

## **FUNDAMENTAL RIGHTS AND ADR: ENSURING JUSTICE OUTSIDE THE COURTROOM**

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### **Abstract**

The Indian Constitution guarantees Fundamental Rights as essential protections for individuals against state actions. However, despite these rights, the traditional judicial system often faces challenges such as delays, high costs, and procedural complexities, limiting access to timely justice. Alternative Dispute Resolution (ADR) mechanisms—including mediation, arbitration, negotiation, and Lok Adalats—offer an effective means of ensuring justice outside the formal courtroom while upholding constitutional values. This paper explores the intersection of Fundamental Rights and ADR, analyzing how ADR mechanisms contribute to the realization of rights such as access to justice (Article 39A), right to equality (Article 14), and right to life and personal liberty (Article 21). It examines how ADR ensures speedy, cost-effective, and participatory dispute resolution, thereby strengthening fundamental rights. Additionally, the role of the Supreme Court and High Courts in promoting ADR through judicial precedents is discussed. The paper also highlights concerns regarding enforceability, fairness, and voluntary participation in ADR processes, particularly in cases involving marginalized communities. The balance between constitutional safeguards and party autonomy in ADR is critically analyzed. Moreover, the research evaluates the constitutional validity of compulsory mediation and arbitration clauses and their impact on fundamental rights. Through a comparative analysis of global best practices, this paper suggests reforms to enhance the effectiveness of ADR in India while maintaining constitutional safeguards. The findings emphasize that while ADR can complement the judicial process, it must be regulated to ensure it does not infringe upon fundamental rights. The study concludes that institutionalized ADR, with proper legal backing and constitutional oversight, can enhance access to justice and uphold democratic values.

## INTRODUCTION

The Indian Constitution stands as a guardian of fundamental rights, providing essential protections for individuals against state actions. However, the traditional judicial system in India faces significant challenges that often impede the realization of these constitutional guarantees. Overwhelming case backlogs, procedural complexities, prohibitive costs, and lengthy delays have created barriers to accessing timely justice for many citizens. In this context, Alternative Dispute Resolution (ADR) mechanisms have emerged as vital instruments for ensuring justice outside the formal courtroom while upholding constitutional values.

The concept of Alternative Dispute Resolution has gained remarkable prominence in India's legal landscape in recent decades. With over 40 million cases pending across various courts, ADR mechanisms offer an alternative pathway to justice that is typically more expeditious, cost-effective, and accessible to ordinary citizens. The constitutional framework of India, particularly through Articles 14, 21, and 39A, emphasizes equal access to justice, protection of personal liberty, and provision of free legal aid. These constitutional imperatives align perfectly with the core objectives of ADR mechanisms, which seek to democratize access to justice.

The relationship between Fundamental Rights and ADR is deeply symbiotic. While Fundamental Rights provide the constitutional foundation and normative framework for access to justice, ADR mechanisms serve as practical tools to realize these rights effectively.<sup>1</sup> Article 14 guarantees equality before law, which ADR helps achieve by making dispute resolution accessible to all sections of society. Article 21's protection of life and personal liberty has been judicially interpreted to include the right to speedy justice, which ADR directly facilitates. Article 39A directs the state to ensure that the legal system promotes justice on the basis of equal opportunity, a directive that ADR mechanisms help fulfill by removing barriers to justice.

The Indian judiciary has recognized this complementary relationship and has actively promoted ADR as a means to enhance access to justice while simultaneously reducing the burden on courts. In numerous judgments, the Supreme Court has emphasized the importance of ADR in realizing constitutional values. For instance, in *Salem Advocate Bar Association v. Union of India*,<sup>2</sup> the Court upheld the constitutional validity of

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<sup>1</sup> Constitution of India, 1950,

<sup>2</sup> *Salem Advocate Bar Association v. Union of India*' (2005) AIR SC 3353.

Section 89 of the Civil Procedure Code,<sup>3</sup> which empowers courts to refer cases to various ADR mechanisms, recognizing its role in furthering access to justice.

ADR mechanisms in India encompass a diverse range of processes, including arbitration, mediation, conciliation, negotiation, and Lok Adalats. Each of these mechanisms offers unique advantages in terms of flexibility, party autonomy, and specialized dispute resolution approaches. Arbitration provides a binding decision by a neutral third party, offering finality similar to court judgments but with greater flexibility and privacy. Mediation facilitates negotiation between parties with the help of a neutral mediator, emphasizing voluntary settlement and relationship preservation. Conciliation is similar to mediation but allows the conciliator to propose solutions. Negotiation involves direct discussion between parties without third-party intervention. Lok Adalats, or "people's courts," offer a forum for conciliatory settlement with the status of a civil court decree.

The effectiveness of these mechanisms in resolving disputes while upholding constitutional values has led to their increasing adoption across various sectors. Commercial disputes, particularly those involving international parties, are increasingly resolved through arbitration. Family disputes, where preserving relationships is often as important as resolving the immediate conflict, frequently benefit from mediation. Consumer disputes, motor accident claims, and labor disputes are commonly addressed through Lok Adalats, which have settled millions of cases since their inception.

