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# The Evolution of Alternative Dispute Resolution Mechanism in India: Its Relationship with Civil Procedure Code and Micro Small, and Medium Enterprises Growth

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SURYA PRAKASH PANDEY<sup>1</sup>, APURVA TIWARI<sup>2</sup> AND DIVY PRABHAT GUPTA<sup>3</sup>

## ABSTRACT

*ADR methods offer an easy solution by providing an efficient and convenient way to resolve disputes. As alternative dispute resolution (ADR) becomes more popular, it will not only reduce the load on the courts but also promote a more just and effective legal system, which would ultimately help society become more peaceful. This is a good indicator of time and money savings, and how frequently various ADR programs occur such as in court is highly dependent on the nature and structure of those processes. ADR in the commercial sector shows that mediation has grown in recent years, revealing insights that offer significant benefits for Indian litigation. Apart from the legal perspective, ADR mechanisms are equally beneficial for economic affairs. It creates tremendous cost-saving and time-saving effects, moreover, making greater benefits to the overall economy, and they address a wider range of considerations for the growth of MSMEs. They establish an environment conducive to the business by reducing the blocks in litigation, and cash flows, and finally building trust among the stakeholders.*

*This research paper examines the relationship between Alternative Dispute Resolution (ADR) mechanisms and the legal aspects particularly the Civil Procedure Code (CPC) to examine whether ADR mechanisms such as mediation and arbitration are supported in the system. It identifies specific CPC provisions governing mediation and arbitration and assesses their impact on the validity and effectiveness of ADR outcomes. This study focuses on the CPC's role in facilitating or preventing these ADR processes' adaptation, use, practice, and implementation. Furthermore, this article also explores the role of the ADR mechanism in the growth and sustainability of micro small, and medium enterprises (MSMEs).*

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<sup>1</sup> Author is a Ph. D. Scholar at Bennett University, Greater Noida, India.

<sup>2</sup> Author is a Ph. D. Scholar at Bennett University, Greater Noida, India.

<sup>3</sup> Author is a Student at University of Lucknow, India

**Keywords:** *Alternative Dispute Resolution (ADR), Civil Procedure Code (CPC), Arbitration, Mediation, MSMEs, Litigation, Law.*

## **I. INTRODUCTION**

Mahatma Gandhi once said: “I realized that the true function of lawyers was to unite parties. The lesson was so indelible that a large part of my time during the twenty years of my practice as a lawyer was occupied with bringing about the private compromise of hundreds of cases. I lost nothing thereby not even money; certainly not my soul”.

In light of the above-mentioned Cott, an Alternative dispute resolution mechanism is a great step toward the establishment of a just and peaceful society. Typically, the phrase refers to a formal process of resolving disputes between disputing parties and a professional "third party" who helps them to a resolution through cooperative discussion, settlement, arbitration, mediation, counseling, and other means. It should be mentioned that mediation and arbitration are the most widely used ADR formats. The concept of ADR is sometimes more dated by the courts, which requires that disputants try for radiation before they take their case to the Court of Justice. ADR stands for alternative dispute resolution (ADR) and is commonly used as an abbreviation for processes or procedures other than adjudication by the presiding judge in the Court of Justice. These processes include settlement, arbitration, negotiation, and mediation<sup>4</sup>. In ADR, a neutral third party takes part to help rather than assist in the resolution of the issues in bickering.

In other words, the expression “Alternative Dispute Resolution” or ADR is typically used to refer to a broad range of conflict resolution procedures, many of which are unquestionably more cost-effective and time-efficient. ADR can refer to anything from a peaceful resolution of a dispute in which the conflicting parties are hired to engage in direct negotiation, but not always within clenched parameters.<sup>5</sup>

ADR is a form of alternative dispute resolution where parties to a dispute are assisted in resolving their differences by an unencumbered third party, known as an ADR practitioner. At the outset, we must acknowledge that ADR covers various methods of resolving disputes outside of court. ADR encompasses all forms of conflict resolution without litigation. But at the

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<sup>4</sup> Boria Sax, *Alternative Dispute Resolution (ADR)*. (1996), <https://doi.org/10.21236/ada311045> (last visited Jan 2025)

<sup>5</sup> A Study of China’s Arbitration System Based on a Review of International FTA Arbitration Mechanisms *Advances in Social Science, Education and Humanities Research/Advances in social science, education and humanities research*, <https://doi.org/10.2991/assehr.k.220105.111> (last visited Feb 2025)

same time, it should be remembered that ADR is not appropriate for every dispute, and it is not the solution to all disputes or conflicts. The phrase "alternative dispute resolution" refers to a variety of conflict resolution techniques, such as Lok Adalats, arbitration, conciliation, and mediation. Conflicting parties might come to an agreement using alternative dispute resolution (ADR) methods and approaches without resorting to litigation. It's a contemporary term for an antiquated process. A novel takes on a well-known concept.

The ADR mechanism significantly contributes to Micro, Small, and Medium Enterprises (MSMEs) in terms of providing dispute redressal mechanisms at a very low cost. It provides an easy pathway to short out disputes in a decent manner. As we know MSMEs are the backbone of the economy of India in the sense that they contribute largely to GDP and employment but face various legal challenges and disputes, which not only drain resources but also delay operations and hinder businesses from growing. The litigation procedures are costly and time-consuming, thereby impractical for MSMEs. However, Alternative Dispute Resolution (ADR), which includes mediation and arbitration, conciliation as well as Online Dispute Resolution (ODR), provides mechanisms for faster, less expensive, and more effective ways of resolving disputes. This paper will examine how ADR benefits MSMEs, strengthen the sustainability of companies and explore avenues for expansion.

