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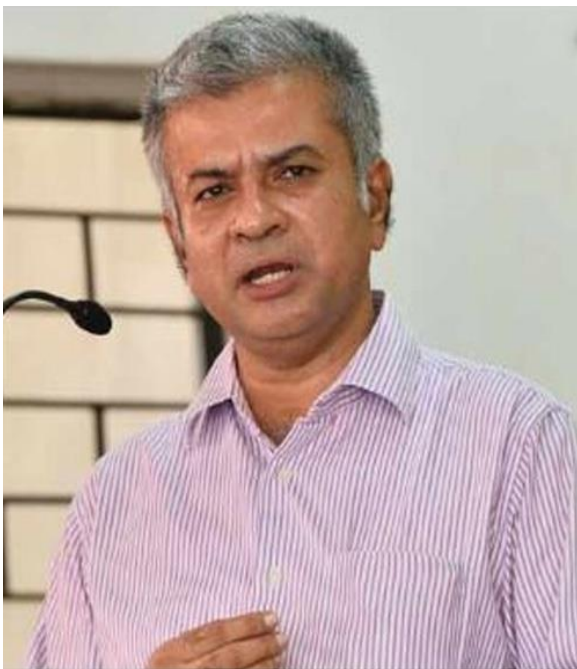
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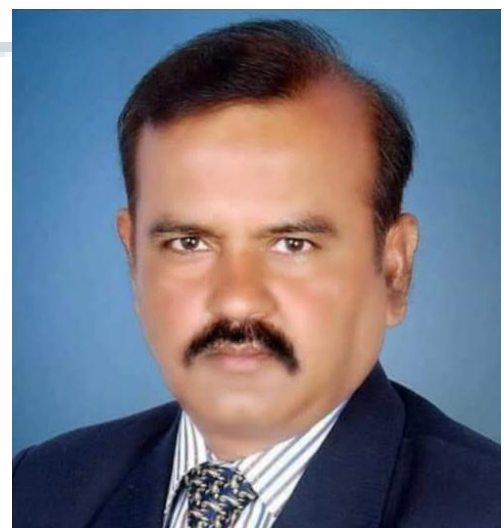
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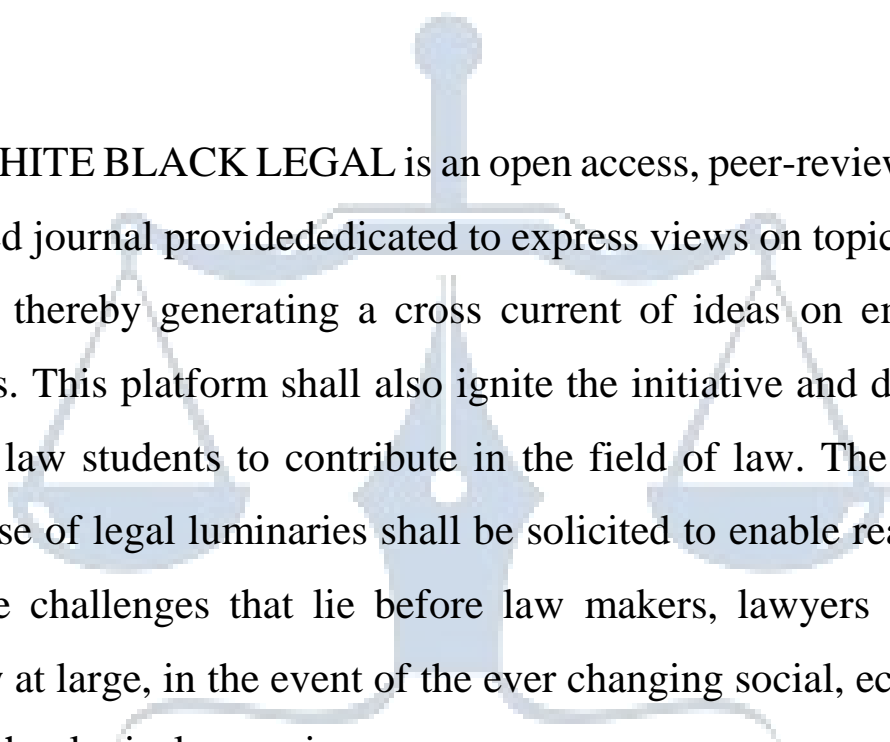