As India continues to evolve as a global economic power, the need for efficient dispute resolution mechanisms becomes even more critical. Foreign investors often consider the efficiency of dispute resolution systems when making investment decisions, and ADR provides a more attractive alternative to the often lengthy court proceedings. Moreover, ADR not only addresses the practical challenges of judicial delays but also aligns with the constitutional vision of justice that is accessible, equitable, and timely for all citizens, regardless of their socio-economic status.

### **Historical Background**

The roots of Alternative Dispute Resolution in India extend deep into the country's ancient past, reflecting a cultural tradition that valued community-based conflict resolution over adversarial proceedings. Long before the establishment of formal courts, village councils known as Panchayats served as forums for dispute resolution in rural India. These traditional systems embodied principles of community involvement, consensus-building, and restorative justice that continue to influence modern ADR mechanisms.

### **Pre-Independence Era**

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<sup>3</sup> Code of Civil Procedure, 1908, s. 89

During the pre-independence period, India experienced a significant transformation in its legal landscape with the introduction of British colonial administration. Before British rule, India had a rich tradition of indigenous dispute resolution systems, most notably the concept of "Panch Parmeshwar" (five persons considered equal to God) that originated in the Vedic period.<sup>4</sup> These village councils or panchayats served as the foundation of local self-governance, where respected village elders collectively resolved disputes and administered justice according to local customs and traditions. The panchayat system was deeply embedded in Indian society, with historical records indicating that self-governing village bodies called "sabhas" existed as early as 1700 BCE, as mentioned in the Rigveda.<sup>5</sup> These bodies evolved into panchayats that held significant executive and judicial powers, including land distribution, tax collection, and dispute resolution. Historical accounts suggest that formal panchayats came into existence around 642 AD during Raja Harshawardhan's reign, with the first organized panchayat established in 1197 under King Bhim Dev of Hisar.

When the British established their administration, they introduced formal legal structures based on common law principles, implementing adversarial court proceedings that were often at odds with India's traditional dispute resolution methods. The British legal system introduced concepts like equality before the law and rule of law, which were radical departures from the caste-based systems that previously existed. However, traditional panchayats continued to function at the local level, particularly in rural areas where access to formal courts was limited.

The Arbitration Act of 1940,<sup>6</sup> enacted on July 1, 1940, marked a significant development during this period. It replaced the earlier Indian Arbitration Act of 1899, which had been applicable only to the presidency towns of Madras, Bombay, and Calcutta. The 1940 Act provided a formal framework for arbitration proceedings throughout India, consolidating and amending the law relating to arbitration. Despite representing an important step in recognizing alternative dispute resolution within the formal legal system, the Act had limitations including excessive court intervention and lack of finality in arbitral awards. It primarily dealt with domestic arbitrations, while foreign awards were handled separately under different legislation.

This dual legal system—British formal courts alongside traditional panchayats—characterized India's pre-independence legal landscape, creating a complex environment where traditional and modern approaches to justice coexisted, sometimes in tension and sometimes in complementary ways.

### **Post-Independence Developments**

After gaining independence in 1947, India inherited the legal framework established by the British, including the judicial system and existing ADR mechanisms. The post-

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<sup>4</sup> 'Panch Parmeshwar and Mediation' (2023) Journal of Positive School Psychology

<sup>5</sup> Dr. S. Rajalakshmi, 'History and Genesis of Panchayat Raj - I' (n.d.) Module Code H12EE14.

<sup>6</sup> Arbitration Act 1940 (India).

independence era witnessed a renewed focus on ADR, particularly as the backlog of cases in Indian courts began to grow at an alarming rate. The Constitution of India, adopted in 1950, laid the groundwork for a justice system that would be accessible to all citizens, though the practical realization of this vision faced numerous challenges.

The 1980s marked a watershed in the evolution of ADR in India. In 1982, the concept of Lok Adalats was introduced in Gujarat as an innovative approach to promote out-of-court settlements. These "people's courts" were designed as informal tribunals where parties could resolve disputes without the formalities and technicalities of a courtroom. The first Lok Adalat, held in Junagadh, Gujarat, demonstrated the potential of this approach, leading to its rapid adoption across the country.

The Legal Services Authorities Act of 1987<sup>7</sup> provided statutory recognition to Lok Adalats, institutionalizing them as a permanent part of the Indian legal system. This legislation established a comprehensive framework for organizing Lok Adalats at various levels, from the national to the taluk level. Lok Adalats primarily handled small civil disputes, including family matters, motor accident claims, and petty criminal cases, with their decisions having the force of a civil court decree. The introduction of Lok Adalats represented a crucial step in institutionalizing ADR mechanisms in India and making justice more accessible to ordinary citizens.

