

**The Need for Regulatory Bodies, and Professional Associations in Setting and Enforcing
Standards for ADR Professionals**

Manamohan KN

Author, Scholar in School of Legal Studies, at REVA University, Bangalore

Dr. Nagaraja V

Co-author, Professor, in the School of Legal Studies, at REVA University, Bangalore

Abstract

Alternative dispute resolution (ADR) is a negotiation based method that is used to solving conflicts between people, it differs from traditional judicial systems and allows people to seek justice without involving the legal system. ADR methods provide immense potential for the people as it is a multi-faceted approach that aims to raise legal awareness of the people and solve cases. The focus of the present research has been to closely analyse the ADR system in India, the disputes are solved through various methods such as arbitration mediation and conciliation, of which arbitration is the most popular. The present research shows that despite having an act and multiple amendments for improving the ADR scene of the country, the country continues to face problems with a lack of people invested in the procedure. Not having any proper regulatory framework for handling these cases and professional associations for maintaining the standards has prevented the ADR system of the country from succeeding.

Keywords: *Alternative dispute resolution (ADR), dispute, challenges, India, mediation, Lok Adalat, arbitration.*

Introduction

The Indian legal system is known for its delays and a substantial backlog of cases, as a result, alternative methods of solving disputes are highly important for the growth and prosperity of the country. Alternative dispute resolution (ADR) is a process through which disputes between different parties within the country are settled without involving the court. The methods and techniques that are used for ADR are scientific and contribute towards reducing the load of pressure from the courts. ADR is responsible in the country for handling all kinds of cases from disputes related to trade and commerce to relationships and liabilities¹. The country lacks any unified regulatory bodies to oversee the processes of ADR, although the country has laws for arbitration, these are generally enforced by the courts. Arbitrators for ADR are not required to have any special skills in India, the purpose of the present study is therefore to assess the need for regulatory bodies and frameworks that can establish standards for handling such cases. Arbitration is becoming a preferred medium of solving disputes as it is much faster and costs significantly less, making enforcing standards for arbitrators and other ADR professionals even more important.

The Historical Context of ADR and the Current Landscape

Although ADR has been recognized by many communities across the world as a dispute resolution method since the 1990s, the concept of resolving these kinds of conflicts in India is not new. In medieval times, different parts of India adopted a panchayat system which would provide judgment over small local disputes in a conclusive manner. During these times, it was generally the head of the village or a respectable person who heard and acted for the case. The panchayat acted as a tribal court in these areas for executing the ruling and providing their judgement. In

¹ Pandey, Akhilesh Kumar. "Alternative Dispute Resolution (ADR) Role in Consumer Disputes in India: Rules made under Consumer Protection Act, 2019." *International Journal Of Legal Developments And Allied Issues* 9, no. 3 (2023): 87-97

1772 the Bengal Regulation was created by the British to establish their control over the subcontinent, and although the panchayat system was not entirely abolished by the new rulers, the people of the country were suggested to submit their disputes through an arbitration procedure². However, it should be mentioned that arbitration in India gained the first formal stature in 1899 with the “Indian Arbitration Act”, although this act was enacted in the presidency towns of Madras, Bombay and Calcutta, it created a formal way for people to resolve their disputes and get amicable outcomes within the country³.

The Code of Civil Procedure was established in the year 1908, followed by the Arbitration Act, of 1940. The act from 1940 primarily dealt with domestic cases and although there were a few international cases handled during these times, they were done with the English Arbitration Act of 1934. It was only after the introduction of the UNCITRAL model law, that India finally enacted its own “Arbitration and Conciliation Act, 1996” which continues to still be used in modern times. This act was almost entirely based on the model law to reduce the involvement of courts in these types of cases and provide the parties with fast dispute resolution methods⁴. The process of arbitration differs significantly from formal courts, as here the parties can appoint a neutral arbitrator who can pass fair judgment over the case. The “Arbitration and Conciliation Act, 1996” had its problems however, the act was amended twice in the years 2015 and 2019. The purpose of the amendments is to provide the arbitrator with more autonomy and reduce the involvement of the court in the arbitration process in the country. Arbitration is the most popular method of ADR in the country and it is ruled through the provisions of the Act of 1996. The government also passed

² Begum, M. "A History of Alternative Dispute Resolution." (2022).