Generally, ADR has an extra-judicial structure with non-judicial procedure but nowadays the concept of Court-Annexed ADR has also come up to keep the faith of the people alive in courts. ADR methods have an "out of court" approach. The word "Alternative" in ADR means "the other option" to the traditional court system.<sup>6</sup> This paper aims to critically examine the coaction between ADR and the CPC in India. The focus lies on these three key dimensions:

***Efficaciousness of ADR under the CPC:*** This section will examine the effectiveness of mediation and arbitration, the two main alternative dispute resolution (ADR) methods commonly used in India, within the framework of the Civil Procedure Code(CPC). The discussion will explore the specific provisions in the CPC that support these processes and evaluate their effectiveness in achieving positive outcomes, ensuring party satisfaction, and enforcing agreements made through ADR.<sup>7</sup>

***Challenges of Integrating ADR with the CPC:*** Integrating ADR mechanisms into the current legal framework poses unique challenges. This section will highlight and assess these obstacles,

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<sup>6</sup> Industrial Conflict Resolution using Court-connected Alternative Dispute Resolution Mediterranean Journal of Social Sciences, <https://doi.org/10.5901/mjss.2014.v5n16p683> (last visited Feb 2025)

<sup>7</sup> Regulating Dispute Resolution: ADR and Access to Justice at the Crossroads European Business Organization Law Review 639, <https://doi.org/10.1017/s1566752912000389> (last visited Feb 2025)

such as jurisdictional concerns, questions surrounding the enforceability of ADR-based resolutions, and possible delays due to procedural intricacies. To develop a thorough understanding, insights from legal practitioners, judges, and the parties engaged in ADR will be explored.<sup>8</sup>

***The Crucial role of CPC in promoting and enforcing ADR Agreements:*** The Civil Procedure Code (CPC) is instrumental in both facilitating and sometimes obstructing the enforcement of agreements reached through ADR. This section will examine the influence of provisions within the CPC on the enforceability of ADR outcomes. Furthermore, it will assess how courts interpret these provisions and their role in supervising ADR processes.<sup>9</sup>

“Justice delayed is justice denied. In the quest for swift and amicable resolutions, Alternative Dispute Resolution is not just opinion; it is a necessity in our current legal landscape.” - Anonymous.

## II. ANALYSIS OF ADR MECHANISMS

***Alternative Dispute Resolution (ADR):*** Encompasses a diverse range of processes and techniques designed to assist disputing parties in a manually agreeable settlement outside the formal court system. This section goes into three main types of ADR used in India: mediation, arbitration, and conciliation, discussing their definitions, historical background within the Indian legal framework, and the justification for selecting the ADR over traditional litigation.<sup>10</sup>

***Mediation:*** To help the opposing parties get to a mutually agreed settlement, a mediator—a neutral third party—facilitates contact and negotiation between them. Put another way, mediation entails actively seeking a solution while being coached by a third party. Giving the parties involved in a disagreement the chance to communicate and look into potential remedies is the main goal of mediation. An expert who serves as a mediator helps the parties achieve a settlement agreement through an unofficial procedure. A mediator cannot force a solution on the parties involved in a dispute, hence they are not allowed to decide who is right or wrong during the mediation process. Rather, a mediator helps the parties in conflict come together, consider, and resolve disagreements peacefully. Notably, the aforementioned kind of ADR technology is accepted and used all over the world.<sup>11</sup>

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<sup>8</sup> A Light on Dispute Resolution Methods with Special Reference To International Commercial Arbitration SSRN Electronic Journal, <https://doi.org/10.2139/ssrn.3932855> (last visited Jan 2025)

<sup>9</sup> Contextualizing alternate dispute resolution: an agile approach to resolve disputes in infrastructure projects Общество и инновации 104, <https://doi.org/10.47689/2181-1415-vol1-iss2-pp104-116> (last visited Feb 2025)

<sup>10</sup> Hwang, S.Y., *Advantages of Alternative Dispute Resolution (ADR)*, 3 INT'L J. L. & MGMT. REV. 22-29 (2019). (last visited Feb 2025)

<sup>11</sup> A Study of China's Arbitration System Based on a Review of International FTA Arbitration Mechanisms

**Arbitration:** This form of ADR mechanism is approved by law. In actuality, arbitration is a codified law that handles the resolution of disputes, primarily those about business and civil law. Under arbitration, an arbitrator or arbitrators are appointed by the court or with the consent of the parties to render an award that satisfies the arbitration clause in the agreement or contract the parties have entered into. As an outcome, a third party acts as the court's presiding officer during the arbitration rules of procedure. Arbitration is a binding process where the parties involved agree to submit their dispute to one or more neutral arbitrators for a final and enforceable decision. Arbitrators act in a quasi-judicial capacity, conducting hearings.<sup>12</sup>

The current global landscape, characterized by globalization and liberalization of trade and commerce, necessitates the successful implementation of economic reforms. The Indian Arbitration Act of 1940 was deemed inadequate for the demands of today's dynamic environment. With the proliferation of international corporations in sectors such as finance, energy, construction, and telecommunications, India is witnessing a significant influx of foreign entities. Furthermore, India's trade with other nations often includes arbitration agreements to resolve potential disputes, reflecting the country's integration into the global economy. of such a type of business dealings and the disagreement ought to be resolved by the 1996 Arbitration and Conciliation Act and the guidelines established there under.

