
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**ALTERNATE DISPUTE RESOLUTION: A SUPPLEMENT, NOT A
SUPPLANTATION**- Uneza Khan¹**Abstract**

ADR also known as Alternate Dispute Resolution is a process of formal dispute resolution in which the parties in dispute meet with a 'third party' who professionally helps in resolving their dispute. For instance, in mediation a mediator, in arbitration an arbitrator. ADR is used to describe a various dispute resolution system, like Mediation, Arbitration, Conciliation, Negotiation, etc. They have gained prominence as viable mechanisms for resolving disputes between the parties outside of the traditional courts.

This paper comprehensively aims at expanding the adoption of Alternate Dispute Resolution. With the expanding population of India and the overburdened courts, several challenges are faced by the Indian Judicial System. This paper also puts light on the concept of ADR as well as emphasising that it should be viewed as a supplement to the court system and not a supplantation. We examine the challenges and integration of ADR within the present court system, emphasising its role in speeding up access to justice and reducing court congestion, and giving more amicable resolutions.

Keywords: Alternate Dispute Resolution, India, Third party, ADR, Arbitration, Conciliation, Mediation, Online dispute resolution.

I. Introduction**A. Definition of Alternative Dispute Resolution (ADR)**

Alternate Dispute Resolution means the process of resolving disputes with involvement of a professional third party who amicably resolves the disputes without involvement of the court.

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The true purpose of a lawyer as I learned from sayings of Mahatma Gandhi, is to bring parties together. As he once said that “I realized that the true function of a lawyer was to unite parties... The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromise of hundreds of cases. I lost nothing thereby not even money; certainly not my soul”². Alternate Dispute Resolution gives a more cooperative approach to the parties concerned; this stands as a highly effective method for maintaining the cooperative relations between the parties.

B. Importance of ADR in Contemporary Legal Systems

Conflicts and Disputes inevitably arise between human beings. The resolution of this was traditionally the judicial system which can be very time consuming because of its lengthy processes, being heavy on the pocket and adversarial. To treat these issues Alternate dispute resolutions has emerged as an effective and popular way to resolve disputes. ADR acts as a valuable supplement to the traditional legal system. ADR is considered as an umbrella under which wide variety of mechanisms are present including conciliation, mediation, arbitration, Lok adalat's etc. each of these serves different purposes and allow the parties to choose their own form of dispute resolution. As less time taking and cost-effective dispute resolutions demand has increased ADR has gained immense traction among family law, labour law, and company law disputes. In the 14th report of the Law Commission of India, recommended strategies to make sure that justice is not complicated, quick, cost-effective, impactful. In its 77th report, the Law Commission of India noted that the Indian society is primarily agrarian and lacks to understand the complex and technical procedures followed by the courts.

C. ADR Serves as a Valuable Supplement to Traditional Court System, Enhancing Efficiency and Accessibility without Supplanting it.

Alternate Dispute Resolution is method in which the disputes are resolved without litigation. But not every case can be dealt with ADR as some matters need the attention of the traditional court system. Despite the growing popularity of ADR, it can never supplant the court system. The amalgamation of Alternate Dispute Resolution and the court process together enhances the effectiveness of legal framework by giving the parties alternate avenues for achieving their wilful outcomes

²<https://kb.icai.org/pdfs/PDFFile5b4f1ebcbf6fd3.51534227.pdf.txt>

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II. Traditional Dispute Resolution

A. Definition of Litigation

Litigation is the first and foremost method of dispute resolution enforced by law. It is a form by which parties in dispute go to courts for resolving their matters. The public process of litigation is regulated by established rules and procedures that specify how the trial is to be conducted and concluded.

B. Limitations of Traditional Court Systems

1. Time and Cost Factors

An effective judicial system requires not only that just results must be reached but that they are reached swiftly.³ Delay in trial is equivalent to denial of justice. The judicial system in India in the past and even today does not have the capacity to resolve the increasing number of lawsuits in a timely manner. Despite the judiciary's constant efforts, the individual may occasionally find themselves trapped in prolonged procedures of litigation for a lifetime. During this entire process, the individual may run out of their resources. The number of judges is very less as compared to the burden of cases the court are dealing with which also results in backlog of cases. The Data from January 2024 of National Crime Records Bureau (NCRB) indicates that trials in fast-track courts—which are established in several states to facilitate speedy trials in cases involving grave offences like rape—take longer than those in regular courts. Additionally, the data revealed that, out of the over 28,000 trials that were finished in India's fast track courts in 2018, only 22% took less than a year, while almost 42% took longer than three years.

The cost associated with these lengthy procedures created more burden on the person who is not financially stable which the lead to severe mental agony. The exorbitant legal fees, court costs and additional expenses can render access to justice challenging for numerous individuals.

2. Complexity Issues

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The court procedure as it is said earlier lengthy making; it is difficult for a layman to understand it efficiently. The legal language and the procedures made by the court for how the cases are filed and heard and where it must be filed according to its jurisdiction leads to confusion and potential delay. The pre-trial processes can be costly and complicated as well time consuming, parties may become overburdened since they have to accumulate evidence, manage deadlines etc.