³ Department of Legal Affairs, ‘ALTERNATIVE DISPUTE RESOLUTION IN INDIA’ <https://legalaffairs.gov.in/sites/default/files/Arbitration_Mediation.pdf> accessed 10th June 2024

⁴ Department of Legal Affairs, ‘ALTERNATIVE DISPUTE RESOLUTION IN INDIA’ <https://legalaffairs.gov.in/sites/default/files/Arbitration_Mediation.pdf> accessed 10th June 2024

the Mediation Bill, 2021, another mode of ADR that can resolve disputes and negotiations between the parties more freely.

The indeterminate extension of matters in the courts of India has resulted in extensive delays and therefore ADR is needed to resolve these problems. There are three main methods through which ADR is practised in the country, these are namely arbitration, conciliation and mediation. Conciliation is an informal style of arbitration whereas mediation is administered by the Mediation Rules, 2003. The arbitrator in these cases clears misconceptions between the parties and helps with the settlements⁵. In modern day India the Westernized version of arbitration is practised through the "Arbitration and Conciliation Act, 1996" whereas the Indian ideals and methods of arbitration are still carried out by the Lok Adalat system of the country⁶.

Regulatory Bodies and ADR

Despite the potential of ADR in India, there is a lack of regulatory frameworks, ADR is one of the areas of society which receives limited support from the government. The country might have the "Arbitration and Conciliation Act, 1996" but there is a lack of ADR centres in the country, the lack of funding is the main issue in this context. The smaller cities and towns do not have any form of ADR centres available and therefore are required to travel to bigger cities for this kind of service. Studies carried out on the arbitration procedure of the country state the need for the government to introduce new mechanisms through which better regulations can be established in the country⁷. At present the general regulations from the Consumer Protection Act are used for mediation and

⁵ Ramchandran, Garvit, and Shiva Singh. "Evolution of Alternative Dispute Resolution (ADR) in India." *Jus Corpus LJ 1* (2020): 1.

⁶ Nga, Pham Thanh. "Alternative Dispute Resolution (ADR): A New Trend of Economic Conflicts Settlement." *International Journal Of Legal Developments And Allied Issues* 8, no. 6 (2022): 1-18.

⁷ Konoorayar, Vishnu, K. N. Pillai, and Jaya VS. "Alternative Dispute Resolution in India-ADR: status/effectiveness study." MISC, 2014.

other administrative aspects of the cases⁸. Laws of arbitration need to be developed with the help of which conflicts can be solved without having to visit courts. ADR literacy programmes and awareness camps can be beneficial for helping people to understand. Infrastructure for ADR needs to be funded by the government. The state level judicial systems that are available in the country can help with this method by providing training to the facilitators and mediators in the context of ADR. The lack of proper guidance from the judicial system has been one of the major barriers to the lack of regulatory frameworks in the country, appropriate guidance from the courts can help in the success of the ADR system within the country and establish institutional frameworks⁹.

The world is constantly changing under globalization, and the regulatory governance for ADR therefore also needs to be improved with time to address the complexities of the system. Although the arbitration act of the country grants ADR professionals autonomy, they are still required to be accountable for their actions. With the introduction of better regulatory frameworks, the ADR centres will have more flexibility in handling these cases. Real Estate Regulatory Authority (RERA) Maharashtra and RERA Uttar Pradesh are some of the only regulatory bodies in the country that have been enacted to oversee cases related to ADR. The country overall lacks regulatory regimes and legislature to promote this kind of judgement and resolve the problems with ADR¹⁰. The Mediation Act, 2021 understands the importance of mediation and conciliation as methods to resolve commercial disputes, however, it still does not cover all of the different problems which are faced by ADR. In order to modernize the ADR system of the country, the

⁸ Pandey, Akhilesh Kumar. "Alternative Dispute Resolution (ADR) Role in Consumer Disputes in India: Rules made under Consumer Protection Act, 2019." *International Journal Of Legal Developments And Allied Issues* 9, no. 3 (2023): 87-97.

