ADR, SETTLEMENT, AND CORPORATE GOVERNANCE DISPUTES: THE UNTAPPED POTENTIAL OF MEDIATION AND ARBITRATION IN SHAREHOLDER CONFLICTS

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ABSTRACT

This research paper examines the applications of the alternative dispute resolution (ADR) models, which deals with mediation, arbitration and settlement models in any shareholder dispute which is brought about by a corporate governance issue. The shareholder conflicts are often complex, as well as the matters of power imbalance, the allegation of oppression and mismanagement and the dispute about control and the strategy, which impact the corporate functioning and the long-term survival. Previously, these disputes have been decided by applying the statutory redress to the Companies Act, 2013, particularly in the National Company Law Tribunal (NCLT). However, these procedures are time consuming and adversarial and it is the aspect which is questionable in relation to its efficiency. The paper discusses the issue of whether arbitration sufficient on matters relating to solving disputes or whether mediation and settlement based mechanisms can be more efficient and relationship-focused solutions. Despite the fact that arbitration is much preferred due to its effectiveness, confidentiality and freedom of the parties, it has significant drawbacks which are that it cannot be effectively used to address the problems associated with governance and statutory issues. Whereas mediation is more flexible and non-adversarial and ensures the continued working relationship between businesses, but is not final without settlement. The paper concludes that the potential of mediation and hybrid ADR models is still underused in the context of recent legislative changes including the Mediation Act, 2023. It states that a more balanced and effective method to solve the shareholder dispute would be an integrated ADR model that uses arbitration, mediation, and settlement options.

Keywords: Shareholder Disputes, Corporate Governance, Arbitration, Mediation, Hybrid ADR.

Introduction

Shareholder disputes have become more complex, which portrays more structural problems in the corporate governance. Disputes between the majority and minority stockholders, accusations of oppression and mismanagement, control and direction disagreements tend to be very impactful on the internal corporate operations as well as the long-term stability. Historically, statutory redress has been used through the Companies Act, 2013 to solve such disputes in India especially before the National Company Law Tribunal (NCLT). Nevertheless, these proceedings have shown concern due to their technical, time consuming and adversarial characteristics, which have questioned their efficiency in providing timely and efficient decisions.[1] Arbitration as Alternative Dispute Resolution (ADR) widely recognised as an effective mechanism. Its merits such as flexibility, confidentiality and party autonomy make it appropriate in conflicts that come out of contractual relationships in a shareholders agreement. Arbitration however has serious drawbacks in shareholder disputes. Most of these cases have statutory rights and consideration of the public interest, mostly cases of oppression and mismanagement which is the exclusive prerogative of the NCLT.[2]

Mediation and settlement-based strategies are also becoming well-known in the ADR system, alongside arbitration. In contrast to arbitration, mediation is a non-adversarial approach that values the cooperative decision-making process and does not harm business relations. This is especially applicable to the shareholder disputes that are relational in nature and are associated with several stakeholders. The introduction of the Mediation Act, 2023 is a major move towards institutionalisation of mediation in India because the mediated settlement agreements in India have been given legal status and enforceability.[3] Nonetheless, mediation is still not used extensively in corporate governance disputes. This paper reviews the role of ADR in eliminating shareholder disputes with specific focus on the untapped mediation and settlement mechanisms as well as arbitration. It assesses the shortcomings of the current systems of dispute resolutions and whether an integrated ADR strategy can better be used to resolve the intricacies of shareholder-related disputes.

[1] Siddhanth Moirangthem & Shresth Goel, "An Examination of the Remedies Available to Shareholders in Cases of Oppression and Mismanagement in Light of Recent Judgements", INDIAN J.L. & LEGAL RSCH., 2022, at 1.
[2] Anuj Berry, Ashish Bhan & Mohit Rohatgi, "Arbitrability of Shareholder Disputes in India: Complexities and Issues", ASIA-PAC. ARB. REV. 2024, at 1.
[3] Dr. Samina Nahid Baig, "A Critical Analysis of the Mediation Act, 2023", 13 INT'L J. CREATIVE RSCH. THOUGHTS 1, 3 (2025).

