ADR and Access to Justice

*By **Varun J***

3rd Year B. Com. LL. B. (H) Student, Amity Law School, Noida, India

Abstract

Desire for affordable and quick justice is universal. Justice, a crucial aspect of any civilized society, intends to establish fairness, equity, and equal opportunities for all members or citizens. The Preamble of India reflects this goal with aspirations of "justice-social, economic, and political." Article 39-A of the Constitution ensures equal access to justice. The administration of justice involves protecting the innocent, punishing the guilty, and resolving disputes satisfactorily. In India's modern legal system, there has been a growing dependence on Alternative Dispute Resolution (ADR) mechanisms to address legal disputes outside of the traditional courtroom setting.

This study examines how ADR processes impact access to justice for marginalized communities. It uses a mixed-methods approach, analyzing ADR case outcomes. The research will begin by examining the historical development of ADR mechanisms and their integration into legal systems worldwide. The study will pay special attention to the potential benefits and challenges these mechanisms pose concerning access to justice, focusing on factors such as cost, efficiency, and inclusivity. Quantitative data will be collected from diverse ADR cases to assess their outcomes compared to traditional litigation. This research contributes to the ongoing discourse on the intersection of ADR and access to justice, providing practical recommendations for policymakers, legal practitioners, and scholars. The findings aim to inform the refinement of ADR frameworks to better address the diverse needs of individuals seeking justice outside the conventional legal system. The study's results suggest that ADR can be a valuable tool for improving access to justice. However, the study highlights the difficulties in ensuring equal representation and participation. More work is needed to address the challenges that arise in implementing ADR mechanisms effectively. So, precisely saying, ADR

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aims to provide justice that not only resolves disputes but also harmonizes the relation of the parties.

Introduction

In recent years, it has become increasingly evident that adversarial litigation is not always the best means of resolving disputes. The traditional courtroom model, while effective in some cases, is often plagued by issues such as congestion, a lack of manpower and resources, and procedural challenges. These issues can lead to significant delays, high costs, and an overall lack of efficiency in the legal system. Fortunately, there is a growing awareness of the alternative dispute resolution (ADR) mechanism as a viable and effective option for resolving disputes. ADR includes various methods such as mediation, arbitration, and negotiation, and it can be a faster, less costly, and more flexible way to address disputes. One of the key benefits of ADR is that it can provide parties with greater control over the outcome of their dispute. Unlike traditional litigation, which is often based on a winner-takes-all approach, ADR allows parties to work collaboratively to find a mutually agreeable solution.[i]

Moreover, ADR can be a more personalized and tailored approach to dispute resolution. Rather than relying on a one-size-fits-all approach, ADR allows parties to design a process that best suits their needs and preferences. This can lead to more creative and innovative solutions, as well as a greater sense of satisfaction with the outcome. Overall, the alternative dispute resolution mechanism has emerged as a valuable tool for addressing the challenges of traditional litigation. By providing parties with greater control, flexibility, and personalized attention, ADR can help to create a more efficient, effective, and fair legal system.

“I had learned the true picture of the law. I had learned to find out the better side of human nature and to enter men's hearts. I realized that the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied with bringing about private compromise of hundreds of cases. I lost nothing therefore even money-certainly not my soul.” – Mahatma Gandhi

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There is a growing need to supplement the current infrastructure of courts utilizing Alternative Dispute Resolution (ADR) mechanisms. ADR systems can bring efficiency to the working of the judiciary, and efforts are being made all over the world to avail of these systems for resolving disputes both at the pre-litigation stage and pending cases. ADR measures have been successful in many countries, especially in the United States where professional teams of mediators and conciliators have productively supplemented the dispute resolution and adjudication process.[ii]

In 1995, the International Center for Alternative Dispute Resolution (ICADR)[iii] was inaugurated by Shri P.V. Narasimha Rao, the Prime Minister of India, who observed that while reforms in the judicial sector should be undertaken with the necessary speed, it does not appear that courts and tribunals will be able to hear the entire burden of the justice system. It is incumbent on the government to provide a reasonable cost for as many modes of settlement of disputes as are necessary to cover the variety of disputes that arise. Litigants should be encouraged to resort to alternative dispute resolution so that the court system would be left with a smaller number of important disputes that demand judicial attention.