⁹ Roy, Caesar. "Alternative dispute resolution and its mechanism—A critical analysis in the light of access to justice in India." (2023): 29-40.

¹⁰ Forum of Indian Regulations, 'Alternative Dispute Resolution in the Regulatory Regime' < <https://foir-india.org/upload/Dispute%20Resolution%20in%20the%20Regulatory%20Regime.pdf>> accessed 10th June 2024

parliament launched the Mediation Bill 2023, this progressive bill is meant to make the ADR process easier for the people. The main structure for ADR in the Indian context has been provided by the act from 1996, the Code of Civil Procedure, 1908 has also been changed to legitimize ADR within the nation and make courts allude matters to these centres for prosecution¹¹. Despite the presence of these regulations, however, the country still requires better support for arbitration and other methods of ADR.

Professional Associations for Maintaining Standards and Quality for ADR

The India International Arbitration Centre Act was enacted in 2019 which helped to create the arbitration centre of the country. The centre has been equipped with the needed infrastructure to professionally manage the legal and administrative roles that ADR play in solving disputes between the different parties. Additionally, the Mediation Act, of 2023 has also laid out the important legislative framework that is needed for establishing a mediation ecosystem within the country¹². The International Centre for Alternative Dispute Resolution (ICADR) is one of the government-endorsed organisations in the country that contributes towards maintaining the standards for the ADR methods. The ICADR has its headquarters in Delhi with regional centres in the different states of Hyderabad, Bangalore and Andhra Pradesh¹³. Studies show that court-annexed ADR centres can be equipped with digital technologies to spread awareness and raise the standards and quality of the centres. Having proper centres of ADR is necessary to make sure

¹¹ Verma, Aditya, and Arvind Kumar Singh. "Growth of Alternative Dispute Resolution Method in The Legal System." *Int. J. Adv. Res. Sci. Technol.* Volume 13, no. 04 (2024): 1313-1323.

¹² Department of Legal Affairs, 'Alternate Dispute Resolution' <https://legallaffairs.gov.in/sites/default/files/AU586_262.pdf> accessed 10th June 2024

¹³ ICADR, 'ICADR - AN INTRODUCTION' <<https://icadr.ap.gov.in/>> accessed 10th June 2024

proper accountability is maintained and that the people have access to transparent methods of seeking justice¹⁴.

Compared to other jurisdictions of the country, mediation and the other ADR methods are not treated as independent professions but rather part-time and post court jobs. The casual nature of these associations contributes towards the lack of a centralized system to oversee the ADR practices and improve the quality and standard of judgement that are provided. The mediation rules of the country also state that the judges of the cases need to be retired judges and lawyers who have over 15 years of experience. Retired bureaucrats and executives can also serve the role of a mediator. In order to establish better rules and regulations, mediation and arbitration need to be treated as full time professions. The system needs to be handled more professionally, and the mediators and lawyers need to be professionally trained to be fit for the job role. While there are many court annexed mediation centres available in the country, these need to be expanded to make the ADR services reach out to the people. Online mediation centres can also be found, Bangalore mediation centre started providing online support during the pandemic. Although the mediation bill of the country provides support for online mediation, confidentiality issues remain with such methods¹⁵. The country requires a proper vision and legal framework to make these ADR centres available all over India.

Legal and Administrative Challenges Faced by ADR

The most important challenge which ADR faces is the lack of legal protection, there is no proper direction as to how the rewards for ADR disputes need to be handled or the fraudulent activities

¹⁴ Sekhri, Desh Gaurav, and NITI OSD. "Designing the future of dispute resolution: The ODR policy plan for India." Message posted to (2020).

¹⁵ Chakraborty, Anirban, and Shuvro Prosun Sarker. "Resolving disputes with an healing effect: the practice of mediation in India." *Revista Brasileira de Alternative Dispute Resolution-Brazilian Journal of Alternative Dispute Resolution-RBADR* 4, no. 8 (2022): 61-84.

in this kind of cases. The government of India has introduced some amendments to handle these issues but they have not fully addressed the problems. The seat and venue dilemma which exists with arbitration cases continues to remain an issue after the 2019 amendments. There is also a lack of incentive to work for the ADR cases and therefore there are limited numbers of arbitration lawyers available to handle these cases¹⁶. As stated prior, ADR is not taken seriously within the country and is rather a part time job for the lawyers, the hearing times are limited and the lawyers do not invest much resources to solve the issues that ADR faces. Much of the ADR disputes are solved with traditional mechanisms, which creates further problems and difficulties for the arbitrator. Getting the parties to agree to a third party arbitrator in the lack of any regulatory framework is also a challenge by itself¹⁷.

