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Elevating India: The Future Of Arbitration And Mediation

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Abstract

As India strides towards becoming a global economic powerhouse, the significance of robust dispute resolution mechanisms cannot be overstated. Arbitration and mediation have emerged as indispensable tools for dispute resolution in the modern era, offering parties a flexible, efficient, and confidential alternative to traditional litigation. In recent years, India has made significant strides in establishing itself as a key player in the global arbitration and mediation landscape. However, to truly elevate India as a hub for these practices, there is a pressing need to chart a course for the future that encompasses both domestic reforms and international engagement.

This abstract explores the trajectory of arbitration and mediation in India, examining the challenges, opportunities, and strategies for advancement. It delves into the legal reforms undertaken by India to create a conducive environment for ADR, such as amendments to arbitration laws and the introduction of specialized mediation legislation. It also highlights the burgeoning infrastructure supporting ADR, including the establishment of state-of-the-art arbitration centres and mediation facilities.

The importance of investing in training and education to enhance the skills and expertise of arbitrators, mediators, and legal professionals in India. It underscores the role of international collaboration and recognition in elevating India's status as an ADR hub, showcasing successful partnerships with global ADR organizations and efforts to align Indian practices with international standards.

It explores innovative approaches to ADR, such as the integration of technology and online dispute resolution platforms, to improve accessibility, efficiency, and transparency. This paper also examines the cultural shift towards embracing ADR as a preferred method for resolving disputes in India and highlighting awareness campaigns.

Keywords: India, arbitration, mediation, alternative dispute resolution, legal reforms, infrastructure development, international collaboration, technological innovation, cultural transformation, dispute resolution, future prospects.

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Introduction

The Concept of ADR is not new for India. Since the ancient times this method was being followed in India. In ancient times people used to resolve their disputes by submitting it to a group of people, known as panchayats. Indian being a democratic country focuses upon its constitutional goal of providing justice to its citizens.AS mentioned in Preamble of our Indian Constitution Justice can be Political, Social and Economic. The Justice here means to determine the rights of the parties and to provide them the remedy. And it is clearly mentioned as basic feature of our Indian Constitution that 'Justice Delayed is Justice denied. Our Justice delivery system is suffering because of various loopholes such as: delay in disposal of cases, costly litigation procedure, poor infrastructure, intricate procedures. So in order to provide justice to the people it becomes necessary that it should be effective, speedy less costly and non-cumbersome.

In our Indian society there are large number of people who use litigation as a weapon against innocent people by falsely making complaints against them with the basic object of tarnishing their image or causing harassment to them. These kinds of cases has contributed towards the pendency of the cases in the Indian Courts. These kinds of frivolous litigations consume the times of our judiciary which results in pendency of the cases. There is a dire need to create awareness among litigants as well as society that unnecessary legal actions can be avoided by means of settlement as in our ancient times the practice was being followed to prevent the unnecessary misery and sufferings of the people. According to official records, as of April 20,2024 there were no less than 80202 cases pending before the Supreme Court, 6183805 lakh cases before the high court, and whopping 4.4 crores cases before district and subordinate courts.[2] According to a official estimate, at the current rate of disposal, it will take 324 years to clear the backlog.

In order to overcome such sufferings, pendency and to provide justice to the needy people there is a need to have an alternative system which can provide the out of the court settlement and can effectively bring to an end the litigation amongst the parties. That out of the court settlement procedure is Alternative Dispute Resolution Mechanism (ADR)

Concept of ADR

The idea of ADR stands as a viable alternative to the cumbersome and intricate court processes. It offers parties a means to sidestep the procedural complexities inherent in the legal system. Essentially, it presents an avenue for resolving disputes outside of formal courtroom settings, allowing parties to opt for either traditional court procedures or court-adjacent methods. In societies, conflicts of interest frequently arise, leading to disputes between parties. It becomes imperative at such junctures to efficiently resolve these disputes in a timely and cost-effective manner.

Every society operates under a legal framework aimed at resolving disputes and delivering justice to those in need. However, this system has become overwhelmed by a multitude of pending cases. Echoing John Rawls' perspective, justice emerges as a primary virtue of social institutions, akin to truth in systems of thought. Numerous endeavors have been made to uphold individuals' fundamental right to justice. Various tribunals and quasi-judicial bodies were instituted to alleviate the burden on courts and provide relief. Nonetheless, these alternatives also grapple with overcrowding, failing to deliver timely resolutions. Consequently, many authors advocate for the implementation of ADR, viewing it as a solution to alleviate the strain on courts and offer parties swift and economical justice.

