

# ALTERNATIVE DISPUTE RESOLUTION (ADR) ROLE IN CONSUMER DISPUTES IN INDIA: RULES MADE UNDER CONSUMER PROTECTION ACT, 2019

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## ABSTRACT

The impact of colonialism on India resulted in the destruction of many indigenous institutions, notably the Panchayats, and the replacement of the philosophy of arbitration and conciliation with that of adjudication, which made the construction of adversarial-style courts of law necessary. Indigenous administration, which covered not only conflict resolution but also other facets of public administration, was best exemplified by Panchayats, traces of which may still be seen in our social order. Despite the need, India was unable to explore any other approaches, but other democracies like the US were compelled to use techniques like plea bargaining, arbitration, etc. In order to collect taxes effectively, the mix of administration and adjudication that was the characteristic of colonial administration was used. The effectiveness of the system in preserving law and order in the society was impacted by this strategy.

India has a long history of using consensus and conciliation to resolve disputes. India was compelled to use ADRs as a result of the requirement to handle the growing amount of litigation. A docket explosion that still haunts us as a result. The study's main objectives are to determine how well India's ADR system works to reduce the backlog of cases in the courts and to offer specific recommendations for developing a robust institutionalised ADR process in India. This paper presents the ADR phenomenon with a specific focus on policy-making and regulatory problems in India. It argues that the current regulatory framework for alternative dispute resolution.

**Keywords:** Consumer Disputes, Alternative Dispute Resolution (ADR), CP Bill 2019

*“Discourage litigation. Persuade your neighbours to compromise wherever you can. Point out to them how the nominal winner is often a loser – in fee, expenses and waste of time.”<sup>i</sup>*

**-Abraham Lincoln**

## **INTRODUCTION**

Our country's national process for delivering justice through the courts has led to some serious issues including exorbitant delays, a substantial backlog of cases, and legal liability. Hence, maintaining peace is essential for growth, as well as one of the most crucial factors in keeping peace in any community is the public's confidence in the administration of justice. The stability, efficiency, and comfort of the system are maintained by the people's confidence that they will receive justice when and where it is needed. Alternative Dispute Resolution (ADR) offers a quick and economical means of delivering justice, and it also has the ability to reduce the vast backlog of cases. The people seeking justice arrive in court with agony and suffering in their hearts as they have dealt with legal issues and suffered psychological and physical pain. Yet, the truth is that obtaining justice through the current legal system is an extremely lengthy process. In these situations, it becomes very important for all court system stakeholders to identify some procedure where such ethical questions may be efficiently and adequately handled. To make efficient use of the ADR process, Parliament passed a law and added Order X of the Code of Civil Procedure, 1908, together with Rules 1-A, 1-B, and 1-C.

Stakeholders inside the justice delivery system are many. They do not even try to enact regulations themselves because they have faith in the legal system and know they will receive justice there. As a result, there is a compounding effect in the litigation process, and occasionally, civil lawsuits may even result in criminal proceedings. The fact is that a just outcome must be achieved quickly in order for the legal system to be successful.

Contradictions, conflicts, and controversies cannot be removed from any community, and human society itself is distinguished by contradictions. The defendant or litigant may run out of options in this condition of uncertainty but never protracted procedure, in addition to suffering from bodily and mental pain.

## CONSUMER DISPUTES

**Who is “Consumer”-** As per Section 2(7) of Indian Consumer Protection Act, 2019<sup>ii</sup>, “Consumer” means any person who:

- i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

Explanation.—for the purposes of this clause,—

- (a) The expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;
- (b) The expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;

**Consumer Dispute-** As per Section 2(8) of Indian Consumer Protection Act, 2019<sup>iii</sup>, “Consumer Dispute” means: a dispute where the person, against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

In **Sreedharan Nair N. v. Registrar, University of Kerala**<sup>iv</sup>, the University refused to provide LL.B. degree certificate on completion of course on the ground that the qualifying examination on the basis of which student was admitted in LL.B. course in Kerala law college has not been

recognised by it. The National Commission held that this is a clear case of deficiency on part of university. A compensation of Rs. 50,000 was awarded to complainant

In the case of **Jitendra Kumar v. Oriental Insurance Company Ltd. and another<sup>v</sup>**, the Supreme Court has held that where the fire has occurred due to mechanical failure and not due to any act or omission of the driver, the insurance company cannot repudiate the claim because of lack of valid driving license.

**Sashikant Krishnaji Dole v. Shitshan Prasarak Mandali<sup>vi</sup>** The coach said that he had vast experience teaching young boys how to swim and that, as in other situations, he had taught the deceased youngster how to swim correctly and performed all required safety procedures. When it was discovered that the dead had drowned, the coach quickly pulled him from the water, got the water out of his stomach, started artificial respiration on him, and then transported him to the hospital, where he passed away.

