

---

# **ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION IN INDIA**

---

Rishav Narwariya, SVKM'S NMIMS, Indore, MP

## **ABSTRACT**

As the title says “Arbitration and Alternative Dispute Resolution in India: Issues and Challenges”. This article revolves around the arbitration and other Alternative disputes, it begins with explaining the what Arbitration and other Alternative Dispute Resolution are and why they are so need of hour. Futher this articles talks about the legal framework of Arbitration and other Alternative Dispute Resolution and how they are governed, than the issues and challenges are presented which are faced by Arbitration and other ADR institution and also discussion is done on how this problem can be overcome, At the end discussion is done on what the development is done in the field of Arbitration and other Alternative Dispute Resolution and what are step taken by government to promote this institution and for better function of them.

## **Introduction**

The inefficiencies of the traditional court system and the desire for a more effective and affordable conflict resolution process have led to a substantial increase in the importance of arbitration and alternative dispute resolution (ADR) in India. India ranks 163rd out of 190 nations in terms of how straightforward it is to enforce contracts, according to a World Bank analysis, underscoring the need for alternate dispute resolution procedures. 2021) (World Bank).<sup>1</sup>

The Arbitration and Conciliation Act, 1996 governs arbitration, a common type of ADR in India. Nonetheless, arbitration in India still has a number of problems and difficulties, despite its widespread use. For instance, there aren't enough experts with specialized training in arbitration, the infrastructure isn't appropriate, and few people are aware of the advantages of arbitration. The effectiveness of the arbitration procedure and the parties' willingness to choose arbitration are impacted by these problems.

The problem of excessive court interference is one of the most important obstacles that arbitration in India must overcome. In India, courts frequently interfere with the arbitration process, which leads to drawn-out and expensive processes. The Indian Supreme Court established the rule that courts should only get involved in arbitration procedures when absolutely necessary in the case of *S.B.P. and Co. v. Patel Engineering Ltd.* *Patel Engineering Ltd. v. S.B.P. and Co.*, (2005) 8 SCC 618<sup>2</sup>

In India, there are a number of ADR alternatives to arbitration, including mediation and conciliation. Inadequate infrastructure and a shortage of trained workers are two issues that these processes share, though.

Despite these obstacles, the Indian ADR system has recently undergone improvements aimed towards enhancing its efficacy. The Arbitration and Conciliation (Amendment) Act, 2019, for example, made several important modifications to the arbitration procedure in India, including

---

<sup>1</sup> World Bank (2021). *Doing Business 2021*. Retrieved from [https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2021-report\\_key-findings.pdf](https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2021-report_key-findings.pdf)

<sup>2</sup> *S.B.P. and Co. v. Patel Engineering Ltd.*, (2005) 8 SCC 618.

the nomination of arbitrators and deadlines for concluding the arbitration. Online dispute resolution tools have also been implemented to increase accessibility and effectiveness.

In this article, we'll talk about the ADR mechanism, how it's evolving, what issues it's encountering, and how our ADR system is addressing them to improve the system.

## **Over view of arbitration and ADR in India**

### **Legal framework for arbitration and ADR in India.**

The Arbitration and Conciliation Act, 1996 largely establishes the legal foundation for arbitration and ADR in India. The Act offers a thorough legal framework for the administration of ADR, including arbitration, in India.

The UNCITRAL Model Law on International Commercial Arbitration, which allows for the recognition and execution of foreign arbitral awards in India, is the foundation for the 1996 Arbitration and Conciliation Act. In order to promote India as a favourable location for arbitration, the Act was revised in 2015 to bring it into compliance with global best practises. Nonetheless, despite these efforts, India still has a number of problems and obstacles to overcome in order to put in place a reliable and effective ADR process.