### **Modern Evolution of ADR**

The Arbitration and Conciliation Act of 1996<sup>8</sup> stands as a landmark development in the history of ADR in India. Replacing the outdated Arbitration Act of 1940, this legislation brought India's arbitration laws in line with the UNCITRAL Model Law on International Commercial Arbitration. The 1996 Act streamlined arbitration procedures and provided a comprehensive framework for both domestic and international arbitration, significantly enhancing India's attractiveness as a venue for international commercial arbitration. It also formally introduced conciliation as an ADR mechanism, allowing parties to settle disputes through a neutral third party who could propose solutions.

The 1996 Act featured several key innovations, including recognition of international arbitration agreements, reinforcement of the binding nature of arbitral awards, limitation of judicial intervention in arbitration proceedings, and provisions for the enforcement of foreign arbitral awards under the New York Convention.<sup>9</sup> These features significantly enhanced the appeal of arbitration for resolving commercial disputes, particularly for multinational corporations and foreign investors operating in India.

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<sup>7</sup> Legal Services Authorities Act 1987 (India).

<sup>8</sup> Arbitration and Conciliation Act 1996 (India).

<sup>9</sup> Kluwer Arbitration Blog (2020). Recent Developments in the Enforcement of New York Convention Awards in India. [online] Available at: <https://arbitrationblog.kluwerarbitration.com/2020/07/06/recent-developments-in-the-enforcement-of-new-york-convention-awards-in-india/> [Accessed 10 Apr. 2025].

Recent amendments to the Arbitration and Conciliation Act in 2015, 2019, and 2020 have further strengthened the ADR framework in India. The 2015 amendment introduced time limits for arbitration proceedings, restricted the grounds for challenging awards, and clarified the role of courts in supporting arbitration. The 2019 and 2020 amendments established the Arbitration Council of India and introduced provisions for the qualification and appointment of arbitrators. These reforms have progressively aligned India's ADR framework with international best practices while addressing challenges specific to the Indian context.<sup>10</sup>

## **LEGAL PROVISIONS OF ADR**

The legal framework governing Alternative Dispute Resolution (ADR) in India has evolved significantly over time, creating a comprehensive system designed to provide efficient dispute resolution outside traditional courtrooms. This framework encompasses various legislations that collectively form the backbone of India's ADR mechanisms, each addressing specific aspects of dispute resolution while complementing one another to create a holistic approach to justice delivery.

### **Arbitration and Conciliation Act, 1996**

The Arbitration and Conciliation Act of 1996 stands as the cornerstone of India's ADR framework, replacing the outdated Arbitration Act of 1940. This legislation was enacted with the primary objective of modernizing India's arbitration laws and aligning them with international standards, particularly the UNCITRAL Model Law on International Commercial Arbitration.<sup>11</sup> The Act is structured into four distinct parts covering domestic arbitration, enforcement of foreign awards, conciliation, and supplementary provisions, making it comprehensive in its scope and application.

The Act provides a robust framework for both domestic and international commercial arbitration, establishing clear procedures for the appointment of arbitrators, conduct of arbitration proceedings, and enforcement of arbitral awards. It also contains detailed provisions for conciliation, offering parties an alternative to the more formal arbitration process. One of the key features of the Act is its emphasis on party autonomy, allowing disputing parties significant freedom in determining the rules and procedures governing their arbitration.

Since its enactment, the Act has undergone several significant amendments in 2015, 2019, and 2020, each aimed at addressing specific challenges and enhancing the effectiveness of arbitration in India. These amendments have focused on streamlining arbitration procedures, reducing judicial intervention, imposing strict timelines for

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<sup>10</sup> 'The Arbitration and Conciliation (Amendment) Ordinance, 2020' (2025) PRS Legislative Research.

<sup>11</sup> UNCITRAL (1985, with amendments as adopted in 2006). UNCITRAL Model Law on International Commercial Arbitration. [online] United Nations Commission on International Trade Law. Available at: [https://uncitral.un.org/en/texts/arbitration/modellaw/commercial\\_arbitration](https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration) [Accessed 10 Apr. 2025].

completion of proceedings, and making arbitration more cost-effective. The 2015 amendment, in particular, introduced provisions for expedited arbitration and limited the grounds for challenging arbitral awards, significantly strengthening the arbitration framework in India.

### **Civil Procedure Code Amendments**

Section 89 of the Civil Procedure Code (CPC),<sup>12</sup> introduced through an amendment in 1999, represents a significant legislative effort to integrate ADR mechanisms into the formal judicial system. This provision empowers courts to refer cases for settlement through various ADR methods, including arbitration, conciliation, judicial settlement, mediation, and Lok Adalat. The amendment was implemented to reduce the burden on courts and provide litigants with faster and less expensive alternatives to traditional litigation.

Rules 1-A to 1-C of Order X of the CPC further elaborate on the procedure to be followed by courts when referring cases to ADR mechanisms. These provisions require courts to explain the available ADR options to parties and facilitate the referral process. The Supreme Court, in the landmark case of *Afcons Infrastructure v. Cherian Varkey Construction*,<sup>13</sup> provided comprehensive guidelines for the implementation of Section 89, clarifying the procedure to be followed by courts and identifying categories of cases suitable and unsuitable for ADR.