The school hired a trainer/coach for the purpose of organizing swimming training camps for boys in the winter and summer. The school had a pool and made recreational facilities accessible to everyone for a charge. The complainants had signed up their son to take swimming lessons under the direction of the instructor.

## **ALTERNATIVE DISPUTE RESOLUTION (ADR)**

The idea of Lok Adalats (People's Courts) is an important addition made by India to international humanitarian law. In India, Panchayats, or municipal governments, have a long history of using ADR techniques like arbitration and Lok Adalat to resolve differences. The idea of Lok Adalat measures of cognitive and institutionalises the traditional notion of conflict resolution through Arbitration, Conciliation, Mediation, or Negotiation, also known as the judgement or decision of "Nyaya-Panchayat."

Across a whole large portion of the 20th Century, the concept of mediation was often used. This technique has become more common in Western countries since the dawn of the 21st century. The Pound Symposium in 1976 was a key event in establishing its American roots. Two pieces of legislation, the Administrative Dispute Resolution Act of 1996 and the Civil Justice Reforms Act of 1990 came after it.

***Justice Warren Burger the former Chief Justice of the American Supreme Court while discussing the importance of ADR had observed:***

*“The harsh truth is that we may be on our way to a society over run by hordes of lawyers, hungry as locusts, and bridges of judges in numbers never before contemplated. The notion that ordinary people want black robed judges, well-dressed lawyers, and fine panelled court rooms as the setting to resolve their disputes is not correct. People with legal problems like people with pain, want relief and they want it as quickly and inexpensively as possible.”<sup>vii</sup>*

*“The obligation of the legal profession is to serve as healers of human conflict and we should provide mechanism that can produce an acceptable result in shortest possible time, with the least possible expense and with a minimum of stress on the participants. That is what justice is all about.”<sup>viii</sup>*

Because of these factors, it is urgent to encourage consumers to exhaust all alternatives available before bringing their complaints to a consumer forum. Here is where Alternative Dispute Resolution (ADR) may be useful. ADR stands for alternate conflict resolution and often entails early neutral assessment, negotiation, conciliation, mediation, and arbitration. It could or might not involve a third person who is impartial and helps both sides to a disagreement find a resolution that they can both accept. Compared to court procedure, the actual system is more adaptable since it enables parties to take an active role in resolving their own conflict. Most notably, because ADR is far less hostile than the traditional court system, it is frequently simpler to maintain the connection between the two parties.

CPC, Section 89, and further provisions - There were a number of regulations in place before S. 89, CPC that permitted the courts to refer disputes to mediation. The Industrial Disputes Act of 1947, Section 23(2) of the Hindu Marriage Act of 1955, and Section 9 of the Family Courts Act of 1984 all have similar clauses. Section 80, Order XXIII, Rule 3, Order XXVII, Rule 5-B, Order XXXII-A, and Order XXXVI of the Code of Civil Procedure, 1908, are more places in which we could locate and assume comparable laws.

**Banwarilal v. Chano Devi** <sup>ix</sup>, the terms of the settlement must be investigated by the court using its judicial mind. The compromise must not be recorded carelessly. The court really does have a responsibility to assess for itself whether the compromise is genuine and lawful.

The Indian Supreme Court has frequently endorsed using an institutionalised ADR framework to resolve disputes. But it was in the **Afcons Infrastructure Ltd. Case<sup>x</sup>** that the Supreme Court decided that all consumer disputes—including those in which a trader, supplier, manufacturer, or service provider is anxious to preserve his professional image and credibility or the popularity of his product; disputes between suppliers and consumers; disputes between bankers and customers; and disputes between developers and customers—are appropriate for ADR proceedings

In the **Geeta Iron and Brass Works Ltd. Case<sup>xi</sup>**, the Supreme Court of India emphasised the need to hold governments responsible for the unnecessary litigation costs that the community bears as a result of their inaction.

***Cases “unsuitable” for ADR Processes (Excluded category of cases)***

1. Representative suits under order 1 Rule 8 CPC
2. Dispute relating to Election to Public Offices (excluding disputes between two groups regarding management of Societies, Clubs, and Association etc.)
3. Cases involving grant of authority by the Court after enquiry for example, suits for grant of probate or letter of administration.
4. Cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion, etc.
5. Cases requiring protection of courts for example, claims against minors, deities and mentally challenged and suits for declaration of title against the Government.
6. Cases involving prosecution for criminal offences.

***“Suitable” cases for ADR procedures:***

The following cases are frequently considered to be being acceptable for A.D.R. processes, except for the cases that fall under the previous section excluded group, all other lawsuits, and matters involving civil problems in particular:

- (i) All cases relating to trade, commerce and contracts (including all money cases).
- (ii) All cases arising from strained or soured relationships, including.

