is treated not as an alternative to justice but as justice itself. That transformation, from the margins to the mainstream of the Indian legal system, is the constitutional imperative of our time.