Research carried out on the “Arbitration and Conciliation Act, 1996” shows that the act has a lot of different issues, when disputes were filed under Section 34 it automatically led to arbitral decisions and although this problem was resolved in the year 2015, clarifications of the original act required more time. The country does not possess any central arbitral hubs to control the region's variants and as a result, a lot of institutions have risen up in recent years. There are multiple localized arbitration centres such as “Delhi International Arbitration Centre (DIAC), Nani Palkhivala Arbitration Centre (NPAC), Mumbai Centre for International Arbitration (MCIA)” which are not robust and cannot impact the entire nation and their arbitration procedure¹⁸. Studies suggest that the arbitration culture of the country is not as robust and therefore a global arbitral hub has not been created. The recruitment system of arbitration is also flawed, fresh arbitrators are

¹⁶ Singh, Anjali. "Challenges to Arbitration in India." *Jus Corpus LJ 2* (2021): 93.

¹⁷ Palanissamy, Ayyappan, and R. Kesavamoorthy. "Automated dispute resolution system (ADRS)—a proposed initial framework for digital justice in online consumer transactions in india." *Procedia Computer Science* 165 (2019): 224-231.

¹⁸ Singh, Anjali. "Challenges to Arbitration in India." *Jus Corpus LJ 2* (2021): 93.

not allowed to be appointed and therefore retired judges have to be placed in these positions. The system needs more recognition and new attorneys need to be appointed to make the process gain support and appreciation from the general public.

The legal system of the country is seen to be plagued with different types of cases and therefore when ADR related cases are embroiled in courts, it causes further delays. Although “Arbitration and Conciliation Act, 1996” states the national courts should not involve themselves in arbitration practices, many of the high courts indulge in ADR cases if the cases are petitioned, this creates delays for both the ADR and the other cases which the national courts deal with. Lok Adalats are one of the best alternatives available in the country to resolve disputes however, lawyers in the country are seen to be reluctant to lead cases in these places. The Lok Adalats lack proper jurisdictions and as a result, when the judgement presented by them does not satisfy the needs of the parties, they are sent to proper courts¹⁹. The judgement and awards suggested by the Lok Adalats can also be challenged, creating more issues for the legal system.

Significance of Certifying and Training ADR Professionals

The present research shows how ADR can provide the disputed parties with proper results in a cost effective manner, however, in order for this to happen the ADR professionals need to be hired properly and trained for handling the disputed cases. The appointment is one of the major lacking areas in the Indian ADR system, introducing certification can help ensure that the ADR professionals that are being hired for the role have the proper skills and training to meet the role. Certifying ADR professionals also ensures that the judgements which they make in the ADR centres follow the ethical standards of society²⁰. Certifying these individuals can also raise the

¹⁹ Patil, Deepa. "A Critical Analysis on Lok-Adalat in India." *Research Front* 3, no. 2 (2015): 56-59.

²⁰ Hoffman, David A. "Certifying ADR Providers." *BOSTON BJ* 40 (1996): 9-1996.

confidence level among consumers, although the number of ADR systems is increasing in the country, public awareness about these ADR centres continues to be low. ADR is treated as a part-time job for lawyers at present, establishing it as a proper justice method would lead to specified forms of training for the mediators and arbitrators. The courts of India involve themselves in ADR cases because of the lack of confidence in their abilities, certification standards would raise confidence levels.