- (iii) All cases where there is a need for continuation of the pre-existing relationship in spite of the disputes, including.
- (iv) All cases relating to tortious liability, including claims for compensation in motor accidents/other accidents.
- (v) All consumer disputes, including where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or product popularity.

The Supreme Court has added that the lists of examples that are "appropriate" and "unsuitable" are illustrative and not complete.

Sec. 89, CPC refers to five types of ADR Mechanisms:-

- (1) Arbitration
- (2) Conciliation
- (3) Mediation
- (4) Judicial Settlement, and
- (5) Lok Adalat

In India, the Alternative Dispute Resolution (ADR) Method operates effectively. Lok Adalats across the nation had settled millions of cases. The National Lok Adalats have historically delivered outstanding results and provided substantial income for the public coffers. In these Lok Adalats, where their lengthy lingering cases were unfairly resolved, millions of people found relief. Even if it takes a while, wiping the tears from the poor plaintiffs' eyes is a huge relief for the litigant seeking the most priceless virtue, namely justice.

## **CONSUMER PROTECTION ACT 2019**

Different general laws have been passed in India and abroad toward this goal due to the long-standing awareness of how important it is to ensure consumers' basic entitlements to wellness, security, and other considerations.. In India, Generally speaking, institutions other than the law of wrongdoings that, at long last, emphasized the protection of consumers' interests include the Indian Agreement Act, 1872, the Offer of Products Act, 1930, the Perilous Medications Act, 1930, the Farming Produce (Reviewing and Showcasing) Act, 1937, the Medications and Beauty care products Act, 1940, the Indian Principles Foundation (Affirmation Imprints) Act,

1952, the Avoidance of Food Contaminated Act, 1954, the Medications and Enchantment Cures (Questionable Notices) Act, 1954, the Fundamental Items Act, 1955, the Guidelines of Loads and Measures Act, 1976 (Presently Legitimate Metrology Act, 2009), the Exchange and Product Imprints Act, 1958, (Presently Exchange Imprints Act, 1999), the Licenses Act, 1970, the Recruit Buys Act, 1972 and the Counteraction of Dark Promoting and Upkeep of Provisions of Fundamental Wares Act, 1980.

This prepared the way for the 1986 Consumer Protection Act, which established a three-tier quasi-judicial redressal agency at the District, State, and Federal levels to supply consumers with simple, quick, and easy remedies. The Consumer Protection (Amendment) Act, 2002, which went into effect on March 15, 2003, made the necessary amendments to the Act to make it more relevant and effective. The President's assent to the Consumer Protection Act of 2019 was given on August 9, 2019, after it had been approved by the Parliament. It aims to protect customers and promote alternatives so that wrongfully accused consumers receive justice right away. In addition to general regulations, this new Act contains regulations for the Central Consumer Protection Council, the Consumer Disputes Redressal Commission, the appointment of presidents and members of state and district commissions, mediation, model regulations, and e-commerce, as well as regulations for the Consumer Commission Procedure, mediation, and administrative control over state commissions and district commissions.

#### ***Important aspects of the 2019 Consumer Protection Act***

- (1) Provision for Seeking Injuries Reparations.
- (2) A competent court's judgment.
- (3) The filing of consumer complaints is free.
- (4) Offering a Complaints Hearing Service.
- (5) Mandatory Recognition.
- (6) Redress via an E-Commerce Entity.



**Table 1 Total Number of Cases Disposed by Consumer Forums (till Nov 2021)<sup>xii</sup>**

S No.	Name of the Agency	Cases filed since Inception (in Lakh)	Cases disposed of since inception(in Lakh)	Cases pending (in Lakh)	o/o of total disposal
1	National Commission	1.02	.82	.2	80.39 %
2	State Commissions	4.67	3.03	1.64	64.88 %
3	District Forums	17.30	12.78	4.52	73.87 %
	<b>Total</b>	<b>22.99</b>	<b>16.63</b>	<b>6.36</b>	<b>72.33 %</b>

Source: [www.ncdrc.nic.in](http://www.ncdrc.nic.in)

There are currently more than 6.36 Lakh cases outstanding in the different consumer courts, which is a concerning number based on the information provided by the Department of Consumer Affairs (Table 1). The fundamental goal of the creation of the consumer courts was to give consumers access to affordable and quick redress where the customer may represent themselves in court. The complexity of the legislation led to an increase in the number of consumers employing attorneys, and the consumer courts' numerous adjournments began to slow down the whole adjudicative process. In light of the Consumer Protection Act of 2019 and during the Covid-19, it was vital to assist consumers by way of online filing in order to combat the pandemic scenario.