The Civil Procedure Code amendments of 1999 and 2002 also introduced measures to reduce delays in civil litigation, including restrictions on adjournments and time limits for various stages of litigation. These amendments complement the ADR provisions by encouraging parties to explore settlement options while also making the formal litigation process more efficient.

### **Legal Services Authorities Act, 1987**

The Legal Services Authorities Act of 1987<sup>14</sup> provides the statutory framework for Lok Adalats (people's courts) in India, which have emerged as a popular forum for the amicable settlement of disputes. Under Section 20(1) of this Act, Lok Adalats are established as forums for conciliatory settlement of disputes, offering a non-adversarial approach to dispute resolution that is deeply rooted in Indian traditions of community-based justice.

Lok Adalats have jurisdiction over a wide range of cases, including civil matters, matrimonial disputes, motor accident claims, and petty criminal offenses. They operate at various levels - national, state, district, and taluk - ensuring accessibility across the country. The decisions of Lok Adalats are deemed to be decrees of civil courts and are

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<sup>12</sup> Civil Procedure Code 1908 (India).

<sup>13</sup> '*Afcons Infrastructure Ltd v. Cherian Varkey Construction*' (2010) 8 SCC 24.

<sup>14</sup> *Supra* Note 7

binding on the parties involved. Importantly, these decisions cannot be appealed, making Lok Adalats an effective mechanism for final resolution of disputes.

The Act also established the National Legal Services Authority (NALSA)<sup>15</sup> and State Legal Services Authorities, which play a crucial role in organizing Lok Adalats and promoting ADR mechanisms. These authorities are responsible for providing free legal aid to eligible persons and ensuring that opportunities for securing justice are not denied to any citizen due to economic or other disabilities.

### **Mediation Act, 2023**

The Mediation Act of 2023<sup>16</sup> represents the most recent addition to India's ADR legal framework, providing a formal structure for institutionalized mediation. This legislation addresses concerns related to the credibility and enforceability of mediation settlements, which had previously been identified as significant barriers to the widespread adoption of mediation in India. The Act aims to promote mediation as a preferred mode of dispute resolution by establishing clear standards for mediator certification and training, ensuring the enforceability of mediation settlements, and providing for confidentiality in mediation proceedings. It applies to mediations conducted in India where all parties reside or are incorporated in India, the mediation agreement specifies resolution under this Act, or it is an international mediation.

A key feature of the Act is its provision for voluntary pre-litigation mediation, allowing parties to attempt mediation before filing a suit in court for civil or commercial matters. The Act also sets a time limit of 120 days for the completion of mediation, extendable by 60 days with the consent of the parties, ensuring that the process remains expeditious. The Mediation Act 2023 aims to transform dispute resolution in India by providing a comprehensive legal framework for mediation. It recognizes pre-litigation mediation, online mediation, and community mediation, while establishing the Mediation Council of India to regulate mediators and mediation institutions. The Act provides for enforcement of domestic mediated settlement agreements, making them final and binding like court judgments, while maintaining strict confidentiality provisions with limited exceptions.

The Supreme Court of India, through its Mediation and Conciliation Project Committee (MCPC), has developed comprehensive guidelines for mediation practice in India, encapsulated in the "Mediation Training Manual of India." Prepared under the chairmanship of Justice Cyriac Joseph, this manual outlines the mediation process, establishes training guidelines for mediators, addresses the role of referral judges, and clarifies the roles of lawyers and parties. The Supreme Court has also formulated Mediation Rules governing the appointment and qualifications of mediators, specifying

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<sup>15</sup> National Legal Services Authority (NALSA). (n.d.). Official website. Available at: <https://nalsa.gov.in/> (Accessed: 10 April 2025)

<sup>16</sup> Government of India. (2023). The Mediation Act, 2023. Ministry of Law and Justice. Available at: <https://legislative.gov.in/sites/default/files/mediation-act-2023.pdf> (Accessed: 9 April 2025).

that they should be empaneled by High Courts or District Courts. These rules establish that mediators are not bound by the Indian Evidence Act or the Code of Civil Procedure but should be guided by principles of fairness.

The combined effect of the Mediation Act and the Supreme Court's guidelines represents a significant advancement in India's alternative dispute resolution landscape, promoting mediation as an efficient, cost-effective, and relationship-preserving approach to conflict resolution.

### **Commercial Courts Act, 2015**

The Commercial Courts Act of 2015<sup>17</sup> includes provisions for mandatory pre-institution mediation in commercial disputes, representing a significant step towards institutionalizing ADR in commercial litigation. Under Section 12A of the Act, parties to commercial disputes that do not contemplate urgent interim relief must mandatorily undergo mediation before instituting a commercial suit.