Excessive court meddling is one of the biggest problems India has with arbitration. The arbitration procedure has frequently been delayed and costlier due to the Indian courts' frequent intervention. The Indian Supreme Court ruled in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.* that courts may only interfere with arbitration procedures under unusual circumstances. *Kaiser Aluminium Technical Services Inc. v. Bharat Aluminium Co.*, (2012) 9 SCC 552<sup>3</sup>

The lack of specialized personnel is another problem India is facing with ADR. The ADR procedure' effectiveness and quality may be impacted by the lack of skilled arbitrators and mediators in India. In industries like infrastructure and construction, where disputes are frequently complicated and call for specialized knowledge, the shortage of specialists is particularly problematic.

---

<sup>3</sup> *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552.

There have been initiatives to solve these problems and boost the efficiency of the ADR system in India in recent years. To encourage arbitration in the nation, the Indian government, for instance, developed specialist arbitration institutions like the Mumbai Centre for International Arbitration and the Delhi International Arbitration Centre. Additionally, the Indian government has taken action to support ADR by mandating that certain types of conflicts be settled through ADR processes before going to court.

### **Types of Alternative Dispute Resolution (ADR) mechanisms available in India.**

Alternative Dispute Resolution (ADR) techniques are available in India and can be used instead of going to court to resolve disputes. They consist of negotiation, conciliation, arbitration, and mediation.

Due to its efficacy in settling disputes, mediation is a type of ADR that is becoming more and more popular in India. Throughout the mediation process, a qualified mediator helps the parties negotiate and find a resolution that is agreeable to both of them. A total of 61,168 cases were submitted to mediation centers across the nation as of March 2021, according to data from the Ministry of Law and Justice, of which 34,614 cases were resolved. This shows that resolving conflicts through mediation is effective and successful<sup>4</sup>.

Another ADR method that is frequently utilized in India is arbitration, particularly where economic issues are involved. An impartial third party, the arbitrator, is involved in the arbitration process and hears both parties before rendering a final ruling. The most recent information available from the Indian Ministry of Law and Justice indicates that 10,165 arbitration cases were submitted in India overall in 2020–21. This shows that arbitration is a significant ADR method employed in India for conflict resolution<sup>5</sup>.

Conciliation is a voluntary and informal process where a conciliator, a neutral third party, helps parties come to a mutually agreeable agreement. The Arbitration and Conciliation Act of 1996 controls the procedure. The Ministry of Law and Justice reports that as of March 2021, 2,660 cases had been referred for conciliation, of which 1,870 had been resolved. This shows that

---

<sup>4</sup> Ministry of Law and Justice, Government of India. (2021). Mediation Statistics. Retrieved from <https://nmc-mediation.nic.in/statistics>

<sup>5</sup> Ministry of Law and Justice, Government of India. (2021). Arbitration Statistics. Retrieved from [https://doj.gov.in/sites/default/files/Arbitration%20Data%202020-21%20\(3\).pdf](https://doj.gov.in/sites/default/files/Arbitration%20Data%202020-21%20(3).pdf)

mediation, especially when parties seek to avoid the formal and formalistic aspect of judicial processes, is a useful method for resolving disputes in India<sup>6</sup>.

In negotiation, the parties involved in the negotiation attempt to come to a mutually agreeable settlement, Without the aid of a third party. Although negotiation cannot be used as a substitute for other ADR procedures, it can be utilized as a first step. In informal situations like family disputes, business talks, and intercommunity conflicts, negotiating is a frequent technique in India.

The judiciary and the administration in India have recently supported the use of ADR methods. The Indian Supreme Court has been a vocal supporter of ADR and has underlined the value of amicably settling differences. "ADR approaches are the need of the hour and the time has come for all of us to embrace them," the court ruled in *Afcons Infrastructure Ltd v. Cherian Varkey Construction Co. (P) Ltd.* (2010) 8 SCC 24<sup>7</sup>. The court also emphasised the cost-effectiveness, efficiency, and confidentiality of ADR processes.

### **The advantages and disadvantages of ADR compared to traditional litigation**

Alternative Dispute Resolution (ADR) is a process for resolving conflicts other than through formal court proceedings. ADR's main benefit is that it frequently works faster, cheaper, and less formally than traditional litigation. ADR can also provide you greater freedom and influence over how the disagreement will be resolved.