The international ADR programmes have focused on the need for training the staff to provide them with more technical assistance, even though ADR is informal it has immense potential in solving the issues of the people and therefore providing them with training would be helpful towards increasing people's desire to use the services that are provided by ADR. The government needs to invest in the infrastructure of the ADR centres and provide legal awareness to the arbitrators to maintain standards for the judicial system²¹. At present, the ILSCA provides training for arbitrary and mediation proceedings. ILSCA acts as a neutral and independent centre for handling these proceedings and also provides educational courses for students who are interested in developing their ADR skills²². The government of India needs to establish proper standards that the students can follow to be arbitrators, mediators and lawyers in the ADR profession. ADR has gained traction in recent times as shown within the research works, the field is incredibly diverse and complex, and proper training is needed for both increasing self-awareness and academic activity²³.

²¹ Begum, Mehnaz, Shabir Ahmed Khan, and Muhammad Zubair Khan. "Alternative Dispute Resolution in the Contemporary World." *Global International Relations Review* 2022 (2022): 11-16.

²² ILS LAW, 'Certificate Course on Alternative Dispute Resolution (ADR) Methods' <<https://ilslaw.edu/event/certificate-course-on-alternative-dispute-resolution-adr-methods/>> accessed 10th June 2024

²³ Shamir, Yona. "Alternative dispute resolution approaches and their application." (2016).

Techniques and Strategies for Improving ADR

The introduction of the Mediation Act, 2021 and Mediation Act, 2023 shows that the perception of the government towards ADR has increased but the country still requires a robust system for increasing arbitration in the country. One of the most significant strategies towards improving ADR is to reduce the involvement of courts in the arbitration procedure. The involvement of the state level courts only contributes towards delays for their cases as well as the ADR practices. An ideal environment needs to be built which supports ADR and the judgements that are passed from these centres. Honouring the integrity of the ADR systems and the awards will contribute towards India becoming a hub²⁴. There is no doubt that the system has significantly improved from where it was in the past as there are proper ADR centres in Delhi and Mumbai but it can only gain traction when it is extended to the other important cities of the country such as Ludhiana, Kolkata and Lucknow. The Indian lawyers need to support the ADR processes in the country instead of preventing their execution.

In order to improve the adoption of ADR systems in the country, raising awareness is an important step. The study suggests that since media and NGOs play an important role in dictating the needs of consumers, they can be used to establish trust in the ADR systems. The present system of hiring retired judges for these cases needs to be stopped to treat ADR as a proper legal procedure, training can play a part in raising the skills of the individuals and setting standards for these processes²⁵. Research carried out on ADR suggests that legislative support is not the only thing which is required to support this kind of dispute resolving system in the country, training needs to be provided to all mediators, conciliators and arbitrators to make them aware of the important role

²⁴Singh, Anjali. "Challenges to Arbitration in India." *Jus Corpus LJ* 2 (2021): 93.

²⁵ Roy, Caesar. "Alternative dispute resolution and its mechanism—A critical analysis in the light of access to justice in India." (2023): 29-40.

which ADR play in society. The government on the other hand is responsible for providing proper infrastructure for these systems and supporting the initiatives with creating infrastructures. Another strategy to increase the use of ADR is to reduce court fees and recognise its potential for successful outcomes. ADR needs to be incentivised to raise the confidence level among the people. Improving ADR in India is a collective effort and requires support from both the government, the legal system and the normal people of the society²⁶. ADR has immense potential to reduce delays and solve the other problems which the legal system has been facing.

Lastly, India needs to establish both private and public institutions that have mandatory courses required in order to become an ADR professional. The research has shown that there are different sub categories for ADR such as mediation and arbitration, specific courses need to be mandated by the country to prevent retired judges and people without qualification from entering the role. At present, the country has a laid-back approach towards ADR, however, in order to encourage more people to use this service and reduce the load from courts, ADR needs to be treated as a proper method of seeking justice. The government can also implement registration and renewable systems for these courses to ensure the ADR professionals are qualified enough for handling the position. Although organisations such as Indian Institute of Arbitration & Mediation (IIAM) provides training programmes for ADR, the courses needs to be affiliated and endorsed by the government.