1.1 Literature Review

1. Snehal Bhatia, Multiparty Arbitration and Consolidation of Proceedings: Indian and Transnational Legal Dogmatics considers the doctrinal and procedural issues that are involved in multiparty arbitration especially in cases of disputes involving multiple agreements and parties. The author draws attention to the issues concerning joinder, intervention and consolidation under Indian and transnational perspective and points out the lack of clear legislative frame work in India. The article does identifying structural weaknesses in arbitration, it does not go far enough into addressing whether non-adversarial mechanisms might be more capable of settling the relational and governance-oriented nature of such disputes.[4]

2. Srishti Yadav, Settlement Agreements in ADR Mechanisms in India: A Critical Analysis discusses the creation and enforceability of settlement agreements in the Indian ADR regime. The author considers the contribution of settlement agreements to the credibility of ADR by finalising the disputes and distinguishes between court annexed and private mediation. However, the research is still general in nature and does not focus on how settlement mechanisms work in specific contexts such as shareholder or corporate governance disputes especially those that involve multiparty relationships.[5]

3. Siddhanth Moirangthem & Shresth Goel, An Examination of the Remedies Available to Shareholders in Cases of Oppression and Mismanagement in Light of Recent Judgements are rather focused on statutory remedies under the Companies Act, 2013, specifically Sections 241-244. The authors point out the way courts have interpreted oppression and mismanagement in a wide and just way, with a focus on fairness and the protection of minorities. Whilst the article does establish the relational and power driven nature of shareholder disputes, what it misses is how such disputes may be resolved through consensual and non-adversarial means of dispute resolution.[6]

4. Anuj Berry, Ashish Bhan & Mohit Rohatgi, Arbitrability of Shareholder Disputes in India:

[4] Snehal Bhatia, "Multiparty Arbitration and Consolidation of Proceedings: Indian and Transnational Legal Dogmatics", 2 INDIAN J.L. & LEGAL RSCH. 1, 3 (2021).

[5] Yadav, S. (2022). "Settlement Agreements in ADR Mechanisms in India: A Critical Analysis". Issue 1 Indian JL & Legal Rsch., 4, 1.

[6] Siddhanth Moirangthem & Shresth Goel, "An Examination of the Remedies Available to Shareholders in Cases of Oppression and Mismanagement in Light of Recent Judgements", INDIAN J.L. & LEGAL RSCH., 2022, at 1.

Complexities and Issues Bases on the distinction between rights in rem and rights in personam, the authors have rendered a doctrinal analysis of arbitrability. The authors point to the conflict between contractual autonomy and statutory remedies, pointing out that many shareholder disputes are within the exclusive jurisdiction of the NCLT. Although the article provides a solid legal framework for understanding the boundaries of arbitration, it is still limited to arbitration and does not discuss alternative mechanisms that may have a better solution for governance sensitive dispute.[7]

5. Dr. Samina Nahid Baig, A Critical Analysis of the Mediation Act, 2023, analyses the statutory framework of Mediation in India. The author identifies some of the significant features, including pre-litigation mediation, enforceability of settlement agreements, and the creation of institutional mechanisms. While the article offers a comprehensive overview of the legal framework, it does not particularly analyse the application of mediation in shareholder or corporate governance disputes, and so its contextual applicability is limited.[8]

6. Akshaya Kamalnath & Aparajita Kaul, Adding Mediation to India's Corporate Resolution Process, contemplating the integration of mediation as a process in insolvency proceedings under the Insolvency and Bankruptcy Code, 2016. The authors conceptualise insolvency resolution as a relational process that involves multiple stakeholders and argue that mediation can serve as a process for cooperation and consensus building. However, their analysis is limited to the situation of insolvencies and does not address large-scale shareholder disputes within the corporate governance frameworks.[9]

7. Sahil Kanuga & Shraddha Bhosale, Mediation of Commercial Disputes in India, looks at the increasing significance of mediation in Indian legal system especially in view of the rising litigation expenses and delays involved in arbitration. The authors highlight the role of pre-institution mediation as per Section 12A of the Commercial Courts Act, 2015 and the authors have provided mediation as a flexible and efficient alternative. However, the study does not focus on the specific challenge of shareholder conflicts within the corporate

[7] Anuj Berry, Ashish Bhan & Mohit Rohatgi, "Arbitrability of Shareholder Disputes in India: Complexities and Issues", ASIA-PAC. ARB. REV. 2024, at 1.
[8] Dr. Samina Nahid Baig, "A Critical Analysis of the Mediation Act, 2023", 13 INT'L J. CREATIVE RSCH. THOUGHTS 1, 4 (2025).
[9] Akshaya Kamalnath & Aparajita Kaul, "Adding Mediation to India's Corporate Resolution Process", 31 INT'L INSOLVENCY REV. 163, 166 (2022).