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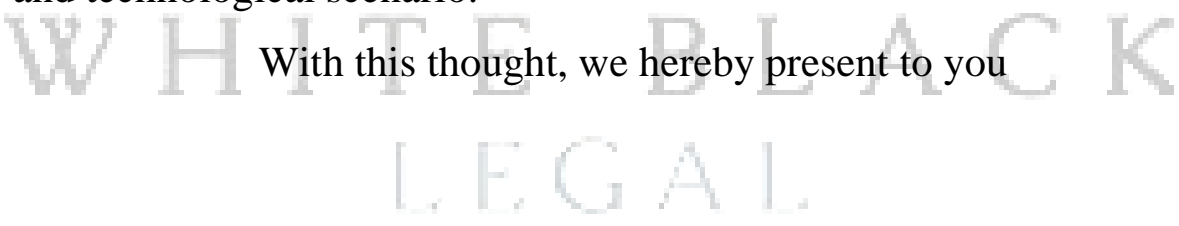
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With this thought, we hereby present to you



# **THE EVOLVING ROLE OF ADR IN INDIA: OPPORTUNITIES, CHALLENGES AND SOLUTIONS**

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## **ABSTRACT**

ADR-Alternative Dispute Resolution has evolved as a mechanism for resolving conflicts in India, and as a possible alternative to legal remedy. The amalgamation of these shoreline practice has been gathered throughout the years in India as a result of the countries enormous dielectric case build-up and the requirement for speedier, less luxurious strategies for administering equity and dispute goals. This article analyzes how alternative dispute resolution (ADR) was developed, implemented, and has limitations when applied in the Indian legal system. It looks into the important legal structures that have certainly bolstered ADR practices in India like the Arbitration and Conciliation Act of 1996 and its latest amendments. It also highlights obstacles created by social perceptions of formal litigation that may impede the use of alternative dispute resolution approaches. Some recommendations in the report for enhancing the efficacy of ADR include broadening legislative frameworks, strengthening the functioning of ADR institutions, and raising awareness of ADR among the public.

## **INTRODUCTION**

In arbitration, the parties in dispute agree to have their matters resolved through a quasi-judicial process where an arbitrator is selected by mutual agreement. Because arbitrations are rooted in a contract between the parties, it is considered a type of alternative dispute resolution (ADR), which is different from court proceedings. The powers of the arbitral tribunal, which has the ability to make decisions like a court, and its obligations are set by law.

ADR, is one of the earliest and most widely utilized devices for alternative dispute resolution as per the 1996 Arbitration and Conciliation Act. The first ADR provisions were contained in the Indian Arbitration Act, 1899, which was valid and enforceable in the Presidency towns of Bombay, Madras, and Calcutta.

After-import of Arbitration Rules into Second Schedule of Code of Civil Procedure, 1908 These clauses ultimately evolved into the Arbitration Act of 1940, which provided a comprehensive statutory framework for arbitration in India. The 1940 Act (which remained on the books for over 50 years) was heavily influenced by the English Arbitration Act of 1934.

Once it was prepared and enforced within the Second Schedule of the Code of Civil Procedure, 1908, arbitration provisions were introduced. The provisions became the Arbitration Act 1940, which established a strong legal foundation for arbitration in India. The 1940 Act, which governed arbitration in the United States for well over 50 years, was heavily influenced by the English Arbitration Act of 1934.

Two separate laws governed the enforcement of foreign awards: the Arbitration (Protocol and Convention) Act, 1937, which applied to awards under the Geneva Convention, and the Foreign Awards (Recognition and Enforcement) Act, 1961, which dealt with awards under the New York Convention. Only domestic arbitration was covered by the Arbitration Act of 1940.<sup>1</sup>

Mediation is another unofficial form of Alternative Dispute Resolution (ADR) that attempts to help parties in conflict communicate with one another and often leads to a mutually agreeable settlement. Unlike arbitration, mediation helps people and businesses resolve conflicts while preserving their relationships since it is entirely voluntary and based on mutual consent.

These days, the primary applications of mediation are in family disputes and cases that the courts refer to mediation centres. Although private or voluntary mediation does take place, it lacks a formal structure and agreements are not acknowledged by law, which discourages broader participation in this kind of dispute resolution. The development of mediation as a popular dispute resolution technique has been hampered by these issues.

The Rajya Sabha has received the Mediation Bill, 2021, in order to address these problems. The purpose of the bill is to establish a unified legal framework for mediation in India. A Joint Parliamentary Committee was tasked with reviewing it, and the government is currently actively considering some of its proposals.