ADR and its impacts on access to justice

The Alternative Dispute Resolution (ADR) system is a non-adversarial technique used to settle legal disputes. ADR has a long history in India, predating the modern adversarial model of the Indian judiciary. The introduction of the modern Indian judiciary was influenced by the English legal system during the British colonial era. The courts in India were established to have a uniform legal system similar to the English courts. However, even before the formalistic court system was established, the Indian legal system relied on several native ADR techniques. During the Vedic age in India, various specialized tribunals were established to deal with different kinds of disputes. These included the Kula, which dealt with family, community, tribe, caste, and race disputes; the Shreni, which dealt with internal disputes in business and corporations of artisans; and the Puga, which dealt with associations of traders and commerce branches. These institutions relied on interest-based negotiations, with a neutral third party identifying the underlying needs and concerns of the parties in dispute. In addition, People's

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Courts or Panchayats continued to be an essential part of dispute resolution in villages. In the modern era, several new and sophisticated forms of ADR techniques have developed.[iv]

Benefits of ADR:

Alternative Dispute Resolution (ADR) methods offer a quicker, less formal, and more affordable way of resolving legal disputes when compared to traditional judicial proceedings. Parties involved in a dispute can choose the time, place, and procedure for the dispute resolution process, making it more convenient for them. Additionally, in case of technical disputes, parties can choose an expert who possesses the relevant legal and technical expertise. ADR also provides the flexibility to refer disputes to non-lawyers, for example, disputes related to the construction industry are often referred to engineers instead of lawyers. Encouraging the use of ADR can help reduce the delays and high pendency of court cases. The rise of ADR is further supported as the Indian law courts face numerous problems like the inadequacy of courts and judges, increasing litigation due to the complexity of laws and obsolete legal statutes, expensive litigation costs, and delays in the disposal of cases resulting in huge pendency in all the courts. ADR has emerged as a successful alternative to court trials, and the rise of the ADR movement in India indicates that it is contributing tremendously towards restoring the faith of litigants in the justice delivery mechanisms.

Different types of ADR mechanisms

ADR can be classified into two categories: court-annexed options (including mediation and conciliation) and community-based dispute resolution mechanisms (such as Lok Adalat). The mechanisms of ADR include,

1. Arbitration
2. Mediation
3. Conciliation/reconciliation
4. Negotiation
5. Lok Adalat.
6. Ombudsman[v]

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7. Nyaya panchayat

Evolution of ADR Mechanisms in the Indian Judiciary

Arbitration in India has a long history, with the practice of panchayats being recognized in the Constitution of India as a form of arbitration.[vi] However, the Geneva Convention in 1923 marked a significant turning point in the international recognition of arbitration.[vii] The convention included clauses for arbitration, and it was followed by the first arbitration provision in the Civil Procedure Code in 1908.[viii] However, this provision was later repealed by the Arbitration Act of 1940. Before this, the Britishers had enacted the Arbitration (Protocol and Convention) Act in 1937,[ix] which India had signed as a state to the Protocol on Arbitration established by the League of Nations.

The League of Nations had realized the importance of arbitration in bringing the world closer through trade and had developed the Protocol on Arbitration Clauses in 1923. However, the Protocol had several issues, and so the League of Nations came up with another Convention in 1927 called the Geneva Convention, which formed the basis for the Arbitration (Protocol and Convention) Act of 1937. This Act referred to the existence of the Arbitration Act of 1899.[x]

The Arbitration Act of 1940 replaced all previous laws governing arbitration, including the Arbitration (Protocol and Convention) Act of 1937. However, the 1940 Act failed to achieve its objective of making the arbitration process cost-effective and time-efficient. Parties were still able to challenge arbitral awards under the 1961 Foreign Awards (Recognition and Enforcement) Act, which was meant to be an additional layer before litigation. This Act was later repealed and replaced by the Arbitration and Conciliation Act of 1996, which was based on the comprehensive model for arbitration presented by the United Nations Commission on International Trade Law (UNCITRAL) in 1985. The 1996 Act has since undergone two more amendments in 2015 and 2019.[xi]

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Ethical implications of ADR as an alternative to traditional court proceedings

Justice Warren Burger,[xii] the former Chief Justice of the American Supreme Court, once observed that our society might be headed towards a future overrun by hordes of lawyers and an excessive number of judges. He argued that the idea that ordinary people want formal courtrooms and well-dressed lawyers to resolve their disputes is not accurate. What people want is relief from their legal problems as quickly and inexpensively as possible. Alternative Dispute Resolution (ADR) can provide several benefits over traditional judicial proceedings, including:

1. ADR can gather reliable information more efficiently than the judicial system since parties are more likely to share information in an informal exchange across the table than in the formal setting of a courtroom. This makes it easier to find the truth of the matter without the need to pillory individuals in public.