[2] https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard

Stephan B. Goldberg et.al in the book Dispute Resolution: Negotiation, Mediation and other processes classically explained the justification of expansion of ADR mechanism[3]. He has mentioned following causes for its growth:[4]

i. To lower court caseloads and expenses
ii. To reduce the parties expenses and time
iii. To provide speedy settlement of those disputes that were disruptive of the community or the lives of the parties families;
iv. To improve public satisfaction with the justice system;
v. To encourage resolutions that were suited to the parties needs;
vi. To increase voluntary compliance with resolutions.
vii. To restore the influence of neighbourhood and community values and cohesiveness of communities.
viii. To provide accessible forums to people with disputes.
ix. To teach the public to try more effective processes than violence or litigation for settling disputes.

The problem of docket explosion has lead to the development of a mechanism which will help in resolving the disputes and to avoid the overburdening of the legal system. ADR being the system which has incorporated the concept of natural justice and rule of law to provide the litigating parties justice and to bring them at win-win situation. The main obstacle in achieving the goal of justice in India is its overburdened courts, but the situation can be improved with the ADR movement.

Evolution and Development of Arbitration in India.

During pre-independence era traditional systems of dispute resolution were common in rural communities, and arbitration dates back thousands of years in India. Under British administration, the Arbitration Act of 1899—which was limited to the presidential towns of Bombay, Calcutta, and Madras—introduced the modern idea of arbitration. The Arbitration Act of 1940, which regulated arbitration throughout British India, came after this.

The Arbitration Act of 1940 remained to regulate arbitration processes even after India attained independence in 1947. But it was criticised for being antiquated and ineffectual, which resulted in long wait times and overbearing court involvement.

In *Guru Nanak Foundation V. Rattan Singh & Sons* [5]Supreme Court has observed that

“Interminable, time consuming, complex and expensive code procedures impelled jurist to search for an alternative forum less formal more effective and speedy for resolution of disputes avoiding procedural claptrap and this lid them to the Arbitration Act, 1940. However, the way in which the proceedings under the act were conducted and without exception challenge in the courts has made lawyers laugh and legal philosophers weep.

In *Food Corporation of India v. Joginderpal Mohinderpal*[6] the Apex court observed that.

> ”the function of court of law to oversee that the Arbitrators act within the norms of justice. Once they do so and the award is clear, just and fair, the courts should, as far as possible, give effect to the award of the parties and make the parties compel to adhere to and obey the decision of their chosen adjudicator. It is in this perspective that one should view the scope and limit of correction by the court of an award made by the Arbitrator. We should make the law of arbitration simple, less technical and more responsible to the actual realities of the situations but must be responsive to the

[3] Sukumar Ray, Alternative Dispute Resolution, 3 (2nd Ed. 2020)
[4] *Ibid*
[5] (1981) 4 SCC 634
[6] AIR 1989 SC 1263

> canons of justice and fair paly and make the Arbitrator adhere to such process and norms which will create confidence, not only by doing justice between the parties, but by creating sense that justice appears to have been done."

With the emergence of globalisation, liberalisation and industrialisation in India there was increase in the commercial disputes also, so there aroused a need for an effective legislation to regulate such disputes. But with the loopholes of the 1940 Act it was not possible to achieve the economic reforms. I t was desired to create a new legal framework which can deal with the commercial disputes in a more effective, more responsible and less technical manner. So, India adopted Arbitration and Conciliation Act,1996 which was based on the Model Law i.e. United Nations Commission on International Trade Law (UNCITRAL) model law on International Commercial Arbitration,1985.

The objective of the new arbitration act was well defined in a case by the Supreme court *Konkan Railway V. Mehul Construction*[7]

> The increasing growth of global trade and the delay in disposal of cases in courts under the normal system in several countries made it imperative to have the perception of an alternative dispute resolution system, more particularly, in the matter of commercial dispute. When the entire world was moving in the favour of a speedy resolution of commercial disputes, the United Nations Commission on International Trade Law way back in 1985 adopted the UNCITRAL Model Law of International Commercial Arbitration and since then number of countries have given recognition to that model in their respective legislative system. With the said UNCITRAL Model Law in view the present Arbitration and Conciliation Act of 1996 has been enacted in India replacing the Indian Arbitration Act,1940 which was the principal legislation on arbitration in the country that had been enacted during the British rule. The Arbitration Act of 1996 provides not only for domestic arbitration but spreads its sweep to international commercial arbitration too. The Indian Law relating to the enforcement of foreign arbitration awards provides for greater autonomy in the arbitral process and limits judicial intervention to a narrower circumference than under the previous law.

