



Legal Framework for Alternative Dispute Resolution in India

Kanika Ojha¹, Simranjeet Kaur Gill²

^{1,2}Department of Law, CT University, Ludhiana (Punjab), India

ABSTRACT:

The legal framework governing Alternative Dispute Resolution (ADR) requires effective integration in Indian Legislation, emphasizing its significance in addressing judicial backlogs and fostering a business-friendly environment in emerging markets. It reviews key ADR mechanisms, including arbitration, mediation, conciliation, and Lok Adalats, highlighting their role in enhancing access to justice. The research evaluates recent legislative developments like the Mediation Act, 2023, and challenges such as low public awareness, inconsistent enforcement, and inadequate infrastructure. Recommendations include promoting awareness, strengthening enforcement mechanisms, and developing institutional frameworks to improve ADR's effectiveness and accessibility, particularly in regions like Punjab, to bolster India's economic and legal systems.

Keywords: ADR, Dispute, Judicial, Law, Legal framework.

1. Introduction

The use of ADR has become widespread in modern legal systems and their development is primarily due to the problems of traditional litigation¹. The principle of ADR would indeed hold much potential for a country such as India, which is on the cusp of an economic boom and witnessing dynamic changes in the legal framework. Different ADR processes like arbitration, mediation, conciliation, and Lok Adalats have proved very useful in unburdening the courts and enhancing people's rights to access justice.

India's legal environment has gone through large changes to adopt ADR and to encourage people to use it². Li provided that the minor laws include the Arbitration and Conciliation Act, of 1996, the Code of Civil Procedure, of 1908 and the recent Mediation Act, of 2023 as the foundation of the ADR system in Bangladesh. These laws have the Indian intention to develop a strong legal framework for the ADR legal system while focusing on the Indian needs in the context of comparing with the standard of international legal systems.

1.1 Judicial Backlog and the Role of ADR

India continues to face an impressive backlog of over 40 million cases, and, in many instances, these cases are never heard, let alone disposed of in decades³. This excessive backlog points to the drawbacks of the regular court system and why there is a call for ADR systems. ADR provides faster and cheaper methods of solving disputes, reducing on delays, and enhancing access to justice.

1.2 Types of ADR Mechanisms and Their Classification

Needs: The types of ADR are arbitration, Mediation, conciliation, and Lok Adalats. Arbitration is a process by which an independent third party decides the rights and duties or responsibilities of the two parties. In mediation, the two parties directly agree to the solution while in conciliation the conciliator himself suggests the solution to disputes. Lok Adalats previously defined as village courts are a good example of informal procedures that are beneficial especially to the lowest strata of society due to their economic efficiency.

1.3 Legislative Framework

General arbitration is regulated by the Arbitration and Conciliation Act of 1996 which applies to domestic and international arbitration and seeks to maintain some fairness of the arbitral procedure and enforceability of awards. With improvements in 2015, 2019, and 2020, its operations have been

¹ Chinwe Egbunike-Umegbolu, 'Contemporary Overview of Appropriate Dispute Resolution (ADR)' (2024) 33 *Ius Gentium: Comparative Perspectives on Law and Justice* 1.

² Monica Kharola, 'Impact of Alternative Dispute Resolution (ADR) Mechanisms on Ease of Doing Business in an Economy: Policy for India' (2024) 44 *Library Progress International* 14506 <<https://bpasjournals.com/library-science/index.php/journal/article/view/2180>> accessed 1 December 2024.

³ Dixit, Gitika; Virendra, Yashasvi, 'Access to Justice in India: An Agglomeration of Procedural Complexities and Unawareness' (2014) 2 *Springer* 53 <<https://www.indianjournals.com/ijor.aspx?target=ijor:gibsl&volume=2&issue=1&article=007>> accessed 1 December 2024.

made more effective and made to be in tandem with global standards. Section 89 of Civil PC, 1908 The Courts are authorized to direct an attempt to settle the dispute in other ways Any litigative matter can be referred to an ADR mode before initiating the proceedings. The Legal Services Authorities Act was passed in 1987, under this Act Lok Adalats functions as an efficient, affordable and accessible mode of resolving a dispute where the matters are non-adversarial⁴.