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<sup>1</sup> Legalaffairs.gov.in, [https://legalaffairs.gov.in/sites/default/files/Arbitration\\_Mediation.pdf](https://legalaffairs.gov.in/sites/default/files/Arbitration_Mediation.pdf), (last visited 10<sup>th</sup> Jan 2025)



Established under the India International Arbitration Centre Act, 2019, the India International Arbitration Centre is an essential body for promoting fair and efficient arbitration in India. The goal is to make the Centre a leading venue for both domestic and international business arbitration.

The Centre will provide tools and support for arbitration, mediation, and conciliation. It will also maintain a roster of certified arbitrators, mediators, and other experts from India and other countries, including investigators and surveyors. The Centre will also promote research, offer training courses, and host conferences and seminars on arbitration and other conflict resolution methods. The centre already has a chairwoman and part-time employees.

The 222<sup>nd</sup> Law Commission Report, there are many advantages of ADR, they are<sup>2</sup>-

- **Cost-Effective:** Alternative Dispute Resolution (ADR) methods are generally more economical compared to traditional litigation.
- **Time-Efficient:** ADR, particularly arbitration, resolves disputes more quickly by avoiding prolonged appeals and court processes.
- **Flexible Procedures:** ADR eliminates rigid legal formalities, enabling parties to tailor procedures to their specific needs.
- **Confidentiality:** Disputes can be resolved privately, safeguarding sensitive information from public disclosure.
- **Preservation of Relationships:** Unlike litigation, which often results in adversarial outcomes, ADR promotes reconciliation and maintains goodwill between parties.
- **Faster Contract Enforcement:** ADR significantly enhances the efficiency of contract enforcement, a key factor emphasized by the World Bank's Ease of Doing Business reports.
- **Saving Foreign Exchange Reserves:** By resolving disputes domestically through arbitration, India reduces the need to rely on costly international arbitration hubs, conserving valuable foreign exchange.

## ANALYSIS

### ISSUES/ CHALLENGES

There are various challenges which ADR and specifically arbitration faces in India. A few of them are<sup>3</sup>-

- The Traditional Indian mindset

The typical citizen of the nation always tries to avoid going to court and being involved in litigation, and he is frequently intimidated when he does. People fear that the results of alternative dispute resolution (ADR) may not be as effective as the court's verdict, even though they trust the courts on all issues. This is because ADR is still relatively new compared to traditional litigation.

- Lack of Legislation

One important step towards modernising arbitration law in India was the 1996 Arbitration and Conciliation Act, which was last revised in 2015. A more thorough and reliable legal framework is still desperately needed, nonetheless, in order to handle the growing complexity of arbitration procedures. To improve the effectiveness and dependability of arbitration as a conflict resolution process, businesses and individuals must continue to overcome obstacles that call for more precise and useful regulations. Lawmakers must thoroughly examine the unique requirements and difficulties encountered by corporate entities, which frequently use arbitration to settle conflicts, in order to do this. This entails being aware of the delays, procedural bottlenecks, and ambiguities in several current legal provisions that erode confidence in arbitration.

Arbitration can be positioned as a competitive alternative to traditional litigation by resolving these problems and providing a simplified, approachable framework.

Increasing understanding and transparency of arbitration procedures and rules should be a major component of reform. Instead than using the frequently costly and time-consuming legal system, more companies and individuals may be encouraged to accept arbitration with confidence provided the rules are clear and uncomplicated. Because arbitral rulings are thought to be unpredictable or unenforceable, many people are still reluctant to use arbitration, especially in high-stakes cases.

- Judicial Interference in Arbitration

It is important to limit the involvement of the courts and other judicial organisations.

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<sup>3</sup> Viamediationcentre.org, <https://viamediationcentre.org/readnews/NDYx/Challenges-of-Arbitration-in-India>, (last visited 10<sup>th</sup> October 2025)

Limiting the extent of judicial intervention before to, throughout, and even following the conclusion of the arbitration process is crucial. In order to increase public confidence in the arbitration process, this is a crucial step. It's critical that ADR gain the same level of trust as the legal system. Section 34 of the Arbitration and Conciliation Act of 1966 requires that the scope of appeals be limited to ensure that no verdict is challenged; otherwise, ADR's effectiveness as a judicial problem-solving process will be negligible.<sup>4</sup>

- Lack of awareness

The general public's lack of information is one of the main reasons arbitration has not become popular in India. Although some attorneys, businesspeople, and legal advisors are knowledgeable about arbitration procedures, this expertise is mostly limited to a particular segment of the legal and business community. Because of this, a large number of startups, small business owners, and those who are new to the business world are still ignorant about arbitration's effectiveness and efficiency as a conflict resolution process. These groups are excluded from the advantages of arbitration since they are unable to investigate it as a potential substitute for conventional litigation due to their ignorance.