This requirement aims to encourage parties to explore settlement options before initiating formal litigation, thereby reducing the burden on commercial courts and promoting faster resolution of commercial disputes. The mediation process must be completed within three months from the date of application, extendable by two months with mutual consent of both parties. If a settlement is reached, it is binding on the parties as an arbitral award under the Arbitration and Conciliation Act.<sup>18</sup>

The Act also provides for the establishment of commercial courts at the district level and commercial divisions in high courts, creating specialized forums for the adjudication of commercial disputes that cannot be resolved through ADR mechanisms. This dual approach of promoting pre-litigation mediation while also strengthening the formal adjudication system for commercial disputes reflects a balanced approach to dispute resolution.

## **CONSTITUTIONAL PROVISIONS**

The constitutional foundation for Alternative Dispute Resolution in India is rooted in several key provisions that emphasize access to justice, equality before the law, and protection of personal liberty.

### **Article 14 - Right to Equality**

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<sup>17</sup> Government of India. (2015). The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. Ministry of Law and Justice. Available at: <https://legislative.gov.in/sites/default/files/A2015-4.pdf> (Accessed: 10 April 2025).

<sup>18</sup> Department of Legal Affairs. (2018). Pre-Institution Mediation and Settlement under the Commercial Courts Act, 2015 (as amended). Ministry of Law and Justice. Available at: <https://legalaffairs.gov.in/sites/default/files/Pre-Institution%20Mediation%20Rules.pdf> (Accessed: 10 April 2025)

Article 14 of the Indian Constitution<sup>19</sup> guarantees equality before the law and equal protection of the laws to all persons. This fundamental right forms a crucial basis for ADR mechanisms, as they aim to provide equal access to justice regardless of socio-economic status or other factors.

ADR mechanisms, by offering more accessible and less costly alternatives to traditional litigation, help realize the constitutional promise of equality in the justice system. They enable individuals who might be deterred by the complexities and costs of formal litigation to seek and obtain justice through simpler, more accessible means.

### **Article 21 - Right to Life and Personal Liberty**

Article 21<sup>20</sup> guarantees the right to life and personal liberty, which has been interpreted broadly by the Supreme Court to include the right to access justice. Delays in the judicial system can effectively deny justice, thereby infringing on this fundamental right.

The concept of a speedy trial further complements these constitutional provisions, ensuring that justice is not only accessible but also delivered within a reasonable timeframe. Recognized as implicit under Article 21 of the Indian Constitution, the right to a speedy trial is a fundamental aspect of the right to life and personal liberty. This principle has been affirmed in landmark judgments such as *Hussainara Khatoon v. State of Bihar* (1979)<sup>21</sup>, where the Supreme Court held that delays in judicial processes could effectively deny justice, infringing upon constitutional rights. ADR mechanisms like arbitration, mediation, and Lok Adalats align seamlessly with this constitutional mandate by offering faster resolutions compared to traditional litigation.

For instance, mediation under the Mediation Act, 2023,<sup>22</sup> mandates the completion of proceedings within 120 days, extendable by an additional 60 days with the consent of the parties. This statutory timeline ensures that disputes are resolved expeditiously without compromising fairness. Similarly, Lok Adalats, governed by the Legal Services Authorities Act, 1987, resolve disputes in a single sitting, providing binding decisions that carry the weight of a civil court decree. These mechanisms not only reduce procedural delays but also alleviate the burden on overburdened courts.

### **Article 39A - Equal Justice and Free Legal Aid**

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<sup>19</sup> Government of India. (n.d.). Constitution of India – Article 14. Legislative Department, Ministry of Law and Justice. Available at: <https://legislative.gov.in/sites/default/files/coi-4March2016.pdf> (Accessed: 9 April 2025).

<sup>20</sup> Government of India. (n.d.). Constitution of India – Article 21. Legislative Department, Ministry of Law and Justice. Available at: <https://legislative.gov.in/sites/default/files/coi-4March2016.pdf> (Accessed: 9 April 2025).

<sup>21</sup> Supreme Court of India. (1979). *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar*. AIR 1979 SC 1360. Available at: <https://api.sci.gov.in/jonew/judis/4873.pdf> (Accessed: 9 April 2025).

<sup>22</sup> *Supra* Note 16

Article 39A of the Indian Constitution, introduced through the 42nd Amendment Act, 1976, embodies the principle of equal justice and free legal aid. It directs the State to ensure that access to justice is not denied to any citizen due to economic or other disabilities. This directive is particularly significant in a country like India, where socio-economic disparities often create barriers to legal recourse. By mandating free legal aid and promoting justice on the basis of equal opportunity, Article 39A aims to democratize the legal system and make it more inclusive.

Alternative Dispute Resolution (ADR) mechanisms play a pivotal role in fulfilling this constitutional mandate. Processes like mediation, arbitration, and Lok Adalats reduce the cost of dispute resolution, making justice accessible to economically disadvantaged sections of society. These mechanisms simplify procedures and provide user-friendly alternatives to formal court systems, which are often intimidating and resource-intensive. Lok Adalats, for instance, resolve disputes in a single sitting without court fees, offering binding decisions that carry the authority of a civil court decree.