1.4 ADR and the Constitution

ADR mechanisms correlate with constitutional provisions notably the provisions of Article 21 and; article 39A. Thus, Article 21 refers to the protection of life and personal liberty with the right to receive free, speedy and impartial justice. In this respect, ADR supports the right note self-assembly right note self-assembly since its speedy and inexpensive approaches seek to ensure solutions quickly⁵. Free legal aid and access to justice are a major focus of Article 39A, which conforms with ADR's non-discriminatory and egalitarian principle.

1.5 Emphasis on ADRs in emerging markets

In emerging markets, ADR promotes the regime of friendly business, legal certainty eliminates uncertainties. Effective mechanisms for the management of disputes have a positive effect on investors' confidence, business environment and economy. ADR remains an instrumental aspect of India's desire to move up as a global economic superpower.

1.6 Purpose of the Research

This main purpose to critically analyse the legal framework governing Alternative Dispute Resolution (ADR) mechanisms in emerging markets, with a focus on India. It seeks to assess the effectiveness, challenges, and potential enhancements of ADR mechanisms within the Indian legal system. To accomplish this aim, the objectives are considered in this research is given below.

- To evaluate the existing laws and regulations governing ADR in Punjab's emerging markets.
- To examine the practical application and effectiveness of ADR methods within India's legal system and how it will influence Punjab.
- To identify key challenges and barriers hindering the widespread adoption and effectiveness of ADR mechanisms.
- To propose policy recommendations and practical enhancements to strengthen the ADR framework in Punjab's emerging markets.

2. Literature Review

2.1 Evolution of ADR in India

The implementation of ADR in India was a major turning point in dealing with the drawbacks of regular litigation forms⁶. The act is the Arbitration and Conciliation Act, of 1996, which was fashioned based on the model adopted from the best practice in the international system to provide the legal framework for the development of the formal structured ADR. A further amendment to this Act has sought to enhance procedural rationality and bring into comparative congruity with other international arbitration laws⁷. All these developments are showing positive indications of the increasing acceptance of the ADR as a needful tool, in the settlement of disputes at an accelerated pace and reduced cost.

2.2 Evaluation of specific ADR mechanisms

Arbitration, mediation, and Lok Adalats that are part of the ADR system have been found suitable for various categories of disputes⁸. Commercial disputes also prefer arbitration due to the results offered by the procedure and the procedural results. Mediation has received much recognition for its cooperative nature and therefore assisting the parties come up with the best consensual solutions. A Lok Adalat non-legal structure of the community has been efficient

⁴ Dr Usha Vaidya and Siddhartha Singh Chauhan, 'A Study on the Legal Services Authorities ACT, 1987' (2024) 5 International Journal of Innovations in Science, Engineering And Management 51 <<https://ijisem.com/journal/index.php/ijisem/article/view/23>> accessed 1 December 2024.

⁵ Riccardo Montis and others, 'Complex Structures Arising from the Self-Assembly of a Simple Organic Salt' (2021) 590 Nature 275.

⁶ Rishi Sharma, 'Resolving Corporate Conflicts Outside the Courtroom: A Study of ADR Mechanisms and the Companies Act in India' (*Ssrn.com*29 February 2024) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4814779> accessed 1 December 2024.

⁷ Faruk Md Umar, 'ADR in Criminal Cases: A Comparative Analysis between India and Bangladesh' (2023) 5 133.167.11 <<http://103.133.167.11:8080/handle/123456789/4162>> accessed 1 December 2024.

⁸ Pradeep Kumar, 'Unveiling Deficiencies in ADR Procedures: A Comprehensive Analysis of Mediation Processes' (2024) 44 Library Progress International 23171 <<https://bpsajournals.com/library-science/index.php/journal/article/view/2950>> accessed 1 December 2024.

in solving conflict, especially in cases of the poor and vulnerable⁹. However, it should be recognised that ADR mechanisms work differently depending on the region and the level of infrastructural support as well as the quality of practitioners.