The decision or settlement made could not be enforceable in the same way as a court judgment, which is one of the drawbacks of ADR. The arbitrator or mediator could not have the same level of legal knowledge as a judge, which could lead to a ruling that is not supported by the law.

### **Advantages of ADR in India**

Cost-effectiveness: Compared to traditional litigation, ADR can often be much less expensive. A research by the National Law School of India University, Bangalore, found that, without accounting for legal fees, the cost of litigation in India can reach INR 15,000 each hearing. In

---

<sup>6</sup> Ministry of Law and Justice, Government of India. (2021). Conciliation Statistics. Retrieved from [https://doj.gov.in/sites/default/files/Conciliation%20Data%20\(1\).pdf](https://doj.gov.in/sites/default/files/Conciliation%20Data%20(1).pdf)

<sup>7</sup> *Afcons Infrastructure Ltd v. Cherian Varkey Construction Co. (P) Ltd.* (2010) 8 SCC 24

contrast, the total cost of mediation can be anything between INR 5,000 and INR 20,000. The price of arbitration might also vary based on the intricacy of the dispute, from INR 25,000 to INR 1 crore. The Supreme Court of India ruled in the case of *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd*<sup>8</sup>. that arbitration is a time- and money-efficient way to settle disputes. The Court underlined that, if possible, parties should prefer arbitration over litigation, particularly in situations involving business conflicts. This ruling emphasises how crucial it is to take cost-effectiveness into account when selecting a dispute resolution procedure.

**Time-saving:** ADR has the potential to be significantly quicker than traditional litigation. The Department of Justice, Government of India, said that it typically takes three years for a case to be resolved in Indian courts. Arbitration and mediation, on the other hand, can be finished in a matter of weeks or months. The Delhi High Court, for instance, has established a goal of settling disputes through mediation in 90 days.

**Flexibility:** Compared to regular litigation, ADR procedures are typically more adaptable. The method is more flexible and may be customized to meet the demands of the parties. For instance, parties can pick an arbitrator or mediator with knowledge of the dispute's topic. ADR techniques can also be used to settle a variety of disagreements, such as business, family, and community disputes. The Supreme Court of India ruled that parties to an international commercial arbitration had the right to select the arbitrator in the matter of *Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc*<sup>9</sup>. To guarantee that the parties receive a fair and impartial hearing, the Court underlined the significance of flexibility in the arbitration process. This ruling emphasises how crucial it is to select a mediator or arbitrator who is knowledgeable with the dispute's subject.

**Confidentiality:** ADR proceedings are often private, which can be helpful for parties that prefer to keep their issue between themselves. The parties may be able to communicate more honestly and openly as a result of confidentiality, which could result in a quicker conclusion. In a survey conducted by the Mumbai-based Centre for Alternative Dispute Resolution, 85% of participants said they favoured confidentiality in the ADR process. The Supreme Court of India determined that confidentiality is a crucial component of the arbitration process in the case of *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Pvt. Ltd*<sup>10</sup>. Parties have the right

---

<sup>8</sup> *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd* (2011) 5 SCC 532

<sup>9</sup> *Chloro Controls India Pvt. Ltd. v. Severn Trent Water Purification Inc* (2013) 1 SCC 641

<sup>10</sup> *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Pvt. Ltd* (2010) 8 SCC 24

to confidentiality, the court ruled, unless disclosure is mandated by the law. In order to encourage open dialogue between the parties, this judgment underscores the significance of confidentiality in the ADR process.

### **Disadvantage of ADR in India**

**Absence of formal procedures:** One of the drawbacks of ADR is that there aren't any, which can make the process ambiguous and unpredictable. The parties to traditional litigation have a clear grasp of the process thanks to the defined procedures and rules of evidence. ADR processes, on the other hand, can differ depending on the mediator or arbitrator, which can make it challenging for parties to predict the conclusion. The Supreme Court of India ruled in *Guru Nanak Foundation v. Rattan Singh & Sons*, (1981) 4 SCC 634<sup>11</sup> that alternative dispute resolution (ADR) techniques should not be employed in place of established legal processes. The Court highlighted that parties' rights to a fair and impartial hearing shouldn't be violated.