governance structures, but mainly on commercial disputes.[10]

1.2 Statement of Problem

India is a country where shareholder disputes are attributed to a host of different issues including conflict control, violation of shareholder agreements, disagreement in boardrooms, and the issue of oppression and mismanagement. The issues of these cases are being dealt mainly with arbitration and statutory redress at the NCLT. Nevertheless, arbitration is limited by the judicial in ability to address issues relating to statutory rights and governance issues although litigation is still lengthy and adversarial. Though in the ADR context mediation and settlement processes have been acknowledged, their application in shareholder and corporate governance disputes has not been as much as seen before. Consequently, it is necessary to study more efficient and moderate approaches to shareholder conflict resolution.

1.3 Research Questions

1. Should arbitration be have a cause journey all by itself in addressing shareholder disputes that occur due to the conflict of corporate governance?

2. Will mediation, settlement, and hybrid mechanisms of ADR be an effective and relationship-oriented strategy to finding solutions to shareholder disagreements?

1.4 Research Objectives

1. To study the type of shareholder conflicts that emerge due to the conflict of corporate governance.

2. To examine the usefulness and shortcomings of arbitration as a means of settling shareholder disputes.

3. To determine how mediation, settlement, and hybrid ADR mechanisms can prove to be more efficient in settling shareholder disputes.

[10] Sahil Kanuga & Shraddha Bhosale, "Mediation of Commercial Disputes in India", 7 NLUJ L. REV. 281, 285 (2020).

1.5 Methodology

This paper is based on the doctrinal research methodology. It is based on the discussion of the laws, court judgments and the existing literature relating to shareholders conflicts and ADR systems in India. The study is based on the secondary sources like journal articles, case laws, and legal reports to discuss arbitration, mediation, and settlement as a way of solving the corporate governance dispute. The aim of the paper is to define the shortcomings of the existing mechanisms and the role of the integrated approaches to ADR in overcoming the conflicts between shareholders.

1.6 Hypothesis

Arbitration alone is not sufficient to resolve the shareholder disputes arising out of the corporate governance disputes, and the use of mediation, settlement and hybrid mechanisms of ADR provides the more effective approach.

Chapter 2: Nature of Shareholder Disputes and Limitations of Existing Mechanisms

This chapter focuses on the substance of shareholder conflicts and restrictions of current mechanisms that are employed to solve shareholder conflicts. It dwells upon the occurrence of such conflict in the corporate governance systems and the existing ways of solving these conflicts by using the statutory redress and arbitration. The practical and legal issues which are posed by these mechanisms are also discussed in this chapter in particular when it comes to addressing complex, multiparty and relational disputes. Through these points, this chapter highlights the necessity of more efficient and equal methods of solving the shareholder conflicts.

2.1 Nature of Shareholder Disputes in Corporate Governance

Shareholders conflict is the result of internal activity of companies, which are directly related to corporate governance. Such conflicts are not mere matters of law but in most cases entail conflict of interests, management and differing business opinions. This is usually between majority and minority shareholders particularly where the distribution of power in making decisions is skewed. One of the biggest types of such conflicts involve the oppression and poor management where the majority shareholders behaviour is discriminatory or unjust towards the minority interest. These disagreements have been identified by the courts as not necessarily restricted to clear legal infraction but other far-reaching issues of fairness and just treatment.[11]

Besides the statutory disputes, shareholder conflicts also emanate out of contractual provisions like shareholder agreements. This can prove to be a contentious area in terms of rights to vote, or in terms of control of management, and violation of agreements. Nonetheless, these disagreements are not strictly contractual as they have a direct influence on the governance and the operations of the company.[12]

More so, the shareholder conflicts are multiparty and relational. The shareholders are included in a continuity of business relationship and a conflict between them has long-term effects on the company. This complicates such conflicts more than a normal commercial conflict, since they need solutions to be provided that will not only be legal but also relational.[13]

Boardroom battles are also a significant element of shareholder problems especially when there is a disagreement on strategic decision or management policies. Such conflicts creates more significant governance challenges in the firm, and in most cases, they end up being formal legal proceedings. In this way, the shareholder conflict of interests is multifaceted and directly connected to the general organization of the corporate government, which complicates their resolution.