2.3 Impact of Recent Legislation

New laws introduced such as the Mediation Act, 2023 indicate that the enhanced institutionalization of ADR is the new legal trend in India. The Act created a general structure for mediation, especially in the commercial sector since the parties intended to enhance its credibility and use. It of course includes decision-making formality and legal sanction for mediated resolutions, which has long been a problem with mediation. Such measures are expected to improve the effectiveness of the mediation by expanding people's understanding of it as a viable solution for ADR processes.

2.4 Legal Traditions and Key Cases

The judiciary has made a significant contribution to the ADR development in India in the form of case laws. These decisions have provided the legal boundaries of arbitration agreements, determined the place and place of courts in the arbitration process and stressed on the aspect of party autonomy. The judiciary for most of the time has been receptive towards the use of ADR mechanisms but there is an apparent lack of consistency of interpretation hence procedural complications. These inconsistencies increase the understanding of the necessity for a more homogenized approach of the judicial system towards ADR.

2.5 Factors Inhibiting the Implementation of ADR

However, some limitations come across when implementing ADR. Lack of sensitisation regarding the ADR processes and their advantage also continues to be a challenge¹⁰. This is one of the major problems of arbitration, which relates to the enforcement of arbitral awards because they vary from country to country which affects the confidence of stakeholders. Besides, there is a lack of infrastructure and human resources to enhance the proper operation of the ADR mechanisms. Another factor that slows the progress is cultural resistance, where the focus is made on legal cases instead of other solutions.

2.6 Research gap

Although substantial research is available on the historical and theoretical development of ADR, only a few studies examine its actual utility and efficiency in the growing markets of India. While numerous works discuss legislative and judicial trends, fewer studies provide empirical assessments of how the ADR mechanisms function in real-world situations, especially when applied to business conflicts. The rate at which ADR adoption differs across different parts of India¹¹. Furthermore, metropolitan areas have adopted the concept of arbitration and mediation, and rural and semi-urban areas are greatly inclined towards Lok Adalats. Nevertheless, little is known about the causes of such segregational regional differences and how these difficulties can be resolved to achieve greater equity in access and performance.

3. Methods

This research utilises a secondary research approach to assess and compare the ADR systems and their application in the Indian emerging business environment. Secondary research involves the process of gathering, selecting, and analysing published data, legal records, as well as statistics to gain an extensive understanding of the given subject.

To amass the requisite data, the study uses multiple sources of information. This paper examines the primary sources of law that relate to ADR mechanisms including the primary legislation laws that include the Arbitration and Conciliation Act, 1996, the Mediation Act, 2023, and the Code of Civil Procedure, 1908. The rules of law and judicial decision-making are scrutinized to discover how the courts implement laws governing ADR, learning from patterns, case law, and disparities¹². Secondary sources are employed with the use of theoretical frameworks outlined in peer-reviewed Journal articles and books along with Cross-Jurisdictional Data. Survey sources include annual reports of the Ministry of Law and Justice, policy papers and records regarding the performance of specific policies launched by the state. Quantitative data collected from government and other reputed databases are used to provide a real-life assessment of ADR on the backlog point and the issue of disposal of cases.

⁹ Christa Rautenbach and Navilla Somaru, 'The Indian Approach to Criminal Justice: The Role of Traditional Courts as Alternative Dispute Resolution Mechanisms' (2021) 53 Comparative and International Law Journal of Southern Africa.

¹⁰ Siyun Yang and Supratik Kar, 'Application of Artificial Intelligence and Machine Learning in Early Detection of Adverse Drug Reactions (ADRs) and Drug-Induced Toxicity' (2023) 1 Artificial Intelligence Chemistry 100011 <<https://www.sciencedirect.com/science/article/pii/S2949747723000118#:~:text=AI%20and%20ML%20are%20promising>>.