3. Relational Impact

The adversarial nature of litigation can intensify the dispute between the parties by worsening personal issues that may lead to misunderstandings between personal as well professional relationships.

III. Types of Alternative Dispute Resolution

Section 89 of Code of Civil Procedure⁴ mentions five different methods of Alternate Dispute Resolution which are as follows:

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

A. Mediation

One of the most important methods of Alternate Dispute Resolution is mediation. In this method a third party also called the mediator is appointed to resolve the disputes. Each party explains their perspective on the dispute and the desired solution at the beginning of the session. After discussing each party's points of view, the mediator separates them into private rooms to start a "caucus conference" and subsequently "joint meetings with the parties."⁵The mediator does not give a decision instead he allows the parties to negotiate and amicably come to their desired conclusions. It is an informal process and is not binding.

B. Arbitration

⁴<https://indiankanoon.org/search/?formInput=section%2089%20c.p.c>

⁵<https://blog.iplayers.in/difference-between-conciliation-and-negotiation/>

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This form of ADR system is approved by law. Arbitration is a codified statute that handles the resolution of disputes involving business and civil cases. Under this procedure, an arbitrator or arbitrators are appointed by the court to render an award in the form of a settlement in accordance with the arbitration clause present in the agreement or contract that has been entered into by the parties. As a result, a third party serves as the court's presiding officer during the arbitration procedure.

The Indian arbitration act, 1940 was not effective to suit the need of the modern society as it majorly dealt with domestic arbitration only and globalization of trade and commerce required effective implementation of economic reforms. The 1941 act also had an extensive involvement of the judiciary which were reduced by the later amendments. For these reasons the government introduced Arbitration and Conciliation (Amendment) Bill, 2006 and adopted UNCITRAL International Commercial Arbitration (1985), with amendments⁶ on 7th July 2006.

C. Negotiation

A non-binding process whereby the parties start negotiations with each other without the help of a third party in an effort to reach a mutually agreeable settlement.

It is the ADR technique that is most frequently used.

Businesses, non-profits, government agencies, court cases, international relations, and private affairs like marriage, divorce, etc. all involve negotiation.

D. Conciliation

It is a non-adjudicatory Alternate Dispute Resolution process. In India the Arbitration and Conciliation Act, 1966-part 3 containing section 61 to 68 deals with the mechanisms of conciliation. Conciliation is an inexpensive, formal and independent method. Only when both parties to the dispute agree to engage in negotiations with the assistance of a third party or parties, either through an agreement or through the invitation and acceptance process laid out in Section 62 followed by the appointment of conciliators provided in Section 64 of the Arbitration and Conciliation Act, can there be an actual reference to conciliation.

E. Lok Adalat

⁶https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration

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Established by the people themselves for social justice, it is a body of law and a mechanism for resolving disputes based on agreements reached through formal discussions. In 1982, the first Lok Adalats were held in the Junagadh (Gujrat) hamlet of Una. Adalats acknowledge cases that are pending in ordinary courts but fall under their authority as well. Pending civil disputes may also be appealed to the Lok Adalat under Section 89 of the Code of Civil Procedure. The Legal Services Authorities Act, 1987 would be followed when the matter is brought before the Lok Adalat. The Legal Services Authorities Act, 1987, Section 19, governs the holding of Lok Adalat.

IV. The Role of ADR in the Legal Landscape

A. Integration of ADR into Legal Systems

Every person desires the administration of justice to be swift and affordable. The traditional court methods of resolving dispute overburdens the judiciary and causes unnecessary lags in the administration of justice. Alternative Dispute Resolution (ADR) processes, such as mediation, conciliation, and arbitration, among others, provide a faster and more effective way to resolve a dispute in such a situation. Compared to traditional arbitration techniques, alternative dispute resolution (ADR) mechanisms are less adversarial and can provide a cooperative solution. ADR allows the parties to the dispute to amicably resolve their matters. With the integration of ADR into the legal system helps in clearing the congestion of courts as the process is less time consuming.

B. Comparison of ADR vs. Litigation

The process of presenting a case in court is known as Litigation whereas Alternate dispute resolution is where a third person resolves the dispute between the parties. A stringent approach is used in litigation whereas Alternate dispute resolution is a flexible process not constrained by formal rules. In Alternate dispute resolution the parties are free to unanimously decide about the third party as it is an outside court procedure whereas litigation is conducted in a courtroom where the judges hear the case and give their rulings. Alternate dispute resolution assists the parties reach outcomes which are favourable by each of them, and it is a more cordial process as compared to litigation. Alternate dispute resolution allows the parties to resolve their dispute in a single procedure unlike litigation which requires lengthy processes. There is no requirement of court fees, costs of witness in alternate dispute resolution whereas litigation requires a hefty amount of payment for all.

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V. Advantages of ADR as a Supplement

A. Speedy Resolution

Part III of the Constitution guarantees every citizen of the State the fundamental right to a speedy trial. Alternative dispute resolution emerged because of the insufficiency of courts, the prolonged nature of the legal process, and the high expense of litigation. ADR reduces the delay and also helps in clearing the backlog of court cases. There have been instances where it has been proven that ADR helps in concluding the cases quickly in comparison to the traditional court system.