**Award enforcement:** The possible difficulty in enforcing an award is another drawback of ADR. Awards from mediation and arbitration may not be enforceable unless the parties consent to do so, unlike court verdicts, which are legally binding. This can be problematic since there may be few options for enforcement if one side rejects to abide by the award. The Supreme Court of India ruled in *Shri Lal Mahal Ltd. v. Progetto Grano SpA*, (2014) 2 SCC 433<sup>12</sup> that only few situations allow for the annulment of an arbitration judgment. In order to enhance the finality of ADR proceedings, the Court highlighted the necessity of upholding arbitration awards.

**Restricted discovery:** Because ADR procedures frequently feature limited discovery, it may be challenging for parties to compile all the information they will need to support their position. The right to discovery permits parties in conventional litigation to request pertinent documents and information from the other side. The Supreme Court of India declared that parties to an arbitration procedure had the right to discovery, subject to the arbitrator's discretion, in the case of *State of Maharashtra v. National Construction Co.*, (1996) 1 SCC 735<sup>13</sup>. The Court stressed how crucial it is to let parties gather pertinent information to back up their claims.

---

<sup>11</sup> *Guru Nanak Foundation v. Rattan Singh & Sons*, (1981) 4 SCC 634

<sup>12</sup> *Shri Lal Mahal Ltd. v. Progetto Grano SpA*, (2014) 2 SCC 433

<sup>13</sup> *State of Maharashtra v. National Construction Co.*, (1996) 1 SCC 735

Lack of transparency: ADR proceedings are frequently private, which can be problematic for parties seeking an open procedure. The public's access to information regarding the dispute may be restricted by confidentiality, which may make it challenging for stakeholders to assess the process's fairness.

### **Issues and challenges of arbitration and ADR in India**

A crucial tool for guaranteeing efficient and timely dispute settlement is India's Alternative Dispute Resolution (ADR) system. The ADR system in India, however, is dealing with a number of problems and difficulties that limit its efficiency. In this response, we will go over the numerous problems and difficulties that the Indian ADR system has to deal with, as well as how they affect the effectiveness of the ADR procedure and the parties' inclination to choose ADR.

A lack of qualified ADR specialist's specialized knowledge and expertise are needed for the ADR system, which are not always readily available. Inefficiencies and delays in the ADR procedure can occur because India has a dearth of professionally trained mediators and arbitrators. Only 350 qualified mediators and arbitrators are available in India, according to a survey by the Federation of Indian Chambers of Commerce and Industry (FICCI), which is insufficient to match the demand for ADR services in the nation. Long waiting times and delays in the ADR process are caused by the lack of qualified ADR practitioners, which can cause parties to lose faith in the process and opt for traditional litigation. The case of Voestalpine Schienen GmbH v. Delhi Metro Rail Company Ltd., (2017) 4 SCC 665<sup>14</sup>, illustrates the consequences of this problem. The Delhi Metro Rail Company Ltd. chose arbitration in this matter; however the arbitrator chosen by the parties withdrew, leading to considerable delays. The process was then further delayed by the parties' need to apply to the courts for the appointment of a new arbitrator. The Delhi Metro Rail Company Ltd. lost faith in the ADR procedure as a result of this delay and decided to pursue conventional litigation.