2.2 Statutory Framework and Role of NCLT in Shareholder Disputes

In India, shareholders disputes are regulated under the Companies Act, 2013 as a result of corporate governance. Under sections 241 to 244, the minority interests can be safeguarded by minority shareholders addressing the NCLT in the instance of oppression and mismanagement to achieve fair management. This allows the Tribunal to intervene in cases where the majority of the action is unfair, despite the lack of a clear legal breach in the action such as the values of fairness and good faith in corporate governance.[14] The NCLT is endowed with broad rights to relieve such as regulate company affairs, dismiss directors, limit the transfer of shares, and order the purchase of minority shares. It can also demand winding up on just and equitable

[11] Siddhanth Moirangthem & Shresth Goel, "An Examination of the Remedies Available to Shareholders in Cases of Oppression and Mismanagement in Light of Recent Judgements", INDIAN J.L. & LEGAL RSCH., 2022, at 1
[12] Ravitej Chilumuri & Aaditya Gambhir, Invocation of Arbitration Clauses in Shareholder Agreements for Disputes under Articles of Association, 13 NUJS L. REV. 807, 810 (2020).
[13] Ravitej Chilumuri & Aaditya Gambhir, Invocation of Arbitration Clauses in Shareholder Agreements for Disputes under Articles of Association, 13 NUJS L. REV. 807, 810 (2020).
[14] Avantika, Corporate Governance Vis-à-vis Oppression and Mismanagement: A Case Study of Tata v. Cyrus Mistry, SSRN (2024)

grounds in extreme situations, thus enabling it to respond to conflicts outside the financial redressing. Nonetheless, the statutory structure is mostly adjudicatory and entails formal, protracted, and litigious actions. This may slow down the resolving process and further deteriorate relationships, which is inappropriate in circumstances of shareholder conflicts that need further collaboration.

The interpretations that the courts have made on these notions have been very weak that is not necessarily in the form of illegal acts but are also taken to involve acts that are unfair or not of probity thus resulting to an intervention in the absence of an apparent legal violation. This has been made clear in Tata Consultancy Services Ltd. v Cyrus Investments Pvt. Ltd. whereby the Supreme Court asserted that not all corporate decisions are oppressive unless it is prejudicial, unfair or without good faith towards the minority shareholders.[15] The NCLT has broad authorities, such as company management, dismissal of directors, limitation of share transfers, and a directive to buy minority share. It is, however, to a large extent adjudicatory on a framework that includes formal and time-consuming proceedings that can slow down resolution and put a strain on relationships. Moreover, these conflicts include overall corporate governance and public interest issues, proving the necessity of NCLT but restricting the application of alternative procedures such as arbitration. It is also reactive as the disputes are resolved only once they escalated. Therefore, the statutory framework is robust but at the same time the inflexibility and adversarial is evident and therefore necessitates other mechanisms.

Also, dispute like these are not considered as an entirely personal matter but larger concerns on corporate governance and the social interest. This would be one of the reasons why the NCLT would be justified and would help remove the application of other mechanisms such as arbitration.[16] The other drawback is that the system is reactive and disputes are only presented before the Tribunal only after the problem has escalated which usually destroys the relationship of parties. Therefore, as inherent to every legal framework, although the Companies Act, 2013 and the NCLT introduce a solid legal framework, they are more strictly, time-consuming, and adversarial, which makes it necessary to use alternative mechanisms to address issues that require flexibilities and collaboration.

[15] Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd., (2021) SCC OnLine SC.
[16] Anuj Berry, Ashish Bhan & Mohit Rohatgi, Arbitrability of Shareholder Disputes in India: Complexities and Issues, ASIA-PAC. ARB. REV. 2024, at 1.