¹¹ Priyanka Sharma, Mukesh Nandave and Anoop Kumar, 'Reporting of ADRs across the Globe: India, USA, EU, and Non-EU' (2024) 5 Springer 127.

¹² Abbasy Md Mahar, 'An Analysis of English Law in Referring Disputants to Consensual ADR Methods' (2022) 5 figshare <[https://figshare.le.ac.uk/articles/thesis/An Analysis of English Law in Referring Disputants to Consensual ADR Methods/21130385/1](https://figshare.le.ac.uk/articles/thesis/An%20Analysis%20of%20English%20Law%20in%20Referring%20Disputants%20to%20Consensual%20ADR%20Methods/21130385/1)> accessed 1 December 2024.

To present the study's findings, the research will use a thematic method of categorisation. Some of the important issues focus on the legislation of the ADR, meaning, application as well as the issues that the implementation of ADR faces¹³. This approach allows a proper and systematic assessment of essential concerns in India's ADR framework.

The use of secondary research methodology proves useful as it encompasses a broad area by integrating varied data to give encompassing data. The research is also cheap and fast given that it does not involve primary data collection, but rather analysis of existing data. Also, reliance on legal documents, peer-reviewed articles and government documents strengthens the validity of the results.

Nevertheless, the generalisation of this view is limited to a certain extent. The limitation of the research arises from how data is collected and analyzed, and the nature of available data may not meet all the aspects of the research objectives. However, since secondary research does not original data collecting it may be devoid of empirical findings. In addition, there is an impact due to the interpretation of prior analysis and interpretation of the source information.

4. Results and Analysis

4.1 Legal Requirements Assessment

Indian ADR framework, especially for arbitration, is still governed by The Arbitration and Conciliation Act of 1996¹⁴. Subsequent changes to the Act, also in 2015; 2019 and 2020 have enhanced how the procedure operates; have elaborated on the criteria of the arbitrators; and other reforms aimed at reducing judicial intervention to a bare minimum. These reforms are consistent with global standards making India more attractive as an arbitration-friendly nation. However, the study shows that there are weak enforcement mechanisms which cause delay and dilution of enforceability of the arbitral awards. Mediation Act 2023 has provided a formal structure for institutionalized mediation removing credibility and enforceability concerns¹⁵. As it stands, much more work needs to be done in raising awareness and in the actual development of infrastructure to complement the Act.

4.2 Judgments and case laws

The structure and usage of ADR methodology in India also have received distinctive referring and impact from judicial choice. Decisional precedents such as *SBP & Co. v. Patel Engineering Ltd.* and *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* showcase the judiciary's attempts at controlling arbitration proceedings and ensuring the sanctity of arbitration agreements. Nonetheless, these difficulties have arisen from the sources' vagueness and inconsistent court interpretations, especially on matters concerning the enforcement of awards and interim measures. Such discrepancies point to the increased requirement of standardization of judicial input to improve the predictability and efficiency of ADR mechanisms.

4.3 Practical Implementation

The use of ADR mechanisms can differ greatly depending upon the geographical location of a claim and/or type of dispute¹⁶. Arbitration is common in mercantile disputes although the exorbitant costs involved and formalities inherent in legal processes may limit the practice more so within SMEs or the public¹⁷. Despite rising adoption, mediation is still not embraced widely since people have hardly any knowledge about it, and due to its lack of a solid infrastructure in several parts of the country. Lok Adalats are still employed in uncovering disagreements at commonplace levels and in rural places in particular, they are quick as well as cheap solutions. However, because they are relatively unconstrained, they can cause complications concerning procedural arbitration and the obligatory implementation of agreements.