The 2015 amendment introduced significant reforms to address inefficiencies and improve the arbitration landscape in India. Key changes included:

- Expedited Arbitration: The amendments set timelines for the completion of arbitration proceedings, aiming to make the process faster and more efficient.
- Neutrality and Independence: Measures were introduced to ensure the neutrality and independence of arbitrators, thereby enhancing the credibility and fairness of arbitration.
- Interim Measures: The amendments allowed arbitral tribunals to grant interim measures, reducing the need for parties to approach courts for such reliefs

The Arbitration and Conciliation (Amendment) Act, 2019 further strengthened the arbitration framework by introducing:

- Arbitration Council of India (ACI): The establishment of the ACI was aimed at grading arbitral institutions and accrediting arbitrators, thus promoting quality and standards in arbitration.
- Confidentiality: Provisions were introduced to ensure the confidentiality of arbitration proceedings, safeguarding the interests of the parties involved.
- Time Limits: The amendments imposed strict timelines for the completion of arbitration proceedings and the delivery of awards, thereby enhancing efficiency and predictability.

[7] (2000) 7SCC 2011

Arbitration also attained the significant growth from the Institutional developments.

- Indian Council of Arbitration (ICA): One of the oldest arbitration institutions in India, the ICA has been instrumental in promoting arbitration through training, conferences, and case administration.
- Mumbai Centre for International Arbitration (MCIA): Established in 2016, the MCIA provides world-class arbitration services for both domestic and international disputes, with the goal of making Mumbai a global arbitration hub.
- New Delhi International Arbitration Centre (NDIAC): Created to provide a robust institutional framework for arbitration, the NDIAC aims to streamline processes and enhance the global competitiveness of Indian arbitration.

The Indian judiciary has increasingly supported arbitration, with landmark Supreme Court judgments reinforcing the principles of minimal judicial intervention and upholding the validity of arbitration agreements and awards. Notable judgments include:

The Supreme court in the case of Bharat Aluminum Co. v. Kaiser Aluminum Technical Service, Inc. (BALCO) [8]restricted court intervention in foreign-seated arbitrations, aligning Indian jurisprudence with international standards.

Vodafone International Holdings BV v. Union of India[9]

This case reinforced the enforcement of international arbitration awards under the New York Convention, demonstrating the judiciary's pro-arbitration stance.

Online Dispute Resolution (ODR) platforms like SAMA, Presolv360, and CODR have facilitated greater access to arbitration, especially during the COVID-19 pandemic. These platforms offer virtual hearings, electronic submissions, and AI-driven tools for case management, making arbitration more accessible and efficient.

Mediation in India

In our nation, the idea of mediation has a long and rich history. Conflicts used to be settled at the community level in Panchayats back in the day. Panch Parmeshwar was the previous name for Panch's.

We now number 125 crores as a nation, and economic growth has been phenomenal due to globalisation and liberalisation. All of this has caused the number of lawsuits in our nation to skyrocket. Despite the fact that our legal system is among the greatest in the world and is well-respected, there is a lot of criticism directed towards it because of the protracted delays in getting matters resolved in court. An honest litigant is now reluctant to go to court to get his disagreement resolved. The Indian judiciary is undergoing reform, with the Supreme Court of India spearheading the effort. In 1966, the Institute for the Study and Development of Legal Systems (ISDLS), based in the United States, was invited by Hon'ble Mr. Justice A.H. Ahmedi, the Chief Justice of India at the time, to take part in a nationwide evaluation of the backlog in civil court cases.

With effect from 1.7.2002, the legislature modified section 89 of the CPC by the Code of Civil Procedure (Amendment) Act, 1999, which included mediation as one of the dispute resolution options. On the advice of the Justice Malimath Committee and the Law Commission of India, the adjustment to Section 89 was adopted. The Law Commission advised that in order to try to reach a mutually agreeable resolution and encourage amicable conflict resolution, the court should have the authority to order parties to a suit or

[8]

[9] (2012) 6 SCC 613

proceeding to appear in person. After issues are framed, the Justice Malimath Committee advised that the Court refer the case for settlement through Arbitration, Conciliation, Mediation, or Judicial Settlement through Lok Adalat. The lawsuit might only be brought if the parties are unable to resolve their differences through any of the ADR procedures.

