

Alternative Dispute Resolution in India: Reimagining Access to Justice through Settlement, Speed, and Party Autonomy

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Abstract

Alternative Dispute Resolution (“ADR”) has become an indispensable part of the Indian justice system as courts continue to face mounting arrears and delays. ADR mechanisms such as arbitration, mediation, conciliation, and Lok Adalats offer a more flexible, economical, and relationship-preserving path to resolving disputes. In India, the statutory framework for ADR is primarily located in Section 89 of the Code of Civil Procedure, 1908, the Arbitration and Conciliation Act, 1996, and the Mediation Act, 2023. Judicial interpretation has also been crucial in shaping the scope and effectiveness of these mechanisms, particularly through landmark decisions such as *Salem Advocate Bar Association v. Union of India* and *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Ltd.* This article examines the evolution, statutory basis, doctrinal development, advantages, limitations, and future relevance of ADR in India. It argues that ADR is no longer merely an alternative to litigation; it is a central instrument for access to justice in a modern legal system.

Alternative Dispute Resolution (ADR) has emerged as one of the most significant innovations in the Indian justice delivery system. In a legal environment marked by congestion, delays, and rising litigation costs, ADR offers mechanisms that are faster, less adversarial, and often more responsive to the parties' needs. Arbitration, mediation, conciliation, and Lok Adalats collectively create a pluralistic framework that enables disputes to be resolved outside the traditional trial model. In India, ADR is supported by Section 89 of the Code of Civil Procedure, 1908, the Arbitration and Conciliation Act, 1996, and the Mediation Act, 2023. Judicial decisions, such as *Salem Advocate Bar Association v. Union of India*, *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Ltd.*, and *Anita Kushwaha v. Pushap Sudan*, have given constitutional and procedural substance to the concept of settlement-oriented justice. This article examines the legal framework, doctrinal growth, practical benefits, and continuing challenges of ADR in India. It argues that ADR is no longer a supplementary device but a central component of access to justice and modern legal capacity building.

Keywords: Alternative Dispute Resolution; Arbitration; Mediation; Conciliation; Lok Adalat; Section 89 CPC; Access to Justice; Mediation Act, 2023; Arbitration and Conciliation Act, 1996; Indian legal system.

Introduction

The Indian legal system has long struggled with procedural delay, docket congestion, and the rising cost of litigation. In such a context, ADR has emerged as a meaningful response to the limitations of adversarial

adjudication. It enables disputes to be resolved in a manner that is faster, less expensive, and often more satisfactory to the parties than conventional trial-based proceedings. The significance of ADR is not simply procedural. It reflects a deeper shift in the philosophy of justice—from command-driven resolution by the court to settlement-oriented resolution by the parties with the assistance of a neutral third party. In India, this shift has acquired constitutional legitimacy through the Supreme Court's emphasis on access to justice as an essential component of Article 21 and the broader rule of law.

ADR is particularly relevant in commercial disputes, family conflicts, labour matters, consumer complaints, and cross-border transactions. It is also increasingly important in legal education and professional training, where practical skills such as negotiation, mediation, and settlement drafting are becoming essential. The Indian judiciary faces an enormous volume of disputes, many of which could be resolved more efficiently through non-trial mechanisms. Litigation often involves procedural complexity, delay, repeated adjournments, and substantial financial and emotional burden. ADR responds to these concerns by offering a dispute-resolution model that is faster, less formal, and more collaborative than ordinary court litigation. ADR also reflects a deeper philosophical shift in legal thinking. Instead of viewing disputes only through an adversarial lens, it recognizes that many conflicts are better handled through negotiated settlement, guided dialogue, or expert neutral evaluation. This is particularly important in a country like India, where access to justice must be meaningful, affordable, and timely. The significance of ADR has increased further with the growing emphasis on legal capacity building in law schools, judicial academies, bar associations, and professional training programmes. For students and practitioners, ADR is not only a legal concept but also a practical skill set involving communication, negotiation, neutrality, and settlement drafting.