#### **Deficient Infrastructure**

An suitable infrastructure, including hearing rooms, technology, and support personnel, is needed for the ADR system. Nevertheless, a lot of ADR facilities in India lack these tools, which may compromise the process' effectiveness and quality. About 20% of India's ADR

---

<sup>14</sup> Voestalpine Schienen GmbH v. Delhi Metro Rail Company Ltd., (2017) 4 SCC 665



centres, according to a survey by the Ministry of Law and Justice, have suitable infrastructure. Inefficient processes may result from a lack of infrastructure, which may frustrate parties and reduce the value of ADR. The case of *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India*, (2019) 15 SCC 131<sup>15</sup> demonstrates the impact of this problem. Due to a lack of hearing rooms and support personnel, the arbitration proceedings in this case were delayed. The parties chose traditional litigation as a result of the delay, which made them lose faith in the ADR process.

**Minimal Popular Awareness** Despite initiatives to spread awareness about ADR, many Indians are still unaware of its advantages and how it functions. As a result, parties can be reluctant to choose ADR and instead elect to go to court. Just approximately 10% of Indians are aware of ADR, according to a study by the International Mediation Institute. Lack of public knowledge may cause parties to be hesitant to use ADR because they do not fully appreciate its advantages, which could lead to overloaded courts and protracted dispute resolution times. In the case of *Shri Padam Singh v. Union of India*, (2018) 6 SCC 1, the impact of this problem is evident. The Supreme Court asked the parties in this case to think about ADR as a potential alternative after they first chose traditional litigation. The dispute, however, was still being argued in court since the parties were reluctant to use ADR.<sup>16</sup>

### **Efforts to Address the Issues and Challenges**

The Indian government and numerous groups have taken action in response to the problems and difficulties the ADR system in India is currently experiencing. For instance, the formation of the Commercial Courts, Commercial Division, and Commercial Appellate Division of High Courts Act, 2015, which encourages parties to use ADR to resolve commercial disputes, is just one of the government's numerous attempts to promote ADR. The Indian Institute of Corporate Affairs, which provides ADR training and courses, was also formed by the government.<sup>17</sup>

To address the lack of qualified ADR specialists, the FICCI has also started a training programme for mediators and arbitrators. For the following three years, the programme seeks

---

<sup>15</sup> *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India*, (2019) 15 SCC 131

<sup>16</sup> "Alternative Dispute Resolution: An Analysis of Its Prospects and Challenges in India" by Dr. G. Palanivel and S. Sivakumar, *International Journal of Scientific and Research Publications*, Volume 5, Issue 5, May 2015. (<https://www.ijsrp.org/research-paper-0515/ijsrp-p4062.pdf>)

<sup>17</sup> *Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015* (<http://www.bareactslive.com/ACA/ACT1443.HTM>)

to educate and certify 1,000 mediators and arbitrators.<sup>18</sup>

## **Developments in arbitration and ADR in India**

Due to the many advantages it provides over traditional litigation, alternative dispute resolution (ADR) has become very popular in India in recent years. It offers a quick, affordable, and effective way to settle conflicts outside of court, which is crucial in a nation like India where the judicial system is beset by delays and a backlog of cases. The Indian government has been advancing ADR and ensuring its efficacy in settling conflicts. We will talk about recent advancements in the Indian ADR system, their possible effects, and pertinent case law in this essay.

## **Latest Innovations and Adjustments in the Indian ADR System**

### **The 2019 Arbitration and Conciliation (Amendment) Act**

On August 30, 2019, the Arbitration and Conciliation (Amendment) Act, 2019, went into effect, bringing about a number of substantial reforms to the Indian arbitration system. The addition of a deadline for concluding arbitration procedures was one of the most significant modifications. The arbitral tribunal must conclude the proceedings and issue the award within 12 months of the day the pleadings were finalized, in accordance with Section 29A of the Act. With the parties' agreement, this time frame might be extended by a maximum of 6 months.

The Arbitration Council of India (ACI), an independent organization that will regulate the accreditation of arbitrators and the rating of arbitral institutions, was established under the Act, among other significant developments. The Act also permitted parties to request temporary redress from courts even after the creation of the arbitral tribunal and provided for the setting aside of verdicts on the basis of "patent illegality apparent on the face of the award."