2.3 Limitations of Arbitration in Shareholder Disputes

Arbitration is well known as a good way of settling commercial disputes since it is flexible, confidential and it also allows parties to be in control. It is frequently applied in a shareholder dispute stated in shareholder agreements by arbitration clauses. Nonetheless, it is not applicable practically and legally in disputes involving corporate governance. One of the major limitations is related to the idea of arbitrability. In Booz Allen and Hamilton Inc vs SBI Home Finance Ltd. the Supreme Court had drawn a line between the rights in personam that are arbitrable and the rights in rem that must be adjudged by a court or tribunal. It also found that some types of disputes like insolvency and winding-up are non-arbitrable because they are public. Corporate governance and the interest of the people are usually used in situations of shareholder disputes especially in cases of oppression and mismanagement and that's why it is not subject to arbitration.[17]

This was further codified in the case of Vidya Drolia v Durga Trading Corporation where the Supreme Court provided a fourfold non-arbitrability test, such as the concerned rights in rem, rights of third party, sovereign functions or where the statute explicitly forbade it. This is because most shareholder disputes are often statutory rights under the Companies Act, 2013, and therefore they are not subject to arbitration but rather the NCLT.[18] In addition, arbitration is a contractual procedure and is reliant on party agreement. Nonetheless, a lot of shareholder conflicts go beyond the contractual agreement and include the statutory rights and obligations. When these arise, arbitral tribunals are not allowed to pass some remedies like controlling the affairs of companies or ousting directors because such authorities are strategically directed to the NCLT.[19]

The other significant drawback is the multilateral character of shareholder conflicts. Arbitration agreements are usually binding to the partaking parties that have signed them. Where disputes in a company relate to more than one shareholder, director and other stakeholders, it might not be feasible to bring all the parties in one arbitral action. This poses conclusions of practice and can result in duplication of proceedings, more complex and inconsistent conclusions.[20] This

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[17] Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. & Ors., (2011) 5 SCC 532.

[18] Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1.

[19] Prakhar Sharma & Jitesh Malik, Arbitration vs NCLT Jurisdiction: Decoding Dispute Resolution Pathways in India, 5 INDIAN J. ARB. L. 1, 4 (2024).

[20] Snehal Bhatia, Multiparty Arbitration and Consolidation of Proceedings: Indian and Transnational Legal Dogmatics, 2 INDIAN J.L. & LEGAL RSCH. 1, 3 (2021).

restriction is also apparent in judicial practise in India, where courts have typically view that the issues relating to oppression, mismanagement and corporate governance are non-arbitrable, with a strictly contractual issue remaining open to arbitration.

Moreover, arbitration is an adversarial process, and this might be inappropriate in cases where further cooperation between parties is required. If shareholders dispute is made up of a continuing relationship, such a dispute can be solved by the adversarial approach, which can only worsen the relationship instead of solving the problem between the parties. Therefore, though arbitration is efficient in contractual disputes, its arbitrability weaknesses, remedies scope, and multiparty disputes make it ineffective in addressing complex shareholder conflicts.

Chapter 3: Role and Potential of Mediation and Settlement in Shareholder Disputes

3.1 Concept and Growth of Mediation in India

Mediation is a non-adversarial dispute resolution process where a neutral third party helps parties to solve the problem by arriving at an agreed amicable solution. Contrary to arbitration, a binding decision is implemented against parties, in mediation, the cooperation and agreement are prioritised, and the parties are free to decide what to do. In India, mediation has gradually emerged as significant component of the dispute resolution system. Nevertheless, the long queues in the courts and escalating arbitration expenses have continued to predispose more people to mediation as a more effective option.[21] Judicial and legislative efforts have also helped to develop it. Mediation has been embraced to minimise the pendency and to facilitate amicable settlements, and the move towards consensual dispute resolution is also reflected in the commercial courts act of 2015, which introduced pre-institution mediation.[22]

Further, mediation is gaining some recognition for its ability to preserve relationships between parties. In commercial and corporate situations, arguments frequently break out between parties who have on-going business relationships. Its discreet and secretive character enables parties to openly discuss and come up with viable solutions that could not be achieved in the court of law.[23] In addition, mediation is a confidential process which is flexible. Parties can organise the process according to their needs and the discussions between the parties during mediation

[21] Sahil Kanuga & Shraddha Bhosale, Mediation of Commercial Disputes in India, 7 NLUJ L. REV. 281, 283 (2020).
[22] Id. at 285.
[23] Nishith Desai Associates, Mediating Commercial Disputes in India, NISHITH DESAI ASSOCIATES (2024).

are not made public. This promotes free communication and assists parties to come to a practical resolution that may not be possible with formal legal proceedings. Mediation today has become a significant mechanism in the dispute resolution system in India. Nevertheless, even though it has grown, its usage in other fields like shareholder disputes, has not been fully exploited.