To address this issue and position India as a more attractive hub for business and arbitration, it is crucial to undertake targeted initiatives and this can include educational campaigns and workshops to demystify arbitration for small business owners, entrepreneurs, and other stakeholders. Universities and legal institutions should include arbitration as a core component of legal and business studies in the courses they offer to students to cultivate an early understanding among the students who will soon become future professionals. Similarly, public awareness campaigns and workshops supported by both government and private organizations, can help inform the broader population about the advantages of arbitration.

## SOLUTIONS

While there are many issues which have been discussed above, there are many ways by which these issues can be countered, they are-

- Spreading Awareness

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<sup>4</sup> Vikash Kumar Singh, Arbitration in India: Recent Developments and key challenges, 2320-2882, IJCRT, c82,2023

The most significant requirement for establishing arbitration in India is to raise awareness among the population. This method relies heavily on effective messaging. The primary goal should be to promote arbitration as a preferred means of dispute resolution and encourage private parties to include arbitration clauses in their contracts rather than relying on litigation. Individuals and businesses are unlikely to pursue justice or even consider arbitration unless they are aware of their rights and potential remedies.<sup>5</sup>

A concentrated effort must be undertaken to inform the public about the advantages and importance of arbitration in order to correct this. This includes illustrating how, in contrast to traditional judicial processes, it can save time, cut expenses, and offer a more adaptable and private avenue for dispute resolution. By emphasising these benefits, arbitration can be marketed as a successful conflict resolution option, especially in the business sector.

Since individuals, small firms, and start-ups frequently lack access to resources and information, awareness campaigns should concentrate on demythologising the arbitration process for these groups. Workshops, seminars, and online campaigns are examples of outreach activities that can be used to explain arbitration's operation, significance, and potential as a cost-effective conflict resolution method without placing an undue strain on the legal system.

Additionally, by proposing arbitration to clients and outlining its significance in contemporary commercial contracts, attorneys and consultants should actively participate in its promotion. A future generation of professionals who recognise the value of arbitration and support its application can be produced by integrating arbitration education into the curricula of law and business schools.

- Compulsory use of ADR methods

It must be enforced strictly and properly. Unless ADR is mandatory, India will not develop a strong ADR system and will not gain the trust of its people.

- Minimising interference of courts

Arbitration is a fundamental component of Alternative Dispute Resolution (ADR) because it requires little involvement from the courts. ADR procedures, such as arbitration, are intended to give parties a quicker, more flexible, and less combative

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<sup>5</sup> Indian National Bar Association, <https://www.indianbarassociation.org/suggestive-measure-to-strengthen-adr-in-india/>, (last visited 10<sup>th</sup> January 2025)

means of resolving conflicts than court-based litigation. But in reality, this goal has occasionally been compromised by judicial interference in arbitration processes, undermining the fundamentals of ADR.

The least amount of judicial intervention is necessary for arbitration to be a fully autonomous and successful system. Courts should only intervene in extreme cases since becoming too involved can make the process take longer, cost more money, and deter parties from using arbitration to settle disputes. Section 34 of the 1996 Arbitration and Conciliation Act, which permits parties to contest arbitral rulings, raises serious concerns. Although this clause is required to maintain accountability and fairness, it shouldn't be used as a means of pointless or excessive contestation, as this would negate the goal of arbitration.

The focus should be on creating a balanced framework where the role of the courts is strictly limited to ensuring procedural integrity and addressing instances of genuine injustice, such as violations of public policy and fundamental rights. At the same time, arbitral awards must be respected and enforced as binding decisions which would in turn reduce the scope for unnecessary challenges and prolonged litigation.

- Establishment of new legal provisions and acts

New legislation and provisions must be introduced in order to improve ADR. The public's perception of ADR may become more severe and serious as a result of such regulations, which might guarantee improved enforcement of ADR procedures.