### **CONSTITUTIONAL GOALS AND ADR**

At the heart of India's constitutional framework lies a profound commitment to justice—not as an abstract ideal, but as a living reality accessible to every citizen. The Constitution envisions a society where justice flows freely, unimpeded by economic barriers, procedural complexities, or systemic delays. Yet, the traditional judicial system, despite its strengths, often struggles to fulfill this vision, with millions of cases pending and justice becoming a distant dream for many.

Alternative Dispute Resolution emerges at this critical intersection, breathing life into constitutional promises that might otherwise remain unfulfilled. When a rural farmer can resolve a land dispute through a Lok Adalat without traveling repeatedly to distant courts, Article 14's guarantee of equality becomes tangible. When a small business owner can settle a commercial disagreement through mediation in weeks rather than years, Article 21's protection of personal liberty is meaningfully expressed.<sup>23</sup>

The Constitution's preamble promises justice—social, economic, and political—to all citizens. ADR mechanisms translate this lofty promise into everyday reality by creating multiple pathways to resolution that accommodate diverse needs and circumstances. They embody the constitutional principle that justice should not be a privilege for the few but a right for all.

This harmonious relationship between ADR and constitutional values represents more than procedural innovation; it reflects a deeper understanding that true justice encompasses not just favorable outcomes but also the dignity of the process itself. By offering more participatory, less adversarial, and more accessible means of dispute

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<sup>23</sup> ADR and the Objective of the Constitution of India

VIA Mediation Centre, 'ADR & the Objective of Constitution of India' (2024)

<https://viamediationcentre.org/readnews/MjMx/ADR-the-objective-of-constitution-of-India>

resolution, ADR helps fulfill the Constitution's ultimate vision: a just society where every citizen can secure their rights without surrendering their dignity or depleting their resources.

## **ROLE OF JUDICIARY**

The Indian judiciary has emerged as a pivotal force in shaping and strengthening Alternative Dispute Resolution (ADR) mechanisms, transcending its traditional adjudicatory role to become an active promoter of out-of-court settlement options. This judicial activism has significantly contributed to institutionalizing ADR within India's legal framework, making justice more accessible and efficient for citizens while simultaneously addressing the overwhelming backlog of cases in courts.

### **Judicial Promotion and Encouragement**

Indian courts, particularly the Supreme Court and High Courts, have consistently encouraged litigants to explore ADR options before or during litigation. This encouragement manifests through active referrals to appropriate ADR mechanisms under Section 89 of the Civil Procedure Code<sup>24</sup>, helping to reduce judicial backlog while providing parties with potentially faster resolution. The judiciary has been proactive in promoting ADR by establishing ADR centers and mandating mediation in specific types of cases. In cases like *K. Srinivas Rao v. D.A. Deepa*,<sup>25</sup> the Supreme Court encouraged mediation in matrimonial and even certain criminal cases, directing the establishment of pre-litigation desks and clinics to settle disputes before they reach formal litigation.

### **Interpretation and Precedent Setting**

Through various landmark judgments, courts have interpreted ADR-related laws in a manner that strengthens these mechanisms and addresses ambiguities in the legislative framework. Judicial decisions have established important precedents regarding the enforceability of arbitration agreements, the validity of mediation settlements, and the scope of judicial intervention in ADR processes. In the 2019 judgment of *MTNL v. Canara Bank*<sup>26</sup>, the Supreme Court invoked the doctrine of "group companies" to permit a non-signatory to an arbitration agreement to participate in arbitration proceedings, demonstrating judicial flexibility in interpreting arbitration law.

### **Limited Judicial Intervention**

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<sup>24</sup> Supra Note 12

<sup>25</sup> Supreme Court of India. (2013). *K. Srinivas Rao v. D.A. Deepa*, Civil Appeal No. 1794 of 2013. Available at:

[https://digisr.sci.gov.in/admin/judgement\\_file/judgement\\_pdf/2013/volume%202/Part%20I/2013\\_2\\_1\\_26-152\\_1703228606.pdf](https://digisr.sci.gov.in/admin/judgement_file/judgement_pdf/2013/volume%202/Part%20I/2013_2_1_26-152_1703228606.pdf) (Accessed: 9 April 2025)

<sup>26</sup> Supreme Court of India. (2019). *Mahanagar Telephone Nigam Ltd. v. Canara Bank & Ors.*, Civil Appeal Nos. 6202–6205 of 2019. Available at: <https://indiankanoon.org/doc/6694102/> (Accessed: 9 April 2025)

In cases like *Bhaven Construction v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd.*<sup>27</sup>, the Supreme Court provided guidelines on judicial intervention in arbitration proceedings. The Court advocated for minimal judicial intervention, emphasizing that courts should respect arbitral process autonomy and intervene only in specific circumstances as provided under the Arbitration and Conciliation Act.

Section 5 of the Arbitration and Conciliation Act stipulates that "no judicial authority shall intervene except where so provided in this Part," reflecting the principle of minimal interference. Courts have clarified that judicial intervention in arbitration should be limited to specific grounds provided in the law, such as lack of jurisdiction, violation of natural justice, fraud, or conflict with public policy. This restrained approach helps preserve the advantages of ADR, including speed, flexibility, and party autonomy.