2. In Mediation or Conciliation, parties themselves determine the outcome, which removes obstacles to reaching a decision.

3. ADR is less formal than traditional judicial proceedings, resulting in lower costs.

4. Traditional judicial proceedings often result in a win-lose situation, whereas ADR can provide a win-win outcome for both parties.

5. ADR is more efficient and quicker, and results in less disruption than traditional judicial proceedings.[xiii]

Role of ADR in promoting fairness, equality, and transparency in the justice system

Alternative Dispute Resolution (ADR) is a comprehensive concept of consensus-building that aims to resolve most disputes of a compoundable nature. These disputes may be related to areas such as contractual, mercantile, commercial, banking, property, labor, compensation, family, and even minor criminal cases. The ADR process focuses on arriving at a workable solution to the dispute rather than delving into legalities and raising merits and demerits. The ADR

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mechanism follows the principles of natural justice and safeguards the contractual rights of the parties involved, with less emphasis on law and lawyers and more on common sense and goodwill. The aim is to achieve a win-win settlement for all parties rather than a win-lose situation.[xiv]

Furthermore, ADR offers several benefits including speed, economy, convenience, simplicity of procedure, secrecy, and the promotion of healthy relationships between parties. As such, the legislature, judiciary, and executive promote ADR methods such as arbitration, conciliation, mediation, Lok Adalat, and/or judicial settlement through courts, without litigation. In this context, this discussion examines the legal and regulatory framework of the ADR mechanism and the role of professionals in India. The ADR mechanism is a beneficial complement to the traditional legal system. While its framework has become comprehensive, its success depends largely on people's willingness to approach it with the right spirit and good faith. To take advantage of the ADR mechanism, parties need to be made aware of its benefits and educated on its adoption. Alternative dispute resolution involves direct participation from the disputants, rather than being handled solely by lawyers and judges. This increased involvement in the dispute settlement process results in greater satisfaction with the outcome. Most ADR processes use an integrative approach that is collaborative rather than competitive, unlike the litigation method. This is why ADR tends to generate less escalation and ill-will between parties, making it an effective solution in situations where the parties will continue to interact after a settlement is reached, such as in matrimonial and labor management cases.[xv]

Case studies where ADR has been used effectively to provide access to justice

The Supreme Court has issued directives to ensure that public sector undertakings of the Central Government and their counterparts in the States do not engage in litigation, spending money on counsel, court fees, procedural expenses, and wasting public time.

In the case of **Chief Conservator of Forests v. Collector**,[xvi] it was highlighted that the state/union government must develop a mechanism to resolve interdepartmental controversies and disputes, as disputes between departments of the Government cannot be contested in court.

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In the case of **Punjab & Sind Bank v. Allahabad Bank**,[xvii] the court held that the machinery set up by the government to monitor disputes between government departments and public sector undertakings, as directed by the Supreme Court in ONGC III,[xviii] is only meant to ensure that parties have an opportunity for conciliation before going to court.

In the case of **Salem Bar Association vs. Union of India**,[xix] the Supreme Court requested the preparation of model rules for Alternative Dispute Resolution and the drafting of rules of mediation under section 89(2)(d) of the Code of Civil Procedure, 1908.

In **Sundaram Finance Ltd. v. NEPC India Ltd.**,[xx] the Supreme Court explicitly stated that the provisions of the Arbitration and Conciliation Act, 1996 are different from those of the Act of 1940 and that the provisions of the Act of 1940 may lead to misconstruction. The 1996 Act was enacted to replace the Act of 1940. To understand the provisions of the 1996 Act, it is more relevant to refer to the UNCITRAL Model Law alongside the 1996 Act, rather than following the provisions of the Act of 1940.