**Conciliation:** It is another form of ADR system. In India the present Arbitration and Conciliation Act, of 1996 contains various conciliatory provisions for the settlement of disputes; Part 3<sup>rd</sup> containing Sections 61 to 81 of the said Act, 1996 deals with the mode and mechanisms of the conciliation. It is to be noted that the system of conciliation is usually used in the case of industrial disputes, commercial transactions, and matrimonial matters. Conciliation shares similarities with mediation.

However, the conciliator may take a more active role in proposing solutions advising the parties on the merits of the case and even issuing a non-binding opinion on the dispute.<sup>13</sup> While the conciliator's suggestions are not binding, they can help guide the parties towards a settlement. In some cases, the conciliator may even issue a non-binding opinion on the dispute.<sup>14</sup>

### III. HISTORICAL CONTEXT OF ADR IN INDIA

Alternative Dispute Resolution (ADR) has flourished, initially in the United States of America

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Advances in Social Science, Education and Humanities Research/Advances in social science, education and humanities research, <https://doi.org/10.2991/assehr.k.220105.111> (last visited Feb 2025)

<sup>12</sup> Alternative dispute resolution: Mediation as a model F1000Research 778, <https://doi.org/10.12688/f1000research.152362.1> (last visited Mar 2025)

<sup>13</sup> Singh, A.K., *ADR and Its Effectiveness in India*, 6 INT'L J. ADVANCED RES. 704-707 (2018).

<sup>14</sup> Mahajan, V., *Conciliation and Arbitration Law* (E. Book Co., New Delhi, 2011).

(U.S.A.), since the political and civil turmoil of the 1960s. Many civil lawsuits were filed during that period to resolve their disagreements and prevent unfairness and prejudice. Justice was delayed as a result of the U.S. legal system's excess of cases, and plaintiffs occasionally had to deal with judicial turnover. Consequently, procedures such as mediation, conciliation, and arbitration gained popularity as dispute resolution procedures for a range of disputes because alternative dispute resolution (ADR) relieved strain on the overburdened legal system.<sup>15</sup> In addition, discrimination on the grounds of race, sex, or national origin was prohibited in public employment, according to the Civil Rights Act of 1964. It should be mentioned that the idea of resolving disputes outside of the legal system is not particularly novel. While non-judicial indigenous techniques have long been utilized by communities to settle conflicts, the widespread promotion of alternative dispute resolution (ADR) models, particularly in the business sector, is new. ADR is a powerful technique for settling disputes amicably.

**Pre-Colonial Era: Legacy of Panchayats and Caste Councils:** Traditional Indian society emphasized social cohesion and collective well-being. This manifested in the widespread use of informal dispute resolution mechanisms like village panchayats and caste councils.<sup>16</sup> These bodies are composed of respected elders, and community leaders, and functioned through dialogue, mediation, and the application of customary law. The primary objective was to achieve reconciliation and restore harmony within the community, prioritizing compromise over adversarial proceedings.<sup>17</sup> This emphasis on consensus and social order laid the groundwork for the acceptance and adaptation of formal ADR mechanisms for the future perspective.

**Colonial Influence and the Commencement of Arbitration:** The arrival of the British Raj in the 18<sup>th</sup> century marked the introduction of a formal legal system based on the English common law. This system also included provisions for arbitration, which were codified in the Arbitration Act of 1899<sup>18</sup>. However, in the case of commercial disputes involving Europeans, the first form of arbitration has been largely used and does not have a significant effect on the conventional community conflict resolution practices in India's poorest regions.

**Post-Independence and Rise of ADR:** The Legal system has undergone several reforms following India's independence in 1947. The need for a more effective and flexible alternative,

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<sup>15</sup> Alternate Dispute Resolution System: A Prudent Mechanism of Speedy Redress in India SSRN Electronic Journal, <https://doi.org/10.2139/ssrn.1080602> (last visited Feb 2025)

<sup>16</sup> Nanda, V.P., The 'Good Governance' Concept Revisited, 603 ANNALS AM. ACAD. POL. & SOC. SCI. 269-283 (2006).

<sup>17</sup> Rahman, H., Traditional Dispute Resolution Mechanisms in India: A Case Study of Panchayats, 3 J. PEACEBUILDING & DEV. 31-42 (2008).

<sup>18</sup> Redfern, A. & Hunter, M., *Law and Practice of International Commercial Arbitration* (Sweet & Maxwell, 2004).

especially given the growing number of pending cases, has become increasingly recognized even though the court system remains the main dispute resolution option. This paved the way for the enactment of the Arbitration and Conciliation Act (1996), which significantly strengthened the legal framework for ADR in India.<sup>19</sup> This Act is based on the Model Law on International Commercial Arbitration established by UNCITRAL and provides a robust framework for conducting both arbitration and conciliation proceedings, promoting their wider use across various types of disputes.<sup>20</sup>

#### IV. MAIN LATENT CHARACTERISTICS OF ADR

1. ADR operates with less formality.
2. Doctrine of Equity
3. Direct participation
4. Communication between disputants

**ADR operates with less formality:** Fundamentally, the ADR system is less formal in comparison with the judicial process. In this process without formal pleadings, written statements, or standards of evidence, the procedural norms are loose. For ADR, this informality is essentially the most significant and attractive aspect. It is also crucial to cut down on needless delays and dispute settlement expenses.