## LANDMARK AMENDMENTS IN 1966 ACT

The act has been amended in 2015, 2019 and 2021. These landmark amendments promoted ADR as one of the key methods to resolve complex disputes in India.<sup>6</sup> A few of them are-  
KEY AMENDMENTS IN 2015 AND 2019-

- a) If the subject at hand is covered by an arbitration agreement, courts must send parties to arbitration in accordance with the 2015 Amendment to Sections 8<sup>7</sup> and 9<sup>8</sup> of the Arbitration and Conciliation Act. Furthermore, arbitral procedures must start within

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<sup>6</sup> Daily Jus, <https://dailyjus.com/world/2024/04/recent-amendments-in-indian-arbitration-and-conciliation-act-the-winds-have-begun-to-blow-for-the-resolution-of-complex-construction-disputes#:~:text=The%202021%20Amendment%2C%20through%20the,the%20challenge%20is%20disposed%20of> (last visited 10<sup>th</sup> January 2025)

<sup>7</sup> Arbitration and Conciliation Act, 1996, § 8, Acts of Parliament, 1996 (India)

<sup>8</sup> Arbitration and Conciliation Act, 1996, § 9, Acts of Parliament, 1996 (India)

ninety days of the court's order if it awards an interim measure of protection under Section 9.

- b) Arbitral tribunals are granted the same authority as courts under Section 9 by the 2015 and 2019 Amendments to Section 17<sup>9</sup>. This implies that any temporary orders made by an arbitral panel throughout the proceedings have the same legal authority as if they had come from a court.
- c) In addition, the 2015 Amendment to Section 2(2)<sup>10</sup> makes it clear that, in the absence of a contrary agreement between the parties, international commercial arbitrations will be subject to the provisions of Section 9 (interim measures), Section 27<sup>11</sup> (evidence collection), and Sections 37(1)(a)<sup>12</sup> and 37(3)<sup>13</sup> (appealable orders), even if the arbitration is held outside of India.
- d) As long as it stays within the parameters of the arbitration agreement, the Respondent in an arbitration proceeding may raise a set-off or submit a counterclaim under the 2015 and 2019 Amendments to Section 23. Timelines are also included by these revisions, which mandate that the statement of defence and the statement of claim be submitted within a period of six months of the arbitrators' appointment.
- e) The tribunal may consider the Respondent's failure to submit a statement of defence to be a loss of the right to do so under the 2015 Amendment to Section 25.<sup>14</sup> This failure, however, will not be interpreted as acknowledging the claims made by the claimant.
- f) The 2015 Amendment to Section 31 stipulates that the initiating party may be obliged to pay the full or partial arbitration costs if the arbitration agreement was formed after the dispute occurred. Furthermore, the Amendment stipulates future interest at a rate 2% higher than the going rate of interest on the date of the award in the event that the arbitrator is unable to determine the interest rate on the awarded sum.
- g) The 2015 and 2019 Amendments introduced Sections 29A and 29B, setting strict timelines for the completion of arbitration. Arbitrators must deliver an award within 12 months of their appointment. This period can be extended by up to six months with the parties' consent. Any further extension requires approval from the court, which may grant it for valid reasons or impose conditions as it deems fit.

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<sup>9</sup> Arbitration and Conciliation Act, 1996, § 17 Acts of Parliament, 1996 (India)

<sup>10</sup> Arbitration and Conciliation Act, 1996, § 2(2), Acts of Parliament, 1996 (India)

<sup>11</sup> Arbitration and Conciliation Act, 1996, § 27, Acts of Parliament, 1996 (India)

<sup>12</sup> Arbitration and Conciliation Act, 1996, § 37(1)(a), Acts of Parliament, 1996 (India)

<sup>13</sup> Arbitration and Conciliation Act, 1996, § 37(3), Acts of Parliament, 1996 (India)

<sup>14</sup> Arbitration and Conciliation Act, 1996, § 25, Acts of Parliament, 1996 (India)

- h) The 2015 Amendment to Section 24<sup>15</sup> requires that hearings for oral arguments or the presentation of evidence be held on a daily basis. Adjournments are not encouraged and are only permitted with good reason.
- i) According to the 2015 Amendment to Section 11<sup>16</sup>, applications for the appointment of arbitrators must be decided by the Supreme Court, High Court, or their appointed representatives within sixty days of notice. Additionally, using the rates specified in the Fourth Schedule, it permits High Courts to impose restrictions on arbitrators' costs.
- j) By adding Section 11(3A)<sup>17</sup>, the 2019 Amendment improved the arbitrators' selection procedure even more. Now, courts can select arbitral institutions to conduct the appointments rather than taking on the duty themselves if parties cannot agree on arbitrators. This expedites the procedure and saves time.