In the case of **Grid Corp. of Orissa Ltd. v. Indian Charge Chrome Ltd.**,[xxi] Section 37(1) of the Indian Electricity Act, 1910, allows for arbitration by the Commission or its nominee of any dispute that arises between the licensees or in respect of matters provided under Section 33. The Orissa High Court held that Section 7 of the Arbitration Act, 1996, would apply to the present case because the scope of the Arbitration Act is extensive; it not only covers arbitration agreements in writing but also other agreements as mentioned in sub-section (4). The court also held that if there is any arbitration agreement in any other enactment for the time being in force, i.e., statutory agreement, provisions of the Arbitration Act, 1996, shall apply except sub-section (1) of Section 40 and Sections 41 and 43.

In **Baba Ali, Petitioner v. Union of India and Others,**[xxii] the validity of the Arbitration Act, 1996, was challenged on the ground that under the Act, the question of jurisdiction of the arbitrator can only be considered by the appropriate court after the award is passed and not at any penultimate stage. The Delhi High Court rejected the plea. Against this decision, a Special Leave Petition was filed in the Supreme Court. The Supreme Court of India dismissed the Special Leave Petition and held that there is no question of the Arbitration and Conciliation Act, 1996, being unconstitutional or in any way offending the basic structure of the

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Constitution of India. The High Court rightly observed that judicial review is available for challenging the award by the procedure laid down therein. The time and manner of judicial scrutiny can legitimately be laid down by the Act passed by the Parliament.

In a case filed under Section 11, **Sri Venkateshwara Construction Co. v. Union of India**,[xxiii] the Andhra Pradesh High Court referred to the provisions of Section 10, sub-section (1) and (2) and held that the parties have the freedom to determine the number of arbitrators, but the number should not be an even number. If the parties fail to provide for an odd number of arbitrators, the arbitral tribunal shall be constituted by a sole arbitrator.

In the case of **Ashalata S. Lahoti v. Hirala Lilladhar**,[xxiv] the Bombay High Court has taken a stand in a few matters, wherein the number of arbitrators was even. In such cases, the mandate of the arbitrator should terminate if they become de facto or de jure to perform their functions. If the tribunal is constituted contrary to Section 10 of the Act of 1996, the arbitrators de jure will not be able to perform those functions. In that case, the parties can move the court to a decision to decide whether the mandate has been terminated or not. This matter is to be dealt with by the court having jurisdiction under Section 14 (2). Therefore, it is held that arbitrators de jure cannot proceed with the arbitration.

In **Guru Nanak Foundation v. M/s Rattan Singh & Sons**,[xxv] the Supreme Court held that court procedures are time-consuming, complex, and expensive. Therefore, jurists searched for an alternative forum that is less formal, more effective, and speedy for the resolution of disputes, avoiding procedural claptrap. This led them to the Arbitration Act, 1940. However, how the proceedings under the Act are conducted and challenged in courts, has made lawyers laugh and legal philosophers weep. Experience shows that the proceedings under the Act have become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Informal forums chosen by the parties for the expeditious disposal of their disputes have, by the decisions of the courts, been clothed with 'legalese' of unforeseeable complexity.

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Conclusion

Alternative Dispute Resolution (ADR) is a faster, cheaper, and more user-friendly way of resolving disputes than the traditional court system. ADR allows people to be more involved in the process of resolving their disputes, which is not possible in the formal and adversarial justice system that is often perceived as being dominated by complex legal procedures and language. ADR offers a range of choices, including the choice of method, procedure, cost, representation, and location. ADR can also ease the burden on the courts by being a quicker alternative to judicial proceedings and by helping to curb the upward spiral of legal costs and legal aid expenditure.

To enhance and promote ADR mechanisms, several steps need to be taken. Firstly, creating awareness and popularizing ADR methods is crucial, and NGOs and the media can play a significant role in this regard. For court-annexed mediation and conciliation, necessary personnel and infrastructure must be developed, which requires government funding. Training programs on ADR mechanisms are also vital, and state-level judicial academies can assume the role of facilitator or active doer for that purpose.

References

Ankona. (n.d.). *viamediationcentre*. Retrieved from viamediationcentre.org: https://viamediationcentre.org/readnews/ODk1/ICADR-And-Why

Ashalata S. Lahoti v. Hirala Lilladhar [, Arb. LR.462 ((Bombay) 1993 (3)).

Baba Ali, Petitioner v. Union of India and Others, (Suppl.) Arb. LR 433 ((SC) 1999).