Conclusion

As concluding remarks, the present research presents a detailed picture of the current conditions of the ADR in India. The study has discussed the acts and amendments that are used in the country

²⁶ Arbune, Prashant Subhash, and Priti Vijaynarayan Yadav. "Comparative Analysis of the Efficacy of Alternative Dispute Resolution Mechanisms in India and the UK."

currently to handle the ADR cases. The historical context of ADR in the country has been presented to show the transformation, the findings of the article show that India lacks both regulatory frameworks as well as professional institutions to establish a centralized system for ADR. While there are ADR centres in some of the cities of the country, they are not accessible to the masses, the ADR institutions need to be endorsed by the government and spread across the country for a better adoption rate of the system.

References

Arbune, Prashant Subhash, and Priti Vijaynarayan Yadav. "Comparative Analysis of the Efficacy of Alternative Dispute Resolution Mechanisms in India and the UK."

Begum, M. "A History of Alternative Dispute Resolution." (2022).

Begum, Mehnaz, Shabir Ahmed Khan, and Muhammad Zubair Khan. "Alternative Dispute Resolution in the Contemporary World." *Global International Relations Review 2022* (2022): 11-16.

Chakraborty, Anirban, and Shuvro Prosun Sarker. "Resolving disputes with an healing effect: the practice of mediation in India." *Revista Brasileira de Alternative Dispute Resolution-Brazilian Journal of Alternative Dispute Resolution-RBADR 4*, no. 8 (2022): 61-84.

Department of Legal Affairs, 'Alternate Dispute Resolution' <
https://legalaffairs.gov.in/sites/default/files/AU586_262.pdf> accessed 10th June 2024

Department of Legal Affairs, 'ALTERNATIVE DISPUTE RESOLUTION IN INDIA' <
https://legalaffairs.gov.in/sites/default/files/Arbitration_Mediation.pdf> accessed 10th June 2024

Forum of Indian Regulations, 'Alternative Dispute Resolution in the Regulatory Regime' <
<https://foir-india.org/upload/Dispute%20Resolution%20in%20the%20Regulatory%20Regime.pdf>> accessed 10th June 2024

Hoffman, David A. "Certifying ADR Providers." *BOSTON BJ 40* (1996): 9-1996.

ICADR, 'ICADR - AN INTRODUCTION' < <https://icadr.ap.gov.in/>> accessed 10th June 2024

ILS LAW, 'Certificate Course on Alternative Dispute Resolution (ADR) Methods'
<<https://ilslaw.edu/event/certificate-course-on-alternative-dispute-resolution-adr-methods/>>

accessed 10th June 2024

Konoorayar, Vishnu, K. N. Pillai, and Jaya VS. "Alternative Dispute Resolution in India-ADR: status/effectiveness study." MISC, 2014.

Nga, Pham Thanh. "Alternative Dispute Resolution (ADR): A New Trend of Economic Conflicts Settlement." International Journal Of Legal Developments And Allied Issues 8, no. 6 (2022): 1-18.

Palanissamy, Ayyappan, and R. Kesavamoorthy. "Automated dispute resolution system (ADRS)—a proposed initial framework for digital justice in online consumer transactions in india." Procedia Computer Science 165 (2019): 224-231.

Pandey, Akhilesh Kumar. "Alternative Dispute Resolution (ADR) Role in Consumer Disputes in India: Rules made under Consumer Protection Act, 2019." International Journal Of Legal Developments And Allied Issues 9, no. 3 (2023): 87-97.

Patil, Deepa. "A Critical Analysis on Lok-Adalat in India." Research Front 3, no. 2 (2015): 56-59.

Ramchandran, Garvit, and Shiva Singh. "Evolution of Alternative Dispute Resolution (ADR) in India." Jus Corpus LJ 1 (2020): 1.

Roy, Caesar. "Alternative dispute resolution and its mechanism—A critical analysis in the light of access to justice in India." (2023): 29-40.

Sekhri, Desh Gaurav, and NITI OSD. "Designing the future of dispute resolution: The ODR policy plan for India." Message posted to (2020).

Shamir, Yona. "Alternative dispute resolution approaches and their application." (2016).

Singh, Anjali. "Challenges to Arbitration in India." *Jus Corpus LJ 2* (2021): 93.

Verma, Aditya, and Arvind Kumar Singh. "Growth of Alternative Dispute Resolution Method in The Legal System." *Int. J. Adv. Res. Sci. Technol.* Volume 13, no. 04 (2024): 1313-1323.