B. Less Formality

The approach of ADR is less formal as compared to the judicial process making it more flexible the parties can communicate in a better manner and resolve their disputes with the help of the third party. There is no requirement of any formal proceeding, evidence, witnesses etc.

C. Active Engagement and Confidentiality

The ADR mechanism provides opportunity for parties in dispute to participate directly. There is larger and more flexible potential for conciliation between parties in dispute, as well as more direct communication. With the ADR approach, a higher degree of confidentiality is also preserved.

D. Third Party Involvement

In addition to their cooperative foundation, alternative dispute resolution (ADR) methods involve the supervision of a qualified third party neutral. As a result, ADR methods foster "minimum friction" between parties by upholding the principles of equity, justice, and good conscience. As a result, ADR has gained national and international recognition and is increasingly becoming its own distinct discipline, enjoying continued popularity in comparison to litigation—especially with non-adversarial aims.

E. Encourages Participatory Justice Model

ADR procedures provide "faster reliefs," they advance justice particularly in claim disputes through Lok Adalats. ADR procedures are "relatively inexpensive" as compared to the

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traditional judicial system. It decreases the backlog of cases in the courts and speeds up the administration of justice. Maximum party involvement in ADR is combined with its informal and flexible approach, which encourages "participative justice" when combined with a problem-solving mindset and a willingness to make concessions.

VI. Challenges Faced by ADR

A. Settlements are not Deterrent

Outcomes of Alternate dispute resolution have very less impact on the society. It has no public sanction or penalty which may not adequately serve the interests of society at large, but the same objectives may be properly and efficiently fulfilled by the punishment given by the courts, which may include either a fine or an incarceration. Therefore, it can be concluded that the ADR system does not intend to have an impact on the general populace

B. Imbalance of Power

Settlements through the process of ADR typically lack complete justice and unanimous consent from all the parties. There are chances that the weaker parties will face societal discrimination. For the above reason, an ADR system may not function appropriately if one of the parties is the government. A more powerful or rich party may exert pressure on a weaker party to accept unjust results, which may appear to be fair but in reality, comes from pressure and coercions

C. Expensive Method

Alternate Dispute Resolution methods like arbitration, conciliation, mediation etc. require the supervision or involvement of professional neutral third parties for which parties often approach to some institution or experts and the costs and fees of the experts and procedure gradually have increased over the years and nowadays prominent ADR experts charge very high fees and ask for luxurious places to hold meetings for the resolution of disputes along with other expenditures on travel and associates.

VII. Future of ADR in Dispute Resolution

A. Online Dispute Resolution

The future of justice is not limited to the traditional courts with the advancement of technology justice has been made less time consuming. With the evolution the court

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proceeding can be held virtually as well the lok Adalat has become E- lok Adalat online⁷. The idea of online dispute resolution (ODR) is to use information and communication technology (ICT) methods to speed up the process of resolving disputes without the need for in-person participation. Mobile phones to audio-visual equipment, smart gadgets, LED screens, spreadsheets, emails, and messaging apps are all examples of communication technology used in ODR. With time technology advancements has profoundly affected the traditional courts as well as Alternate dispute resolution. It decreases the hefty costs and also saves time for the parties enhancing the access to justice. Parties in dispute can engage at their convenience which facilitates speedier resolutions.

VIII. Conclusion

In the case of *Guru Nanak Foundation v. Rattan Singh and Sons*, Justice **DA Desai** said:

“Interminable, time consuming, complex and expensive Court procedures impelled jurists to search for an alternative Forum, less formal, more effective and speedier for resolution of disputes, avoiding procedural claptrap and this led them to Arbitration Act, 1940.

However, the way in which the proceedings under the Act are conducted and without exception challenged in Courts, has made Lawyers laugh and legal philosophers weep...Informal Forum chosen by the parties for expeditious disposal of their disputes has by the decisions of the Court been clothed with ‘legalese’ of unforeseeable complexity.”⁸

Because of arrears of pending cases and experience litigations compel to search for alternatives means. The acceptance of alternative dispute resolution is also influenced by the current state of the legal system, which is in disarray. There are about 2.5 crore cases pending in different Indian courts. This might result in a complete breakdown of the administration of justice in a democratic system. This legal maxim, "Justice delayed is justice buried," illustrates how complicated the court system can be. The backlog of cases in the court system today is being extended from one decade to the next without a final decision being made because there are not enough judges, staff members, or adequate infrastructure to deal with the backlog. Alternate dispute resolutions work as a helping hand to the Indian judicial

⁷<https://www.newindianexpress.com/nation/2020/Jul/11/chhattisgarh-organises-indias-first-e-lok-adalat-2168331.html>

⁸<https://www.barandbench.com/columns/50-landmark-decisions-on-arbitration-law-in-india-2018-2019-part-i>

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system, but even after the rising demand of Alternate Dispute Resolution it will always remain supplement of the traditional litigation and not a supplant.

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