**The doctrine of Equity:** No doubt doctrine of equity is applicable in the method of alternative dispute resolution. Mainly ADR is pivotal for the appliance of the doctrine of equity. In ADR, rather than being resolved by an imposed legal standard of proof, each case is decided by a third party or negotiated by the disputing parties themselves, depending on the principles and terms that are deemed fair in that circumstance. It is not expected that ADR will set up a precedent or bring changes in legal as well as social norms. The system of ADR focuses on achieving efficient and effective settlement and providing consistent and uniform justice.

**Direct Participation:** The ADR system creates a good scope for the direct participation of disputants. There is more direct dialogue and the opportunity for conciliation between disputes is greater and more flexible. A higher level of confidentiality is also maintained in the ADR method.

**Communication between disputants:** The ADR system provides straight and direct

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<sup>19</sup> Delgado, R. & Stancil, J., *Critical Perspectives on Police, Policing, and Mass Incarceration*

<sup>20</sup> UNCITRAL Model Law on International Commercial Arbitration (1985), with Amendments as Adopted in 2006, U.N. Doc. A/40/17, annex I, and U.N. Doc. A/61/17, annex I (1985 & 2006).



communication between the disputants. More flexibility and informality make the ADR system popular and effective which contains the potentiality of a higher level of settlement of disputes while exercising direct power of enforcement of the result of ADR processes. Notably, ADR sought to be designed to suit the conflicting parties and positions, so that failure of ADR can be kept at bay.

## **V. LAW OF ALTERNATIVE DISPUTE RESOLUTION IN INDIA**

In its fourteenth report, the Law Commission of India recommended strategies to ensure that justice is straightforward, efficient, cost-effective, and meaningful. The Law Commission of India noted in its 77th report that the majority of Indian society is agricultural and lacks the sophistication to understand the convoluted and arcane processes that the courts undertake. The Arbitration and Conciliation Act, 1996; the Legal Services Authority Act, 1987; section 89; and Order 10 Rule 1-A to 1-C of the Civil Procedure Code, along with a few other laws, are the three main laws that show how sensitive the Indian government is to the promotion of ADR. Section 89 of the Civil Procedure Code provides the five different methods of ADR which are listed below-

1. Arbitration
2. Conciliation
3. Mediation
4. Judicial Settlement
5. Lok Adalat

The court is under a legal obligation to proceed with the hearing of the suit if the reference to the ADR fails. In case the settlement has been reached, the court is bound to examine it and make a decree in terms of the settlement as per the rules laid down in Rule 3 Order 23 of the Civil Procedure Code. The court may order that any conflicts included in the settlement that are not related to the lawsuit be regulated by the laws that are in effect at the time. Section 74 of the Arbitration and Conciliation Act, if it is a conciliation settlement.<sup>21</sup> or Section 21 of the Legal Services Act, 1987 (if it is a settlement by a Lok Adalat or by mediation).<sup>22</sup>

The Court shall record that the reference is by mutual consent, if the reference is to arbitration or conciliation, and nothing further is required to be stated in the order sheet. In case, a need was felt by the Court to refer the dispute to any of the three processes – Lok Adalat, Mediation,

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<sup>21</sup> Arbitration and Conciliation Act, No. 26 of 1996, § 74, INDIA CODE (1996).

<sup>22</sup> Legal Services Act, No. 39 of 1987, § 21, INDIA CODE (1987).

and Judicial Settlement, the fact must be mentioned by the court.

### **(A) Hypothesis For Using ADR**

“International alternative dispute resolution allows us to replace the language of confirmation with the language of cooperation, leading to solutions that benefit all parties involved.” – Louise Arbour

While the efficiency and cost-effectiveness of ADR are undeniable advantages, the hypothesis for using ADR extends beyond these practical benefits:

1. **Safeguarding relationship:** ADR processes, particularly mediation, can help preserve relationships between disputing parties. Unlike litigation, which can foster animosity, ADR encourages dialogue and understanding, potentially allowing for ongoing collaboration even after the dispute is resolved.<sup>23</sup>
2. **Accreditation and Control:** ADR enables parties to have greater control over the procedure for the resolution. In contrast to court proceedings where the judge dictates the outcome, ADR empowers parties to actively participate in shaping the solution.<sup>24</sup>
3. **Mouldability and innovativeness:** ADR allows for exploring options beyond the win-lose framework of traditional litigation. Parties can develop creative solutions that address their specific needs and interests, leading to more mutually beneficial outcomes.<sup>25</sup>

### **(B) Working Mechanisms of Arbitration**

Arbitration which dates to the Vedic era, has been part of India’s history and ADR mechanisms such as mediation, arbitration, conciliation or Lok Adalat have become an integral part of dispute resolution in this country. The 1996 Arbitration and Conciliation Act, which controls and regulates arbitration in India, is based on the UNCITRAL<sup>26</sup> model of International commercial arbitration from 1985. In India, six categories of arbitration have been developed of which three are at the forefront: institutional arbitration, fast-track arbitration, and ad hoc arbitration. Presently In India, there are 35 arbitral organizations for trade, merchant associations, public sector undertakings, and city-specific chambers of industry and commerce. These organizations may have their own set of regulations or are subject to the Arbitration and

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<sup>23</sup> Menkel-Meadow, C., Ethics Issues in Arbitration and Related Dispute Resolution Processes: What’s Happening and What’s Not, 56 U. MIAMI L. REV. 949 (2004).