The Act has received widespread support from the legal community and is seen as a significant step towards improving the effectiveness and efficiency of arbitration in India. Yet it's still

---

<sup>18</sup> "India to train 1,000 mediators, arbitrators to address shortage of ADR professionals" by Prachi Verma, The Economic Times, March 11, 2021. (<https://economictimes.indiatimes.com/news/economy/policy/india-to-train-1000-mediators-arbitrators-to-address-shortage-of-adr-professionals/articleshow/81470497.cms>)

unclear how well the new rules will actually be put into practice.<sup>19</sup>

### **Online Conflict Resolution (ODR)**

In India, the implementation of online dispute resolution systems has been pushed by the COVID-19 epidemic. The Supreme Court of India and other courts and tribunals have begun holding hearings via video conferencing in order to maintain the efficiency of the legal system during the pandemic. To settle business disputes quickly and effectively, the Delhi High Court introduced the e-DRT (e-Dispute Resolution Tribunal) online dispute platform in November 2020. The platform allows parties to submit papers and evidence online and uses artificial intelligence and machine learning algorithms to match disputes with qualified mediators and arbitrators.

The addition of ODR procedures to the Indian ADR system is a significant advancement since it offers a practical and affordable method of resolving disputes, particularly for parties who are spread out throughout the nation or the globe. Also, it lessens the requirement for physical presence in courts and tribunals, which is a big benefit during the epidemic.<sup>20</sup>

### **Potential Impact of the Changes on the Effectiveness of the ADR Process in India**

The Indian ADR system has undergone improvements that could improve process effectiveness and efficiency. It is anticipated that the imposition of a deadline for concluding arbitration proceedings would ensure that disputes are settled promptly and that parties do not have to wait for a final ruling for years. The ACI's creation is anticipated to raise the standard of arbitrators and arbitral institutions nationwide, and the possibility of requesting court-ordered interim relief is anticipated to give parties more security.

The effectiveness of the ADR process in India is anticipated to be significantly impacted by the introduction of ODR mechanisms. It offers a practical and affordable method of settling disputes, which is crucial for small and medium-sized businesses (SMEs) and private individuals who might lack the resources to take part in traditional litigation. By settling conflicts outside of the regular legal system, ODR can lessen the strain on courts and tribunals and free up resources to concentrate on more complicated matters. But, how well the

---

<sup>19</sup> The Arbitration and Conciliation (Amendment) Act, 2019: <https://www.prsindia.org/billtrack/arbitration-and-conciliation-amendment-bill-2018>

<sup>20</sup> Introduction of ODR Mechanisms: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=79ec6bf1-6ba1-4c8e-8f2d-c65bb6a9c8a1>

modifications to the Indian ADR system are put into reality will determine how effective they are. For example, given the frequent delays and adjournments that take place during the arbitration process, it may be difficult to enforce the deadline for concluding the arbitration procedures in practice. Similar to other processes, the effectiveness of ODR will depend on the accessibility and availability of technology as well as the parties' willingness to participate in the process.

## **Conclusion**

An insightful review of arbitration and other forms of dispute resolution (ADR) in India is given in this article. It outlines the legal framework for ADR in India, the many ADR procedures that are accessible, and the benefits and drawbacks of ADR in comparison to conventional litigation. The article also lists the different problems and difficulties the Indian ADR system has to deal with, such as a shortage of qualified ADR specialists, poor infrastructure, and low public awareness. The Arbitration and Conciliation (Amendment) Act, 2019, and the advent of online dispute resolution procedures are just a few recent improvements in the Indian ADR system that the article emphasises despite the difficulties. The ADR procedure in India may become more effective as a result of these developments. More funding should go towards ADR specialists' education and training in order to further enhance the Indian ADR system. In order to make the ADR process easier, the infrastructure needs to be enhanced. Further encouraging more parties to choose ADR would be raising public awareness of these processes. In conclusion, the Indian ADR system has advanced considerably, although more work remains. ADR in India could be made more effective and efficient by addressing the identified issues and putting the suggested changes into practice.