### Consent Requirements for Different ADR Processes

The Supreme Court has clarified consent requirements for various ADR processes:

- **Arbitration:** Consent of all parties is mandatory and must be documented in writing through an application, joint affidavit, or recorded in the order sheet signed by the parties.
- **Conciliation:** Consent of all parties is necessary.
- **Lok Adalat, Mediation, and Judicial Settlement:** These processes also require parties' consent for reference, but courts must exercise discretion judiciously, considering the nature of disputes, parties' interests, and expedition in dispute resolution.

The Court emphasized that when consent is required for every ADR processes, their voluntary nature remains preserved as parties retain freedom to accept or reject settlements.

### Training and Capacity Building

The judiciary has taken significant initiatives to enhance the quality of ADR processes through training and capacity building. The Mediation and Conciliation Project Committee (MCPC), constituted by the Chief Justice of India in 2005, has been instrumental in training mediators across the country. By March 2010, the committee had conducted 52 awareness programs/referral judges training programs and 52 mediation training programs, with about 869 persons undergoing 40 hours of

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<sup>27</sup> Supreme Court of India. (2021). *Bhaven Construction v. Executive Engineer, Sardar Sarovar Narmada Nigam Ltd.*, Civil Appeal No. 14665 of 2015. Available at: <https://indiankanoon.org/doc/26156987/> (Accessed: 9 April 2025)

training. Courts have established mediation centers and training programs for mediators, ensuring the availability of qualified professionals to handle referred cases.<sup>28</sup>

### **Institutional Support and Infrastructure**

The judiciary has provided substantial institutional support for ADR mechanisms. Many courts have established ADR centers within their premises, making these services more accessible to litigants. The Supreme Court Mediation Centre and the Delhi High Court Mediation and Conciliation Centre are examples of initiatives that have institutionalized ADR in India's judicial system.<sup>29</sup> The Delhi Judicial Academy has organized mediation training workshops and opened a mediation center in its campus, appointing its Deputy Director as the mediator. These institutional efforts have created a robust infrastructure for the implementation of ADR mechanisms.

### **Future Directions and Technological Integration**

The judiciary's role in ADR continues to evolve, with increasing support for technology integration in ADR processes. The COVID-19 pandemic accelerated the adoption of digital platforms, and courts are now supporting Online Dispute Resolution (ODR) as an extension of traditional ADR methods. The judiciary and governments are collaborating to integrate ODR into court-annexed centers, which can especially benefit from artificial intelligence and machine learning to resolve disputes with limited questions of law and fact.<sup>30</sup> The judiciary is also looking to incorporate international best practices in ADR to enhance India's position as a global arbitration hub and continues to provide input for regulatory development to ensure consistency and adaptability to emerging needs.

Through these multifaceted interventions, the Indian judiciary has demonstrated its commitment to making justice more accessible, efficient, and responsive to the needs of citizens while reducing the burden on the formal court system.

## **LANDMARK JUDGMENTS**

The Supreme Court of India has significantly shaped Alternative Dispute Resolution through landmark judgments that provide clarity on ADR implementation and encourage its adoption across the legal system.

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<sup>28</sup> Mediation and Conciliation Project Committee (MCPC). (2010). Training and Capacity Building in Mediation: Awareness and Training Programs. Supreme Court of India. Available at: <http://www.sci.gov.in/> (Accessed: 8 April 2025).

<sup>29</sup> Delhi High Court. (2021). Delhi High Court Mediation and Conciliation Centre: Advancing Alternative Dispute Resolution. Available at: <http://delhihighcourt.nic.in/> (Accessed: 8 April 2025).

<sup>30</sup> Ministry of Law and Justice, Government of India. (2021). Technological Integration in ADR: Future Directions and Online Dispute Resolution. Available at: <https://lawmin.gov.in/> (Accessed: 8 April 2025)

### **Afcons Infrastructure Case Guidelines**

In *Afcons Infrastructure Limited v. Cherian Varkey Construction*,<sup>31</sup> the Supreme Court established comprehensive guidelines for implementing Section 89 of the Civil Procedure Code, which encourages dispute settlement through ADR mechanisms. The Court outlined a clear procedure for courts to follow:

1. Before framing issues, courts should schedule a preliminary hearing to understand the case facts and dispute nature.
2. Courts must assess whether cases fall within categories unsuitable for ADR, recording brief explanations if they're deemed unfit.
3. For suitable cases, courts should explain available ADR options and help parties make informed choices.

The Court identified cases generally unsuitable for ADR, including representative suits under Order 1 Rule 8 CPC, disputes relating to election to public offices, cases involving grant of authority by court after inquiry, and cases involving serious allegations of fraud, fabrication of documents, or forgery.

Conversely, the Court specified cases suitable for ADR processes, such as trade, commerce, and contract disputes; disputes between insurers and insured; banking and financial matters; and matrimonial disputes.