Meaning and Scope of ADR

Alternative Dispute Resolution refers to a cluster of processes used to resolve disputes outside a full court trial. The most common forms are arbitration, mediation, conciliation, negotiation, and Lok Adalat settlement. Each mechanism has its own structure, level of formality, and binding effect, but all aim to achieve efficient and workable resolution. Arbitration is adjudicatory. The parties submit their dispute to an arbitrator, and the resulting award is generally binding. Mediation is facilitative and voluntary, with the mediator helping the parties reach a mutually acceptable settlement. Conciliation is similar but often slightly more interventionist. Lok Adalats provide a statutory forum where settlement can be achieved in suitable matters, especially where compromise is possible. The broad appeal of ADR lies in its flexibility. It can preserve commercial relationships, reduce hostility in family or workplace conflicts, and provide specialized decision-making in technically complex matters. For this reason, ADR has become an indispensable part of contemporary justice systems across jurisdictions.

ADR refers to a family of processes through which disputes are resolved outside a full judicial trial. The main forms are arbitration, mediation, conciliation, negotiation, and Lok Adalat settlement. Each mechanism differs in procedure and legal effect, but all seek to reduce the burden of litigation while promoting efficient dispute resolution. Arbitration is adjudicatory in nature and results in a binding award rendered by a neutral arbitrator. Mediation is facilitative and settlement-based, with the mediator assisting the parties in reaching a voluntary resolution. Conciliation is similar to mediation, though it is often more structured and may involve the conciliator suggesting terms of settlement. Lok Adalats provide a statutory forum for compromise, especially in disputes suitable for mutual settlement. The utility of ADR lies in its flexibility. Parties may tailor the process to the nature of the dispute, choose a neutral with subject-matter

expertise, maintain confidentiality, and preserve ongoing relationships. This is particularly valuable where the adversarial model would otherwise deepen conflict.

Statutory Framework in India

The Indian statutory framework for ADR is centered around three principal sources. First, Section 89 of the Code of Civil Procedure, 1908 empowers courts to refer disputes to arbitration, conciliation, mediation, judicial settlement, or Lok Adalat when settlement elements are present. The provision was introduced to encourage out-of-court resolution and to reduce the burden on courts. Second, the Arbitration and Conciliation Act, 1996 provides the core legal framework for arbitration and conciliation in India. The official long title of the Act states that it is designed “to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation and for matters connected therewith or incidental thereto.” Third, the Mediation Act, 2023 is a major legislative development. Its long title states that it is intended “to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial or otherwise, enforce mediated settlement agreements, provide for a body.

The Indian statutory framework for ADR is anchored in Section 89 of the Code of Civil Procedure, 1908. This provision empowers civil courts to refer a dispute for settlement through arbitration, conciliation, mediation, judicial settlement, or Lok Adalat where settlement appears possible. Though initially controversial in implementation, Section 89 has become the procedural gateway to court-referred ADR.¹ The Arbitration and Conciliation Act, 1996 provides the principal legislation governing arbitration and conciliation in India. It incorporates the UNCITRAL model approach and seeks to make arbitration more efficient and enforceable. Over time, Indian courts have reinforced the finality of arbitral awards while also scrutinizing arbitrator neutrality and procedural fairness. The Mediation Act, 2023² is a significant recent development. It gives mediation a separate legislative identity, strengthens institutional mediation, and creates a more coherent framework for mediated settlement agreements and related procedures. Public legal materials indicate that the Act is intended to modernize mediation practice and make it a more reliable dispute-resolution avenue.

Judicial Evolution

The Supreme Court has played a foundational role in giving practical meaning to ADR in India. In *Salem Advocate Bar Association v. Union of India*,³ the Court upheld the validity and importance of ADR-related reforms and encouraged courts to make meaningful use of Section 89 CPC. The judgment helped move ADR from legislative aspiration to judicial practice. The most important doctrinal clarification came in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Ltd.* There, the Court explained how Section 89 should be applied and clarified the categories of disputes appropriate for ADR. It emphasized that courts should identify disputes suitable for settlement and then refer them to the appropriate ADR mechanism. This decision remains central to any discussion of ADR under Indian civil procedure.

In *Anita Kushwaha v. Pushap Sudan*, the Supreme Court recognized access to justice as a meaningful constitutional guarantee, not a hollow promise. That reasoning has important implications for ADR because ADR can reduce barriers created by cost, distance, delay, and procedural complexity. It reinforces

¹ *Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. Ltd.*, (2010) 8 SCC 24.

² Mediation Act, No. 17 of 2023, India Code.

³ *Salem Advocate Bar Ass’n v. Union of India*, (2003) 1 SCC 49.

the view that efficient dispute resolution is part of substantive justice. The law of arbitration has also developed through cases concerned with neutrality and fairness. In *TRF Ltd. v. Energo Engineering Projects Ltd.*, the Court addressed the problem of unilateral appointment and arbitrator independence. Such decisions are important because the credibility of ADR depends on public confidence in the impartiality of the neutral decision-maker.