#### KEY AMENDMENTS IN 2021-

- a) By eliminating the Eighth Schedule and replacing Section 43J, the section now states that: “The qualifications, experience and norms for accreditation of arbitrators shall be such as may be specified by the regulations.”<sup>18</sup>

The 2021 Amendment Act made major adjustments that permitted the appointment of foreign nationals as arbitrators. This modification is especially crucial for settling intricate and highly technical conflicts in sectors like construction since it gives parties the option to select arbitrators who possess the knowledge and experience needed to manage these cases successfully.

### **CONCLUSION**

Alternative Dispute Resolution (ADR) has appeared as a meaningful solution to the drawbacks in traditional litigation, and can now be counted as a pillar in development of the Indian legal system. ADR is a viable solution in India with its range of mechanisms: arbitration, mediation, conciliation, and negotiation, which provide a faster, cheaper, and more flexible way of resolving disputes, while also alleviating the burden of pending cases in the courts of the country. The Indian legal system has shown an extraordinary journey of resilience through

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<sup>15</sup> Arbitration and Conciliation Act, 1996, § 24, Acts of Parliament, 1996 (India)

<sup>16</sup> Arbitration and Conciliation Act, 1996, § 11, Acts of Parliament, 1996 (India)

<sup>17</sup> Arbitration and Conciliation Act, 1996, § 11(3A), Acts of Parliament, 1996 (India)

<sup>18</sup> Herbertsmithfreehills, <https://www.herbertsmithfreehills.com/notes/arbitration/2020-11/india-amends-arbitration-law-relating-to-enforcement-of-awards-tainted-by-fraud-and-arbitrator-qualifications>, (last visited 10<sup>th</sup> January 2025)

historic reforms and amendments which aim to modernise and enhance the efficiency of ADR mechanisms.

The Arbitration and Conciliation Act, 1996 is a significant step in the direction of promoting arbitration as an alternative mode of settlement of disputes. Major reforms in 2015, 2019 and 2021 addressed the key issues but also strengthened the position of arbitration in India. The 2015 amendments introduce stricter timelines for arbitral awards, the availability of enforceable interim orders, and increased efficiency with day-to-day hearings. Those revisions inspired confidence in arbitration as a swift and reliable process.

Further strengthening arbitration, changes in 2019 established the institutional mechanisms, such as allowing arbitral organisations to choose arbitrators and narrowing the powers of courts in the appointment process. This amendment not only enhanced the effectiveness of the procedure but also brought Indian arbitration procedure at par with the international practice. The 2019 changes also framed a much-needed regimen for transparency and accountability in the arbitration process and ensured fast and fair award delivery.

The 2021 amendment went one step further by removing the Eighth Schedule and also substituting Section 43J to allow appointment of foreign nationals as arbitrators. Such shift is of utmost significance, especially for complex and technical disputes like those pertaining to the infrastructure/construction space. The amendment legitimizes and strengthens the tribunal mechanism in India in a manner that lets the parties appoint arbitrators who have specialized knowledge and also expertise, irrespective of his/her nationality. It instils confidence in both international investors and companies, positioning the nation as a viable hub for international commercial arbitration.

Despite these developments, there is yet number of hindrances faced by ADR in India, which include lack of awareness, judicial intervention and the aggravate distrust of non-judicial dispute settlement techniques in public's mind. Most resistance to ADR becoming mainstream has come from the old-world haters that believe more in court-based litigation. Moreover, ADR processes, such as mediation, have few legal requirements that inhibit the acceptance of a fit for court.

However, these challenges are surmountable. Increasing public awareness through public



campaigns, workshops, and education can help close the knowledge gap and encourage its adoption. This sort of mindset can be learned in business and law schools, and a familiarity with ADR in schools in general puts ADR in the forefront of minds and brings their values into the public consciousness, especially in the business world. Also, less court intervention will enhance confidence within the ADR process, particularly regarding arbitral judgments.

The establishment of entities such as the India International Arbitration Centre and the draft Mediation Bill, 2021 are examples of commitment to institutionalise ADR in India. These initiatives, along with certain reforms, position ADR as a pillar of the justice delivery system in India.

To conclude, while challenges remain, the steady development of ADR in India indicates that it is moving in the right path. The institutional support for and legal advances in ADR, grounded in educated public awareness of the practice, demonstrate ADR's power to transform the conflict resolution environment. By advancing alternative dispute resolution (ADR) as a robust, efficient, and reliable alternative to litigation, India can settle disputes more efficiently, relieve pressure on the courts, and create an environment conducive to domestic and foreign business.