**Subhechha Welfare Society v. Earth Infrastructure Pvt. Ltd.**,<sup>xiii</sup> The Supreme Court ruled that the NCDRC's decision that a registered consumer group can submit a complaint on behalf of a single consumer but not on behalf of numerous customers in one complaint is incorrect and without legal support.

**Bahar Agrochem & Feeds Pvt. Ltd. v. Prasad Gurusidappa Prachande.**<sup>xiv</sup>, The National Commission rejected the amendment, stating that there was no set formula for determining whether the forum for customers had the authority to hear a matter, and that each case had to be judged on its unique facts. The issues in the present case could not be regarded as being so

complex that they could not be resolved in summary processes; if required, the consumer forum had the authority to cross-examine witnesses and experts.

It is essential because everyone who has been wronged or feels cheated will be able to use this portal to submit a complaint to the appropriate consumer commission online, pay the charge associated with the complaint, and keep track of the case's progress from anywhere in the world.

Any customer or supporter may sign up for the e-Daakhil programme with the required authentication by receiving an OTP on their registered cell phone or an activation link on their registered email address.

**Post Script:** - India has to build a strong ADR and ODR process for resolving disputes involving overseas consumers due to the expanding consumerism as well as the number of firms that cater to foreign customers. This is clearly stated in the EU regulation on alternative dispute resolution for consumer complaints, which India should heed:

*"The differences in ADR coverage, quality, and awareness among Member States act as an impediment to the internal marketplace and are one of the factors preventing many consumers from shopping globally in addition to their lack of confidence in the capacity to quickly, easily, and affordably resolve any potential disputes with traders. For the same causes, businesses may decide not to sell to customers in other EU countries where there is insufficient access to effective ADR processes. Additionally, businesses operating in Member States where high-quality ADR processes are insufficiently accessible are at a competitive disadvantage compared to businesses operating in other Member States where access to such processes is available and where it is possible to swiftly and affordably address consumer complaints. ADR should be available for all types of domestic and international disputes covered by this Directive, ADR procedures should adhere to uniform quality standards that apply all through the Union, and consumers and traders should be aware that such procedures exist in order for consumers to fully take advantage of the potential of the internal market."*

In conclusion, ADR is becoming increasingly well-known and used every day because to its many benefits, including in India. Solving international conflicts and disagreements has emerged as the new fashion.

It is advised that established policies be created for individual stakeholders in India to undertake specific actions to improve ADR and implement actions to raise awareness of ADR as a practical conflict resolution alternative in both the academic and business sectors. For instance, academic institutions can fund the development and running of conciliation centers under Decree 22 or participate in a community outreach programme to resolve small conflicts in the community without providing legal assistance. Additionally, these institutions might introduce an internship programme via their current clinical education programmes to teach law students with a certified mentor through apprenticeship programmes building real-world negotiating and mediation skills. Additionally, the great majority of business contracts lack automatic mediation clauses that take effect in the event of a disagreement. The creation of such terms within civil and business contracts should thus be taught to attorneys.

Whether or whether the parties are ICC members, the International Chamber of Commerce (ICC) has published "Mediation Guidance Notes" for their use. Therefore, the nations ought to use this directive to employ mediation measures that are more widely accepted and simple to understand and apply.

## ENDNOTES

<sup>i</sup> Mahboob Ali, "Alternative Dispute Resolution Mechanism in Modern India Society" Judicial Training & Research Institute uploaded on 7th January 2016 (4)

<sup>ii</sup> Sec 2 (7) (i), (ii) Indian Consumer Protection Act, 2019

<sup>iii</sup> Sec 2 (8) Indian Consumer Protection Act, 2019

<sup>iv</sup> [2001 CTJ 561 (CP) (NCDRC)]

<sup>v</sup> C.A. No.-004647-004647 / 2003

<sup>vi</sup> [F.A. No. 134 of 1993 decided on 27.9.1995 (NCDRC)]

<sup>vii</sup> Dr. Banamali Barik, "ADR Mechanism And The Redressal Of Consumer Grievances Within The Three-Tier Consumer Adjudicatory System In India: An Analysis" South Asian Law Review Journal Volume 5, (384) 2019

<sup>viii</sup> Mahboob Ali, "Alternative Dispute Resolution Mechanism in Modern India Society" Judicial Training & Research Institute uploaded on 7th January 2016 (6)

<sup>ix</sup> AIR 1993 SC 1139

<sup>x</sup> M/S Afcons Infra Ltd & Anr Vs M/S Cherian Varkey Construction & Ors 2010 (8) SCC 24

<sup>xi</sup> 1978 AIR 1608, 1979 SCR (1) 746

<sup>xii</sup> [www.ncdrc.nic.in](http://www.ncdrc.nic.in)

<sup>xiii</sup> 2020 SCC OnLine SC 208.

<sup>xiv</sup> II (2009) CPJ 137 (NC)