Bhat, I. H. (2013). ACCESS TO JUSTICE: A CRITICAL ANALYSIS OF ALTERNATE. *International Journal of Humanities and Social Science Invention*, 46-53.

britannica. (n.d.). Retrieved from britannica.com: https://www.britannica.com/biography/Warren-E-Burger

CBSE. (2014). *Legal studies* . delhi: The Secretary, Central Board of Secondary Education.

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constitution, I. (n.d.). *SSC*. Retrieved from https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-seventy-third-amendment-act-1992

drishtiias. (n.d.). Retrieved from drishtiias.com: https://www.drishtiias.com/mains/model-essays/a-society-that-has-more-justice-is-a-society-that-neds-less-charity

Grid Corp. of Orissa Ltd. v. Indian Charge Chrome Ltd, Arb. LR 128 (Orissa) (Orissa HC 1998).

Gupta, K. (2022, september 1). *ipleader*. Retrieved from blog.ipleader.in: https://blog.ipleaders.in/section-89-cpc/

Guru Nanak Foundation v. M/s Rattan Singh & Sons, SC. 2075 (SC AIR 1981).

Hon'ble Thiru Justice S.B.Sinha, J. S. (n.d.). *ADR and access to justice: issues and perspectives*. Retrieved from https://www.tnsja.tn.gov.in/article/ADR-%20SBSinha.pdf.

indiankanoon. (1937). Retrieved from indiankanoon.org: Preamble, Arbitration (Protocol and Convention) Act, 1937....

Kumar, N. (n.d.). Retrieved from https://kb.icai.org/pdfs/PDFFile5b4f1ebcbf6fd3.51534227.pdf

Nations..., L. o. (n.d.). *treaties.un*. Retrieved from treaties.un.org: https://treaties.un.org/doc/Publication/UNTS/LON/Volume%2027/v27.pdf...

Nylund, A. (2014, june 9). *springer, Cham*. Retrieved from https://link.springer.com/chapter/10.1007/978-3-319-04465-1_16: https://link.springer.com/chapter/10.1007/978-3-319-04465-1_16

Oil and Natural Gas Commission v. Collector of, Supp2 SCC 432 (supreme court 1992).

ONGC III, SCC 437 (SCC (2004)).

Punjab & Sind Bank v. Allahabad Bank, SCALE 557 (2006).

Salem Bar Association vs. Union of India, SCC 344 (sc (2005)).

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Sharma, L. (2021, february 7). *ssconline*. Retrieved from ssconline.com: https://www.scconline.com/blog/post/2021/02/07/evolution-of-adr-mechanisms-in-india/#_ftn6

Sri Venkateshwara Construction Co. v. Union of India, Arb. LR 619 (AP) (AP HC 2001).

Sundaram Finance Ltd. v. NEPC India Ltd.,, SCC 565 (SCC 1999).

Endnotes

[i] (Hon'ble Thiru Justice S.B.Sinha, n.d.)
[ii] (Nylund, 2014)
[iii] (Ankona, n.d.)
[iv] (CBSE, 2014)
[v] Ombudsman is etymologically rooted in the word *umboosmaor*, essentially meaning "representative."
[vi] (constitution, n.d.) also refer the article 40 of Indian constitution.
[vii] (Nations..., n.d.)
[viii] (Gupta, 2022)
[ix] (indiankanoon, 1937)
[x] Convention on the Execution of Foreign Arbitral Awards signed at Geneva on 26-9-1927 also known as the Geneva Convention, 1927.
[xi] (Sharma, 2021)
[xii] (britannica, n.d.)
[xiii] (drishtiias, n.d.)
[xiv] (Kumar, n.d.)
[xv] (Bhat, 2013)
[xvi] (Oil and Natural Gas Commission v. Collector of, 1992)
[xvii] (Punjab & Sind Bank v. Allahabad Bank, 2006)
[xviii] (ONGC III, (2004))
[xix] (Salem Bar Association vs. Union of India, (2005))
[xx] (Sundaram Finance Ltd. v. NEPC India Ltd.,, 1999)
[xxi] (Grid Corp. of Orissa Ltd. v. Indian Charge Chrome Ltd, 1998)
[xxii] (Baba Ali, Petitioner v. Union of India and Others, 1999)
[xxiii] (Sri Venkateshwara Construction Co. v. Union of India, 2001)
[xxiv] (Ashalata S. Lahoti v. Hirala Lilladhar [, 1993 (3))
[xxv] (Guru Nanak Foundation v. M/s Rattan Singh & Sons, AIR 1981)

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