While mediation is becoming a more popular strategy for resolving conflicts worldwide, private mediation in India has long lacked a formal framework and legal sanction, which has discouraged parties from participating and increased the backlog of judges. In India, mediation was not particularly governed by any single law, unlike arbitration and conciliation.

In order to address this issue, the Mediation Act, 2023 ("Mediation Act") was introduced to enhance the effectiveness of mediation in India, thereby, rendering a comprehensive and elaborate legislative framework for efficient implementation of mediation. [10]The Mediation Act has been introduced with an objective to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial or otherwise, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost-effective process and for matters connected therewith or incidental thereto.[11]

Technological Advancement and Arbitration and Mediation

The relationship between arbitration, mediation, and technological advancements, particularly ODR and AI, is transforming the landscape of dispute resolution by improving accessibility, efficiency, and accuracy while posing challenges related to privacy, security, and ethical considerations. As these technologies evolve, they are poised to play an increasingly crucial role in modern legal practice. The Future of Justice Was Not Limited to the Court Room.[12] In A Current Scenario the Advancement of Technology and Development. Justice Will be Easily Accessible, less time-consuming, Strong, and Focused on Achieving Fair Outcomes. Alternative dispute resolution (ADR) has already taken place in dispute resolution before going to court. Nowadays, technology has become one of the parts of the justice system. [13]

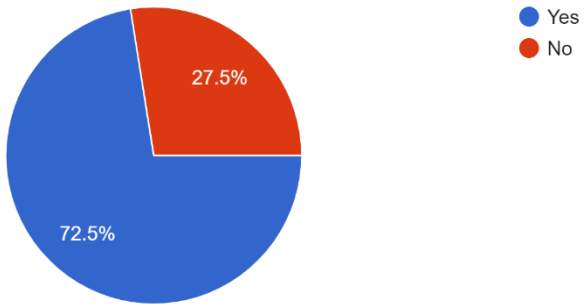
Awareness

For the data collection a study on litigants or general public and lawyers of Lucknow has been undertaken and it is the core of this research study. This empirical study deals with the awareness and perspectives of litigants and lawyers, and it aims to analyse the implementation of Alternative Dispute resolution Mechanism.

Amongst 100 respondents (72.5%) were aware that ADR is considered an out-of-court settlement process, while (27.5%) were not aware. The majority of respondents (72.5%) being aware of ADR as an out-of-court settlement process indicates a good level of knowledge about this alternative method of resolving disputes. This suggests that ADR is gaining recognition and acceptance as a viable option for dispute resolution. However, it is worth noting that a significant portion (27.5%) of the respondents were not aware of ADR as an out-of-court settlement process. This indicates the need for further education and awareness campaigns to promote understanding and utilization of ADR.

[10] https://www.lexology.com/library/detail.aspx?g=920e6d73-be01-49a8-8281-eb534a81a767
[11] Ibid
[12] Rahul Kr Gaur," Tech-Driven Justice: Unraveling The Dynamics Of Online Dispute Resolution" https://www.livelaw.in/lawschool/articles/future-of-justice-technology-alternative-dispute-resolution-260027
[13] Ibid

Awareness of Alternative Dispute Resolution (ADR) as an out-of-court settlement process:



Conclusion.

Though various efforts are being taken to elevate arbitration and mediation still there is alck of awareness amongst the large number of people. This lack of awareness can be attributed to various factors, including limited public education on ADR benefits, misconceptions about its effectiveness, and insufficient visibility of successful ADR outcomes. Consequently, many individuals continue to rely on traditional court systems, which can be more time-consuming and costly.

To bridge this gap, it is imperative to implement comprehensive public awareness campaigns that highlight the advantages of ADR, such as cost efficiency, time savings, and the preservation of relationships. Additionally, building trust in these processes requires showcasing real-world success stories and endorsements from credible sources within the legal community.

Future efforts should focus on integrating ADR education into community programs, legal education, and mainstream media. By fostering a deeper understanding and trust in arbitration and mediation, we can create a more informed public that is confident in utilizing ADR as a practical and effective means of resolving disputes outside the courtroom.

In conclusion, while strides have been made in promoting ADR, much work remains to ensure it is recognized and trusted as a valuable tool for dispute resolution. It is through persistent education and awareness efforts that we can hope to achieve greater acceptance and utilization of ADR, ultimately contributing to a more efficient and harmonious legal landscape