<sup>24</sup> Menkel-Meadow, C., Ethics Issues in Arbitration and Related Dispute Resolution Processes: What’s Happening and What’s Not, 56 U. MIAMI L. REV. 949 (2004).

<sup>25</sup> Park, S. & Kelly, J., Alternative Dispute Resolution in International Business Transactions, 11 J. INT’L BUS. EDUC. 1-17 (2012).

<sup>26</sup> UNCITRAL Arb. Rules, U.N. Doc. A/RES/68/109 (2013).

Conciliation Act 1996. The High-Level Group to Examine India's Institutionalization of Arbitration Procedures, led by 'Justice (Retd.) BN Srikrishna', submitted its report to the Union Law Ministry. Key recommendations include the Arbitration Promotion Council of India (APCI), the specialist arbitration bench, changes in the Arbitration and Conciliation Act, and the National Litigation Policy (NLP).

The last amendment to the Act was made in 2021. Firstly, the ambit was widened, and its provision now also hold for arbitrations involving international business disputes, even when the venue is outside of India. Additionally, it gives parties the option to pursue arbitration processes quickly. Within six months, the prizes would be given out. Furthermore, the Act specifies that the Court's scope of work shall be limited to determining whether a legitimate arbitration agreement exists. Finally, the establishment of the Arbitration Bar of India (ABI) in May 2024 represents a step toward improving the arbitration landscape. ABI is India's leading professional association dedicated to advancing of ADR in India by collaborating with relevant stakeholders, engaging with government bodies, and participating in policy discussions. ABI provides 3 categories of membership, which include members, associate members and honorary members. In recent years, there have been major changes to the arbitration law in India, to make it more stable and arbitrator-friendly. Several pro-arbitration rulings from India's Supreme Court and High Courts have resulted from the growing popularity of arbitration. These rulings support minimal interference in arbitral awards, recognition of emergency arbitral awards in arbitrations with Indian seats, and validation of the function and validity of third-party funding in arbitration.<sup>27</sup>

India's economic growth and its importance as a global player have led to an increase in arbitrations involving Indian parties. The number of India-related arbitrations is expected to continue growing in 2024 and beyond as India's economy continues to expand and attract foreign investors.

## VI. EFFECTIVENESS OF MEDIATION AND ARBITRATION UNDER THE CPC

*The Civil Procedure Code (CPC) of India:* As effective alternatives to legal proceedings, mediation and arbitration are strongly promoted. Arbitration offers a binding decision by the chosen arbitrator, while mediation provides for collaborative solutions through an impartial facilitator. By giving judges, the power to propose mediation and enforcement of arbitration agreements, the CPC facilitates these procedures. Studies have shown that ADR under the Civil Procedure Code leads to faster resolution and higher satisfaction of parties due to mutual

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<sup>27</sup> Arushie Marwah & Vrinda Vinayak, Recent Developments in India-Related Arbitration (2020).

agreements and strong enforceability through the legal framework.

### **(A) Provisions under the CPC Expedite the ADR Process**

**Section 89 (CPC):** This section is pivotal in promoting mediation by empowering courts to direct parties towards mediation after assessing the possibility of a settlement that may be acceptable to all involved.<sup>28</sup>

**Order X Rule 1a (CPC):** This rule lays down the procedural framework for courts to follow when referring parties to mediation, ensuring that mediation is considered at an early stage in the litigation process.<sup>29</sup>

**Section 36 of the Arbitration and Conciliation Act (r/w CPC):** This section facilitates the enforcement of arbitral awards, treating them as equivalent to a court's decree, thus underpinning the binding nature of arbitration outcomes.<sup>30</sup>

### **(B) Evaluation of the Effectiveness of ADR Mechanisms**

**Outcomes:** Both mediation and arbitration have been shown to expedite dispute resolution, offering quicker outcomes compared to traditional court proceedings. This effectiveness in achieving timely resolutions helps in alleviating the burden on courts and providing swift justice to disputants.<sup>31</sup>

**Satisfaction of the Parties:** The consensual nature of mediation and the controlled adversarial process of arbitration tend to result in higher satisfaction rates among parties. This satisfaction arises from parties having more say in the process and outcomes, often leading to solutions that are tailor-made to suit the needs of all involved.<sup>32</sup>

**Enforceability:** The strong legal framework provided by CPC, along with the Arbitration and Conciliation Act, ensures that agreements and awards from ADR processes are enforceable. This legal backing significantly enhances the credibility and reliability of ADR outcomes, ensuring compliance and respect for the resolution process.<sup>33</sup>

### **(C) Challenges of Integrating ADR with CPC**

“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser in fees, expenses, time and trouble” –

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<sup>28</sup> Code of Civil Procedure, 1908, Act No. 5 of 1908, INDIA CODE (1908).