### **Perry Kansagra Case**

In *Perry Kansagra v. Smriti Madan Kansagra*,<sup>32</sup> the Supreme Court further identified dispute types where ADR may be preferable to litigation. The Court specifically mentioned cases relating to trade, commerce, and contracts, including money claims arising from contracts, as particularly suitable for ADR mechanisms. The Court noted that disputes relating to specific performance or disputes between insurers and insured, bankers and customers would be better resolved through ADR rather than litigation. This highlights the Court's recognition of ADR advantages in certain dispute types.

The Court also categorized disputes arising from strained relationships (including matrimonial causes, maintenance, child custody, and partition among family members) and cases requiring continuation of pre-existing relationships (including disputes between neighbors, employers and employees, and society members) as suitable for ADR processes.

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<sup>31</sup> Supreme Court of India. (2010). *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, Civil Appeal No. 6000 of 2010. Available at: <https://www.sci.gov.in/judgment/detail/114407> (Accessed: 9 April 2025).

<sup>32</sup> Supreme Court of India. (2020). *Smriti Madan Kansagra v. Perry Kansagra*, Civil Appeal No. 3559 of 2020. Available at: <https://www.sci.gov.in/judgment/detail/114407> (Accessed: 9 April 2025).

These guidelines collectively demonstrate the Supreme Court's commitment to promoting ADR as an effective means of ensuring justice outside the courtroom while reducing the burden on the formal judicial system.

## **CONCLUSION & SUGGESTIONS**

### **Conclusion**

The integration of Alternative Dispute Resolution mechanisms within India's constitutional framework represents a significant evolution in the justice delivery system. This research demonstrates that ADR mechanisms effectively complement the formal judicial process while advancing fundamental rights by providing accessible, efficient, and equitable pathways to justice. The alignment of ADR with constitutional values enshrined in Articles 14, 21, and 39A reinforces the state's commitment to ensuring justice for all citizens.

India's ADR landscape has transformed remarkably from traditional panchayat systems to sophisticated statutory mechanisms under the Arbitration and Conciliation Act, 1996, and the Mediation Act, 2023. The judiciary, particularly the Supreme Court, has been instrumental in this transformation through landmark judgments, comprehensive guidelines, and institutional support that have legitimized and strengthened ADR processes.

Despite these advancements, significant challenges persist. Issues related to public awareness, institutional quality, regulatory frameworks, and cultural perceptions continue to hinder the full potential of ADR in India. Addressing these challenges requires concerted efforts from all stakeholders—including the government, judiciary, legal fraternity, and civil society—to create a more robust ADR ecosystem that upholds constitutional values while delivering timely and effective justice. As India continues to refine its ADR framework, the balance between constitutional safeguards and efficient dispute resolution remains crucial for ensuring that justice outside the courtroom truly serves the constitutional vision of justice for all.

### **Suggestions for Strengthening ADR**

Based on the analysis of the current state of ADR in India, the following suggestions are proposed to further strengthen these mechanisms while ensuring they uphold constitutional values:

#### **Enhancing Awareness and Education**

Raising public awareness about ADR options and their benefits is crucial for their widespread adoption. This can be achieved through comprehensive awareness campaigns targeting various segments of society. Simultaneously, integrating ADR education into legal curricula at universities and law schools will prepare future legal professionals to effectively utilize these mechanisms. Regular workshops and seminars for practicing lawyers, judges, and other stakeholders will ensure that the legal

community stays updated on ADR developments, fostering a culture that embraces alternative dispute resolution methods.

### **Institutional Development**

Establishing ADR centers at all levels of the judicial hierarchy, from district courts to high courts, is essential for ensuring geographical accessibility and promoting the use of ADR mechanisms. Developing specialized ADR institutions for different types of disputes, including non-commercial matters such as family disputes, will provide tailored solutions for specific areas of conflict. To maintain high standards, it's crucial to implement quality control measures through certification and accreditation of ADR practitioners and institutions, ensuring that parties have access to competent and qualified professionals.

### **Legislative and Regulatory Reforms**

Continuous refinement of the legal framework for ADR is necessary to address gaps and ambiguities in existing laws. This includes developing comprehensive rules and regulations for emerging ADR mechanisms such as online dispute resolution, which has gained prominence in recent years. Consideration should be given to making pre-litigation mediation mandatory for certain categories of cases, which could significantly reduce court backlogs and promote faster resolution of disputes. These reforms will strengthen the foundation of ADR in India and increase its effectiveness in resolving conflicts.

### **Technology Integration**

Leveraging technology is key to making ADR processes more accessible, efficient, and cost-effective. Developing secure online platforms for virtual ADR proceedings, particularly for mediation and conciliation, can expand the reach of these services and accommodate parties who may be geographically distant. Implementing advanced case management systems that facilitate seamless referral of cases from courts to appropriate ADR mechanisms can streamline the process and reduce administrative burdens. By embracing technological solutions, ADR can become more responsive to the needs of a digital age, enhancing its appeal and effectiveness in resolving disputes.

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