3.2 Legal Framework: Mediation Act, 2023

The recent Mediation Act, 2023 is a major move towards the formalisation of mediation as a formal dispute resolution process in India. Before the enactment of this law, the mediation was governed by various haphazard provisions of various statutes and judicial practices and as a result, they lacked uniformity. The Act fills this gap by offering a holistic legal framework thereby enhancing the position of mediation in the Indian system of dispute resolution.[24]

Among the main peculiarities of the Act, the focus on pre-litigation mediation should be noted. Any party is urged to seek mediation before a formal court action is undertaken especially in business disputes. This is an attempt to encourage resolution of issues at the early stages, minimize unnecessary litigation and distort the court workload. The Act is indicative of an evident transition to an efficient and consensual dispute resolution through the introduction of mediation at an early stage.

Another the role played by the mediator is clear in the Act because he/she is seen as a neutral facilitator who helps the parties to come to a voluntary settlement without making any decision. It focuses on procedure leniency where parties may be able to design the process in such a way that would suit them. This is what separates mediation in relation to formal adjudicatory mechanisms as well as makes it more flexible to various forms of dispute including complex commercial issues. The mediated settlement agreements are recognized and enforceable as a significant contribution of the Act. Mediation settlements are considered to be final and binding, and may be enforced similarly to the way a court decree may be. This is a crucial provision when it comes to mediation because it increases the reliability of mediation as a dispute resolution process.[25]

[24] Dr. Samina Nahid Baig, A Critical Analysis of the Mediation Act, 2023, 13 INT'L J. CREATIVE RSCH. THOUGHTS 1, 2 (2025).
[25] Id. at 5.

The Act also provides an institutional structure in the form of the Mediation Council of India that will be charged with the responsibility of regulating the practice of mediation, accrediting the mediators and ensuring the quality standard. It also promotes the creation of mediation institutions to facilitate organized and professional dispute resolution procedures.[26]

The Act also acknowledges other types of mediation such as online mediation and this has contributed to accessibility and convenience of the parties more so when it comes to commercial disputes among parties located in different locations. Although this has been made possible, there is an insufficient application of Mediation Act, 2023 in shareholder and corporate governance cases, which means there is the necessity to increase awareness and institutional incorporation.

3.3 Role of Settlement Agreements in Resolving Disputes

Settlement agreements form an integral part of alternative dispute resolution, especially in the process of mediation. They are the final product in a consensual process in which the parties agree voluntarily on terms to settle their dispute. Unlike adjudicatory mechanisms, in which parties to litigation or arbitration have a decision forced upon them by a court or tribunal, a settlement is one in which the parties come to some sort of mutual understanding and cooperation.

In the Indian ADR framework, settlement agreements have been recognised as an integral part to give practical effect to the dispute resolution processes. They deliver finality to the disputes in that after resolution they define the rights and obligations of the parties clearly. This helps in minimising the chances of further legal proceedings and ensures that the disputes are sorted out in a wholesome manner.[27] In settlement agreements, parties are not restricted to hard legal remedies and can reach solutions that they find appropriate for their particular needs and interests. This is especially helpful in corporate disputes, where the parties may want to continue their business relationship even after they have resolved their differences. Settlement agreements provide for creative and practical solutions that may not be available under formal adjudication.

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[26] Id. at 6.

[27] Srishti Yadav, Settlement Agreements in ADR Mechanisms in India: A Critical Analysis, 4 INDIAN J.L. & LEGAL RSCH. 1, 2 (2022).

The enforceability of settlement agreements has also been enhanced in recent years. With the Mediation Act, 2023 mediated settlement agreements have been given legal standing and can be enforced in the same manner as court decrees. This makes the mediation more reliable and assumes parties would seek to resolve their disputes through settlement-based approaches.[28] Further, settlement agreements assist in cutting down time and expenses of dispute resolution. Since the process is based on negotiation and consensus it does not involve long term legal proceedings. This makes it an efficient mechanism, especially in commercial and corporate situations where delays can have major financial and operational consequences.

In the context of shareholder disputes, settlement agreements have a particular value because of the relationship nature of these conflicts. Shareholders usually have an ongoing business relationship and an agreeable solution is helpful to maintain these relationships and to settle disputes. Unlike the adversarial mechanisms, the settlement-based approaches prioritize on co-operation and long-term stability. Therefore, settlement agreements form an important part of the ADR framework by providing flexible, efficient and relationship-oriented solutions. They not only bring finality to disputes but create a foundation for continued co-operation between parties and are therefore appropriate for corporate governance disputes.