Importance of Key Case Laws

- *Salem Advocate Bar Association v. Union of India* strengthened the legitimacy of court-referred settlement mechanisms and encouraged procedural reforms in civil justice.
- *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Ltd.* clarified the working of Section 89 CPC and became the leading authority on court referral to ADR.
- *Anita Kushwaha v. Pushap Sudan* linked access to justice with constitutional equality and effective legal remedies.
- *TRF Ltd. v. Energo Engineering Projects Ltd.*⁴ reinforced the principle that arbitration must rest on neutrality and procedural integrity.

These judgments collectively show that ADR in India is not a peripheral innovation. It is part of the broader constitutional and procedural architecture of justice.

Advantages of ADR

ADR offers several practical and jurisprudential advantages. First, it is generally faster than ordinary litigation, which is especially useful in commercial disputes where time has direct economic value. Second, it is often less expensive, reducing the financial burden on parties and the system. Third, it supports confidentiality, which matters in family disputes, business disputes, and matters involving sensitive information.⁵ ADR also improves party autonomy. Instead of having a result imposed by a judge after long pleadings and evidence, the parties may help shape the solution themselves. This often leads to higher compliance because the settlement reflects consent rather than coercion. In many cases, that makes the outcome more durable and less likely to produce further litigation. From a systemic perspective, ADR reduces pressure on courts and allows judicial resources to be directed toward disputes that truly require authoritative adjudication. It therefore serves both private interests and public administration of justice.⁶

Limitations and Challenges

Despite its strengths, ADR is not universally suitable. Some disputes require full judicial scrutiny, especially where there are allegations of serious fraud, systemic illegality, or public law questions. In such cases, confidentiality and compromise may not be appropriate.⁷ Another concern is unequal bargaining power. In mediation or settlement negotiations, a stronger party may dominate the process unless the mediator is skilled and the framework is carefully designed. This is why training, ethical standards, and procedural safeguards are essential. Arbitration also faces concerns relating to cost, delay, and neutrality when parties perceive institutional weakness or arbitrator bias. That is why the broader trend toward

⁴ *TRF Ltd. v. Energo Eng'g Projects Ltd.*, (2017) 8 SCC 377.

⁶ See Indian Institute of Corporate Affairs, Certified Mediator Programme.

⁷ *Anita Kushwaha v. Pushap Sudan*, (2016) 8 SCC 509.

professionalization, including capacity-building and institutional arbitrator training, is important for ADR's credibility in India.

ADR in Capacity Building

For a capacity-building programme, ADR should be taught as both doctrine and skill. Participants should learn the legal basis of ADR, the referral structure under Section 89 CPC,⁸ the procedure under the Arbitration and Conciliation Act, 1996, and the newer framework under the Mediation Act, 2023⁹. They should also understand the limits of each process and the types of disputes best suited for them. Practical exercises should include mock mediation, simulated arbitration, drafting of settlement terms, and case-based discussion. Such training is useful for law teachers, law students, legal aid volunteers, and practitioners. It also helps build communication skills, listening ability, neutrality, and settlement judgment—qualities that are essential for modern dispute-resolution work.¹⁰ ADR training becomes especially valuable in India because the legal profession increasingly demands practical competence alongside theoretical knowledge. A lawyer who understands settlement dynamics is better equipped to advise clients, conserve judicial time, and promote efficient justice delivery.

Conclusion

ADR has moved from being a secondary option to becoming a central feature of modern Indian justice. Its value lies not merely in speed but in its ability to transform conflict into structured settlement, reduce strain on courts, and enhance access to justice. The statutory reforms and judicial decisions discussed above show that India has steadily built a strong normative and institutional foundation for ADR. For academic and training purposes, ADR¹¹ is a rich subject because it combines legal doctrine, court practice, policy reform, and practical skill development. A capacity building programme on ADR should therefore present it not as an escape from law, but as an advanced and increasingly necessary mode of delivering law's promises.

Bibliography

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⁸ Code of Civil Procedure, No. 5 of 1908, § 89, India Code

⁹ See generally India Code and PIB materials on the Mediation Act, 2023.

¹⁰ See materials discussing ADR institutionalization and capacity building in India.

¹¹ Arbitration and Conciliation Act, No. 26 of 1996, India Code