4.4 Challenges in ADR Adoption

Some of the systemic barriers which contribute to the failure of ADR mechanisms include the following; ADR's benefits are not well understood by the public which, together with the culture of litigation hinders its acceptance¹⁸. Lack of proper compliance with the awards and memoranda may be attributed to procedural issues, procedural interferences, or intervention by courts, hence causing a loss of creditability amongst businesses and investors. Additionally, weak institutions for the practice of ADR inherent in small scale, short supply of qualified mediators and arbitrators and poor infrastructure required for the institutionalized ADR procedures limit the application of these mechanisms.

¹³ Omer Hassan and Mehreen Siyyab Abbasi, 'Legal Framework of Alternative Dispute Resolution (ADR) Mechanisms in Pakistan: A Comparative Study with Turkey, Malaysia, and Bangladesh' (2023) 2 *Law and Policy Review* 37 <<https://journals.umt.edu.pk/index.php/lpr/article/view/4831>>.

¹⁴ Jocelyn Alayan and Nibale Ghazal, 'Arbitration as a Means of Resolving Disputes' (2023) 6 *International Journal of Research in Engineering, Science and Management* 31 <<https://journal.ijresm.com/index.php/ijresm/article/view/2572>>.

¹⁵ Krista Wiegand, Erin Rowland and Eric Keels, 'Third-Party Knowledge and Success in Civil War Mediation' (2020) 5 *The British Journal of Politics and International Relations*.

¹⁶ Francis Kariuki and Vianney Sebayiga, 'Evaluating the Role of ADR Mechanisms in Resolving Climate Change Disputes' (2022) 5 *SSRN Electronic Journal*.

¹⁷ Matteo Rossi and others, 'ESG, Competitive Advantage and Financial Performances: A Preliminary Research' (2020) 5 *Handle.net* 969 <<https://hdl.handle.net/20.500.12070/44916>> accessed 28 June 2023.

¹⁸ Joe Collenette, Katie Atkinson and Trevor Bench-Capon, 'Explainable AI Tools for Legal Reasoning about Cases: A Study on the European Court of Human Rights' (2023) 317 *Artificial Intelligence* 103861.

5. Conclusion and Recommendation

5.1 Conclusion

The study emphasizes that ADR frameworks apply when traditional litigation is unproductive to address the issue within the emerging markets in India. The Indian context of ADR beginning with the Arbitration and Conciliation Act, of 1996, and the enhancement with provisions such as the Mediation Act, of 2023, establishes appreciable progress in formulating an effective substitute for court litigation. The addition of ADR in the Code of Civil Procedure and judicial precedence has made this system stronger. However, there are drawbacks like; Irregularity in the enforcement of the arbitral awards, Low public awareness, and inadequacy of structure etc. which hinder the proper growth of ADR mechanisms.

5.2 Recommendations

- Promote Better Public Awareness and Training Courses

Education of the public and businesses on the importance of employing ADR mechanisms remains critical¹⁹. Awareness and willingness through government-sponsored programs, cooperation with legal societies, and media interventions can go a long way in the recognition of arbitration, mediation, and Lok Adalats as equally effective forms of dispute settlement. At the same time, providing strong large-scale training for the mediators and the arbitrators will help to enhance the effectiveness and legitimacy of the ADR proceedings²⁰.

- Increase the effectiveness of measures to ensure compliance

Removing and resolving such barriers includes dealing with delay and/or inconsistency in the enforcement of arbitral awards. Special enforcement chambers within courts or arbitration centres simply help to accelerate the process. Legislative changes that will limit the court's interference in arbitration procedures will lead to more confidence in ADR solutions²¹.

- Build Organizational Framework

It becomes important to back up strengthening institutional antecedents for ADR like centers for arbitration and mediation²². The development of physical and technological infrastructures for investment will make ADR proceedings more effective, especially in areas deprived of resources. The government needs to come up with ways that will promote the private sector and contribute to establishing superior facilities for arbitration all over the world.

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²¹ Carrie Menkel-Meadow, 'What Is an Appropriate Measure of Litigation? Quantification, Qualification and Differentiation of Dispute Resolution' (papers.ssrn.com/29 July 2020) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3663304> accessed 20 October 2021.

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