Chapter 4: Integrated ADR Framework and Critical Analysis

4.1 Comparative Analysis: Arbitration vs Mediation in Shareholder Disputes

Arbitration and mediation both are major aspects of the ADR structure which differ in their manner and applicability in shareholder disputes. An adjudicatory process involving a neutral adjudicator coming up with a binding decision is known as arbitration, whereas a consensual process directed at coming up with a mutually agreed solution is referred to as mediation. The difference is essential in determining how effective they are in ending corporate governance disputes. Arbitration is especially effective in commercial and contractual disputes because of its binding nature, confidentiality and party autonomy. It is used for enforceability and finality especially in the case of disputes arising out of shareholder agreements.

However, its effectiveness is limited in matters which involve statutory rights, issues of governance and matters of public interest, which are within the jurisdiction of the NCLT. In

[28] Dr. Samina Nahid Baig, A Critical Analysis of the Mediation Act, 2023, 13 INT'L J. CREATIVE RSCH. THOUGHTS 1, 5 (2025).

contrast, mediation takes a more non-adversarial approach that is more appropriate to the relational nature of shareholder disputes and supports communication and preserves ongoing business relationships.[29] Despite the advantages, mediation has the certain limitations. It does not provide a binding result unless parties come to a settlement and the issues are left answered in case of non-cooperation. Additionally, imbalances of power between majority and minority shareholders may contribute to the fairness of outcomes.[30] An analysis of the two mechanisms reveals that arbitration is more final and enforceable but less flexible in dealing with governance and relationship problems whereas mediation is more flexible and relationship-saving but less certain and definitive.

Thus, it is not possible to use either of the mechanisms to solve the intricacies of shareholder wrangles. This brings in the importance of a balanced solution and the blending of both the arbitration and mediation methods to make sure that the corporate governance disputes can be resolved in the most enforceable and flexible way possible.

4.2 Need for an Integrated ADR Approach: Hybrid Mechanisms

A comparative analysis of arbitration and mediation reveals that even jointly neither mechanism is sufficient to resolve shareholder disputes. While arbitration has advantages of finality and enforceability, it is limited in dealing with governance related and statutory issues. Mediation, on the other hand, is flexible and does not destroy relationships but does not provide certainty for what happens when the parties do not agree. These limitations require an integrated approach involving the strength of both mechanisms

A hybrid ADR models such as Med-Arb and Arb-Med-Arb. In Med-Arb, parties first try the mediation process if the settlement fails, can go on to the arbitration process for a binding decision. Conversely, Arb-Med-Arb may start with arbitration, followed by mediation, with any settlement being capable of being recorded as an enforceable arbitral award. These models are a combination of consensual resolution and legal certainty and have gained recognition internationally as effective dispute resolution mechanisms.[31] Such hybrid approaches are

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[29] Sahil Kanuga & Shraddha Bhosale, Mediation of Commercial Disputes in India, 7 NLUJ L. REV. 281, 283 (2020).

[30] Akshaya Kamalnath & Aparajita Kaul, Adding Mediation to India's Corporate Resolution Process, 31 INT'L INSOLVENCY REV. 163, 168 (2022).

[31] Prakhar Sharma & Jitesh Malik, Arbitration vs NCLT Jurisdiction: Decoding Dispute Resolution Pathways in India, 5 INDIAN J. ARB. L. 1, 8 (2024).

especially relevant for shareholder disputes, which are multiparty at the same time and involve both contractual and statutory elements. While the arbitration may not be good for accommodating all the interested parties and mediation may not provide finality, there are hybrid models which incorporate a component of cooperation with a component of enforceability to provide a more complete solution.[32]

Despite these benefits, hybrid ADR mechanisms are yet to be availed in India, especially in corporate governance disputes. Lack of institutional integration and lack of awareness among the stakeholders is a hurdle in their adoption. This underscores the importance of better legal recognition, institutional support and policy development to support the development of integrated ADR frameworks. Accordingly, an integrated ADR system, which includes arbitration as well as mediation, is a more balanced and effective system, addressing both the relational and the enforceability aspects of shareholder disputes.