<sup>29</sup> Code of Civil Procedure, 1908, Act No. 5 of 1908, INDIA CODE (1908).

<sup>30</sup> Code of Civil Procedure, 1908, Order II Rule 2, INDIA CODE (1908).

<sup>31</sup> Arbitration and Conciliation Act, No. 26 of 1996, INDIA CODE (1996).

<sup>32</sup> Park, S. & Kelly, Alternative Dispute Resolution (ADR) in International Business Transactions, 11 J. INT'L BUS. EDUC. 1-17 (2012).

<sup>33</sup> Malhotra, O.P., The Law and Practice of Arbitration and Conciliation (2d ed. 2014).

Abraham Lincon

Procedural and practical challenges are posed by the Integration of ADR mechanisms such as mediation, and arbitration with the Civil Procedure Code. Jurisdiction issues, enforceability, and procedural delays are factors contributing to these challenges. A valuable insight into these challenges can be found in the opinions of lawyers, judges, and interested parties.

**(D) Procedural and Practical Challenges in Aligning ADR Mechanisms with the CPC**

1. **Jurisdictional Challenges:** The issue of jurisdiction is a significant obstacle, particularly in ADR mechanisms which are initiated through a court order. It can be difficult to determine which court has jurisdiction to monitor and enforce ADR results, in particular, cases that involve multiple jurisdictions or where the parties are from different countries. This confusion may lead to a conflict of jurisdiction which could affect the ADR proceedings.
2. **Interstate and International dispute:** The choice of the appropriate jurisdiction for ADR proceedings and subsequently enforcement of decisions become difficult when disputes are brought by parties from different states or countries. The CPC does not lay down concrete guidelines for International Arbitration, which may lead to legislative uncertainty on the enforceability of arbitral decisions in other countries.
3. **Overlap of Judicial and Arbitral Roles:** Confusion may occur when the courts and arbitral tribunals have jurisdictions to deal with a single matter in parallel. This may be the case if one of the parties' disputes whether an arbitration agreement is applicable under the Act on Arbitration and Conciliation, 1996. The courts often must decide whether to continue the proceedings and refer the parties to arbitration.
4. **Enforceability of ADR-Derived Solutions:** The enforceability of mediation agreements continues to be difficult, although section 36 of to enforce arbitration decisions, the Arbitration and Conciliation Act, and the CPC are merged as a court order. To obtain similar enforceability, mediation agreements require the conversion into a judicial decree in which litigation aspects can be brought back as part of the ADR process which could complicate and delay resolving disputes.
5. **Procedural Delays:** Linking ADR procedures with the formal legal system introduces the potential for procedural delays. For instance, the requirement that courts facilitate ADR under Section 89 of the CPC can lead to delays in scheduling and completing mediation or arbitration, especially in overloaded jurisdictions. Additionally, the transition from ADR outcomes back to the court system for final decrees can also

introduce delays.<sup>34</sup>

## VII. DEVELOPMENT THROUGH CASE LAWS

### 1. *Wellington Associates Ltd. V. Mr. Kirti Mehta*<sup>35</sup>

The question in this case was whether the use of the word ‘may’ in an arbitration clause made recourse to arbitration mandatory. The Court admitted that this disability upon the powers of the arbitral tribunal had been removed by the intersection of Section 16<sup>36</sup> of the Act but also went on to point out that Section 16 was an enabling provision. The Court made repeated observations about how it would be “absurd” to allow the tribunal to decide questions relating to its jurisdiction. Lastly, while upholding the judgment in Ador Samia, the Court pointed out that whether the function exercised by the Chief Justice was judicial or administrative bore no relevance to deciding upon the existence or legality of the arbitration clause.

### 2. *Sundaram Finance Ltd. V. NEPC India Ltd.*<sup>37</sup>

The Hon’ble SC established that an order U/s 11 of the Arbitration and Conciliation Act is an administrative order. “Under the 1996 Act, the appointment of arbitrator is made as per the judicial order appointing an arbitrator.”

The primary question before the Court was whether it had the authority to make interim order U/s 9 of the 1996 Arbitration and Conciliation Act before arbitral proceedings started and an arbitrator was chosen. The Court held that “But a situation may so demand that a party may choose to apply U/s 9 for an interim measure even before issuing a notice contemplated by Section 21 of the said Act. If an application is so made, the Court will first have to be satisfied that there exists a valid arbitration agreement and the applicant intends to take the dispute to arbitration. Once it is so satisfied, the Court will have the jurisdiction to pass order U/S 9 giving such interim protection as the facts and circumstances warrant.” The Court held that it has jurisdiction to pass interim order U/s 9 of the 1996 Act even before the start of the arbitration process and the appointment of the arbitrator. The Court can grant interim relief to support the arbitral proceedings. It is implicit that a party accepts the existence of a final and binding arbitration agreement when applying U/s 9.

### 3. *Ador Samia Private Limited V. Peekay Holdings Limited and Ors.*<sup>38</sup>

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<sup>34</sup> Code of Civil Procedure, 1908, Act No. 5 of 1908, INDIA CODE (1908).

<sup>35</sup> Wellington Associates Ltd. v. Kirti Mehta, MANU/SC/0012/1999 (India).

<sup>36</sup> Arbitration and Conciliation Act, No. 26 of 1996

<sup>37</sup> Sundaram Finance Ltd. v. NEPC India Ltd., MANU/SC/0012/1999 (India).

<sup>38</sup> Ador Samia Private Ltd. v. Peekay Holdings Ltd. & Ors., MANU/SC/0506/1999 (India).

This case dealt with the issue of whether an appeal against a High Court's Chief Justice's appointment of an arbitrator was under Article 136 of the Indian Constitution, and the court based its decision on the previous Sundaram judgment.<sup>39</sup> The court essentially prohibited the Chief Justice from ruling on questions such as the existence or validity of the arbitration agreement. These questions fall well within the scope of determination by the arbitral tribunal by the doctrine of Kompetenz-Kompetenz.

#### 4. *O.N.G.C. V. Saw Pipes*<sup>40</sup>

In the present case, the Court has intervened in an arbitral award. Predictably, the judgment caused an uproar when it was delivered. Some authors have harshly criticized that decision, arguing that it will open Pandora's box for further challenges to arbitral awards.

### VIII. SHORTCOMINGS OF MEDIATION

Mediation works successfully in some circumstances, however, there are significant statutory weaknesses that could be improved. According to Section 89 of the CPC (1908), the court may submit a proposed settlement to arbitration if it identifies appropriate aspects for the parties. The court will then draft the settlement terms and send them to the parties for review. Lok Adalat refers to peace-making and arbitration. In This section there are several shortcomings, which are given below-

1. The section completely negates the ADR mechanism by requiring the judge to state the terms of the settlement. This clarification defeats the intent of mediation. The primary goal is to reach a settlement and resolve conflict amicably, but imposing a settlement on parties defeats the purpose of mediation.
2. The second issue is directly linked to the first. If the judge is determining the terms of the settlement, he must thoroughly investigate the case. After such a thorough examination, the need to refer the case to mediation would be eliminated.
3. This section elaborates on mediation and conciliation as distinct. But as widely acknowledged, these two terms are used synonymously all over the world.

#### (A) Shortcomings of Arbitration

Although arbitration is supposed to provide a timely and cost-effective experience, it has not lived up to its potential in recent times. This could be primarily attributed to the fact that most lawyers participating in arbitration are litigators who are accustomed to trying cases in court.

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<sup>39</sup> Sundaram Finance Ltd. v. NEPC India Ltd., MANU/SC/0012/1999 (India).

<sup>40</sup> Oil & Natural Gas Corp. Ltd. v. SAW Pipes Ltd., MANU/SC/0314/2003 (India).

Because of their background, they are used to and feel more secure in pursuing lengthy and costly trial procedures. Courtroom litigation and arbitration have become rather comparable, as both are costly, adversarial, and frustratingly procedural.

Another problem that arises is how the courts have the power to appoint the arbitrator in case the parties are unable to decide on their own. The entire point of arbitration is to eliminate the involvement of courts. However, if the court is involved at such an early stage of the dispute resolution process, then the main aim of the ADR mechanism would fail. ADR is a step to prevent litigation, not a step before it.

## **IX. THE ROLE OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN STRENGTHENING MSMEs IN INDIA**

Micro, Small, and Medium Enterprises (MSMEs) are crucial for the Indian economy since they greatly contribute to GDP and employment. However, legal disputes afflict these businesses and drain their resources, cause delays in operations, and hinder growth. Traditional litigation, costly and time-consuming, stands to be an impractical option for MSMEs. Thus, Alternative Dispute Resolution (ADR) mechanisms like mediation, arbitration, conciliation, and Online Dispute Resolution (ODR) prove to be a faster, cheaper, and more efficient way of dispute resolution. The article delineates the benefits of ADR from the MSME point of view and how it sustains and expands their businesses. Here are a few points that foster the significance of the ADR mechanism in the growth and sustainability of MSMEs.<sup>41</sup>

**Cost Efficiency and timesaving:** Yet, ADR mechanisms, particularly mediation, arbitration, and Online Dispute Resolution, usher in innovative advantages for Micro, Small, and Medium Enterprises (MSMEs) in putting an end to the two negative factors that traditional litigation has: exorbitant costs and prolonged timelines. Since they operate in an environment of limited financial resources and very tight cash flow cycles, the high costs associated with court fees, legal representation, travel expenses, non-availability of time due to procedural delays, etc., can often be crippling for MSMEs. Traditional litigation also consumes a huge deal of time because of the massive case backlog in the judicial system of India and pending disputes often last for years without any resolution. These dual financial and temporal burdens work havoc with the operational activities of MSMEs; they stymie critical relationships and threaten overall existence. On the contrary, they offer a smooth, flexible, and inexpensive alternative. For example, processes such as mediation or arbitration might involve less formality, have far less

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<sup>41</sup> Sriram Panchu, *Mediation Practice & Law: The Path to Successful Dispute Resolution* (2011).



expensive fee structures, and cost considerably less in terms of administrative overhead. Therefore, the costs of access and affordability become just simplistically open and financially viable for smaller businesses.<sup>42</sup>

ADR is supposed to resolve disputes much faster, usually just in a few weeks or months. This speed of resolution permits MSMEs to minimize a disruption of their business operation while maintaining the continuity of their business activities and avoids protracted opportunity costs from lengthy legal battles. ODR enhances these benefits and allows quicker and remote access to our resolution processes using technology, hence minimizing the travel and reducing an organization's logistical costs. ADR addresses how payment disputes and other conflicts could have been resolved efficiently while resulting in a manageable cash flow situation for MSMEs, which allows these businesses to invest in the core areas enabling their growth and innovation. The amicable and collaborative nature of ADR will even foster better, longer relationships with clients, vendors, and partners—key to competitive and sustainable economic advancement. Cost efficiency and time savings thus have tremendous benefits because they create an environment in which MSMEs can thrive, directing these entities on how to effectively deal with disputes without needing to compromise financial health or operational stability towards developing the economy. Also, financial restraints and delays are mitigated so that MSMEs can participate harmoniously in their primary goals—create value, create jobs, and contribute to the economy's development.