4.3 Comparative Insights and Policy Recommendations

The evolution of hybrid ADR systems in other jurisdictions has some valuable lessons for the betterment of the dispute resolution in India. Countries like Singapore have successfully implemented integrated models such as Arb-Med-Arb, in which mediation is integrated into arbitration, and hence, they can convert settlements into arbitral awards that can be enforced.[33]

Similarly, In United Kingdom courts have also promoted mediation as the overall approach to dispute resolution. Courts have gone to the extent of putting greater focus on amicable settlement and encouraging mechanisms that minimise the use of adversarial litigation. These trends represent a world-wide move toward more commercial and cooperative ways of settling disputes in business and corporate life.[34] Although the Mediation Act, 2023 has a good legal base, its use in the shareholder dispute is not that high. The arbitration process is also somewhat independent, and there is not enough coordination among the mediation processes, which is diminishing the efficiency of ADR in the battle between complex corporate disputes.[35]

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[32] Ravitej Chilumuri & Aaditya Gambhir, Invocation of Arbitration Clauses in Shareholder Agreements for Disputes under Articles of Association, 13 NUJS L. REV. 807, 812 (2020).

[33] Prakhar Sharma & Jitesh Malik, Arbitration vs NCLT Jurisdiction: Decoding Dispute Resolution Pathways in India, 5 INDIAN J. ARB. L. 1, 9 (2024).

[34] Sahil Kanuga & Shraddha Bhosale, Mediation of Commercial Disputes in India, 7 NLUJ L. REV. 281, 287 (2020).

[35] Dr. Samina Nahid Baig, A Critical Analysis of the Mediation Act, 2023, 13 INT'L J. CREATIVE RSCH. THOUGHTS 1, 6 (2025).

To address these gaps, several measures required such as firstly a hybrid ADR mechanisms such as Med-Arb and Arb-Med-Arb need to be formally recognised and institutionalised. Second, a higher level of awareness and training among legal professionals, corporations, and stakeholders is necessary, in order to promote their adoption. Third, better coordination among the statutory forums such as the NCLT and ADR mechanism can help in early stages of resolving disputes and also in reducing the burden on the tribunal. Finally, strengthening the institutions of mediation by means of accreditation and regulatory standards is of utmost importance to the creation of confidence in the system. Accordingly, incorporating arbitration, mediation, and settlement mechanisms provides a more balanced and effective solution to shareholder's disputes and enhances the corporate governance.

Chapter 5: Conclusion

This study explored the nature of shareholder disputes and the effectiveness of the existing dispute resolution in dealing with shareholder disputes. It emphasised that shareholder disputes are intricate, multi-sided and intimately related to issues of corporate governance. These disputes tend to come from the conflict of control, breach of agreements, concern of oppression and mismanagement, hence these disputes are different from normal commercial disputes. The analysis of the statutory framework revealed that though the Companies Act, 2013 and the NCLT provide important remedies, the process is largely adjudicatory, time consuming and adversarial. Similarly, despite the advantages such as confidentiality and enforceability, arbitration has strong limitations to deal with the governance related and statutory disputes. Issues of arbitrability, jurisdictional conflicts with the NCLT, and practical difficulties of dealing with multiparty disputes result in its diminished effectiveness in resolving shareholder conflicts.

On the other hand, mediation as well as settlement mechanisms provide a more flexible and relationship-oriented approach. The Mediation Act, 2023 had strengthened the legal framework by recognising and enforcing mediated settlements. Mediation enables parties to settle disputes through cooperation and helps in preserving business relationships. However, mediation is not always sufficient and where parties are unwilling to cooperate or where there is a need for a binding outcome, other steps such as litigation can be necessary. This study therefore finds that neither arbitration nor mediation, used separately, are able to solve the complexities of the shareholder disputes. A combination of the strengths of both mechanisms is a more effective solution. Hybrid models of ADR like Med-Arb and Arb-Med-Arb have both the benefits of flexibility and enforceability and hence can be used to solve conflicts of corporate governance.

On policy grounds, there is a necessity to encourage the application of mediation and hybrid ADR structures to corporate dispute settlement. This can be by raising awareness, enhancing institutional structures as well as promoting mediation at an early stage in shareholder conflicts. Better integration of statutory forums like NCLT and ADR systems can help to make the system more efficient and to decrease the workload on tribunals. To conclude mediation and settlement are sets a balanced dispute resolution mechanism which providing more effective, efficient and more relationship oriented approaches to the shareholder not being an addition to arbitration.

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