***Enhancing Global Trade Opportunities and Sustainable Growth:*** As MSMEs try to broaden their international trading footprints, they also encounter intricate jurisdictional challenges and legal complexities impeding their effective dispute resolution process. ADR is one unbiased, universally recognized approach to resolving such disputes with utmost efficiency. Arbitration, considered the backbone of ADR, is more or less accepted as the lawful resolution method for cross-border commercial disputes. Therefore, for MSMEs engaged in the interplay of global markets, it becomes an indispensable instrument to offer a neutral ground to balance uncertainties and undertake enforcement of resolutions without tedious court proceedings in foreign jurisdictions. This very nature of disputes resolved through arbitration gives MSMEs a sense of confidence and credence with their international stakeholders, aiding an easier way of doing business and nurturing further trust in their global operations.

On the other hand, the principles of ADR blend well into the long-term vision of all MSMEs that eventually go by sustainable business practices. Litigation ultimately takes a toll on the

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<sup>42</sup> Fali Nariman, *Finality in India: The Impossible Dream*, 10 INT'L ARB. 373, 373–84 (2014).

finances and operations of small businesses, drawing much-needed resources away from innovation and growth. Additionally, ADR diminishes such burdens by offering cost-effective and amicable means of settling disputes, ensuring financial liability and operational continuity. It provides adjustable speed in dispute resolution through which MSMEs may scale upward significantly, create new markets, and elevate their competitive edge. It will also prove useful in maintaining stakeholder and partner relations as one of the ways they will promote internal resilience and sustainability in MSMEs in times of changing economic conditions. Sustainable development would also be ensured for this kind of environment to be in a reasonable pace for developing businesses under severe legal limitations for innovation.<sup>43</sup>

#### **(A) Specific Example of ADR in the Indian MSME Context**

The Indian government has realized the significance of ADR in furthering MSMEs and has put various mechanisms in place to have different motives for promoting ADR use. The MSME Samadhaan Portal launched by the government under the MSME Act, 2006, is aimed at quick arbitration or conciliation of delayed payments issues.<sup>44</sup> Apart from that, private Online Dispute Resolution platforms use the technology of the legal tech industry to provide fast, convenient, and reasonably priced dispute resolution services to MSMEs across the length and breadth of India's geographical area.<sup>45</sup>

## **X. CONCLUSION**

According to the National Judicial Data Grid (NJDG), 29.97% of civil cases and 42.77% of criminal matters are presently pending before the SC. The case backlog is especially concerning because it only includes cases filed within the last year. It becomes more challenging for parties to reach a swift and efficient resolution to their disagreements. The parties are forced to continue their legal battles for far longer than necessary by our litigation system. As a result, ADR is frequently required in these situations. Now, the term “alternative” in ADR implies that these processes are outside of the legal framework only to be used in special circumstances never as a first option. They have been viewed as distinct and of lesser status by practitioners of the traditional legislation system. Apart from this, Alternate Dispute Resolution is the best option for MSMEs to legally deal with such problems, less expensively and most effectively. ADR methods save costs, have quick solutions, and provide more business-friendly solutions.

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<sup>43</sup> Gautam Bhatia, Section 11 of the Arbitration and Conciliation Act of 1996: The Jurisprudence of Supreme Court and Implications for the Jurisdiction of an Arbitral Tribunal, 21 NLSIU REV. 65, 65–75 (2009).

<sup>44</sup> The Micro, Small and Medium Enterprises Development Act, No. 27 of 2006, INDIA CODE (2006).

<sup>45</sup> Government of India, MSME Samadhaan – Delayed Payment Monitoring System, Ministry of Micro, Small & Medium Enterprises, available at <<https://samadhaan.msme.gov.in>>.

Therefore, ADR mechanisms help MSMEs to grow and be sustainable.

India is on the verge of providing better features with its legal architecture for ADR, which would create a more efficient, accessible, and business-friendly ADR system for MSMEs. Therefore, promoting ADR acceptance will beckon saving the courts from the increasing cases, besides empowering small businesses towards their sustenance in a different and much more complex business world. However, as times are changing, there is an increasing need to incorporate these mechanisms into the dispute resolution process. Consequently, efforts are being made to ensure that these dispute-resolution methods are effective and meet the parties' expectations. India is making progress toward enhancing its arbitration and mediation landscape and attracting greater foreign investment, despite certain challenges like the unpredictability and delays of the legal system. This is evident in the creation of the Arbitration Bar of India and the dispute resolution strategy is crucial and could make the difference between a speedy settlement and a lengthy legal battle.

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