

The background of the journal cover features a top-down view of a wooden desk. On the desk, there is a pair of black leather brogue shoes in the top left, a black leather bag in the top right, an open notebook with a silver pen in the bottom left, and a black leather watch with a silver face in the bottom right. A large white rectangular panel is centered on the desk, containing the journal's title and ISSN. A yellow horizontal band is at the bottom of the cover.

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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **ALTERNATE DISPUTE RESOLUTION & ITS CHALLENGES**

Authored By - Shehryar Edibam

## **INTRODUCTION**

During the lifetime of a person, he or she may encounter several conflicts and disagreements. When certain disagreements are not suitable to be taken to Court, they may be resolved outside the Court by coming to an agreement. ADR which stands for Alternate Dispute Resolution is a relatively new concept in India. However, the process of Mediation dates back centuries. Mediation is a process wherein disputing parties are assisted by a neutral third party to come to a mutual agreement. As several cases are pending before Indian Courts, Alternative Dispute Resolution could be a great method for cost-effective and speedy resolution of these cases. Alternative Dispute Resolution is a great method to resolve matrimonial issues, business issues, and family issues. Family issues are traumatic and the courtroom is not an ideal place to settle such grievances. The legal battle during divorce proceedings escalates hateful feelings among the families and causes hostility among them. Children often tend to suffer during divorce proceedings between two parties. Therefore, Alternative Dispute Resolution is a great means of resolving such sensitive issues.<sup>1</sup>

## **MODES OF ALTERNATIVE DISPUTE RESOLUTION IN INDIA**

### 1) Arbitration

Arbitration is a form of Alternative Dispute Resolution that co-exists with the litigation system. It is a binding form of resolving disputes outside the court of law. In this process, the disputing parties choose one or more arbitrators. The arbitrators are neutral and render an award that is enforceable in court of law and binding on both parties. This is a method of private dispute resolution that does not involve any court proceedings.

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<sup>1</sup> <https://blog.ipleaders.in/an-overview-of-challenges-in-adr-mechanism-in-india/>

## 2) Conciliation

Conciliation is an informal way of settling disputes outside the court. A neutral third-party called conciliator assists the disputing parties in identifying the issue and comes up with different options and alternatives to reach an agreement. The conciliator encourages communication between the parties and lowers the tension. No agreement is required in the process of conciliation. Conciliation is non-binding on the parties.

## 3) Mediation

Mediation has been a mode of dispute resolution in our country since a long time. It is one of the most effective processes of Alternate Dispute Resolution in which the disputing parties are assisted by a neutral party called the mediator to amicably settle the dispute. Mediation is one of the most time and cost-effective methods of Alternate Dispute Resolution. It is a voluntary procedure that is non-binding on the parties. The confidentiality of the matter is maintained in this procedure. Under this process, the disputing parties send their written issues to the mediator, after which the mediation hearing takes place. The purpose of the mediators is to facilitate the dispute resolution process and not to direct the parties. It is a less formal process as compared to arbitration.

## 4) Negotiation

As a form of Alternate Dispute Resolution, negotiation can be defined as any direct or indirect form of communication between disputing parties to come to a mutual agreement. Unlike the other forms of Alternate Dispute Resolution, negotiation does not require the involvement of a third party. It is considered the most flexible and informal means of Alternate Dispute Resolution. Negotiation is voluntary and is non-binding on the parties. Negotiation allows the parties to meet in order to settle the dispute. Negotiation is the most common form of Alternate Dispute Resolution.

## 5) Lok Adalat

Lok Adalats are the courts of the people. These courts are established by the people themselves to bring about social justice. Lok Adalats are a form of Alternate Dispute Resolution. The award rendered by Lok Adalats is binding on all parties. The parties cannot appeal the award of the Lok Adalats in any court of law. If any of the parties are not satisfied by the award rendered by the Lok Adalat then they may approach any court with appropriate jurisdiction and initiate litigation proceedings.<sup>2</sup>

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<sup>2</sup> <https://byjus.com/free-ias-prep/alternative-dispute-resolution/>



## **WHY IS ADR BETTER THAN LITIGATION?**

- Litigation can go on for a long period of time, making it very expensive for the parties involved. The parties have to pay a hefty fee to their advocates for their representation. On the flip side, Alternate Dispute Resolution is cost and time-effective.
- There are ample of cases pending before the Indian Courts and there is a shortage of judges to dispose of these cases. Alternate Dispute Resolution is a great means to dispose of these cases in a speedy manner.
- In case of litigation, the final decision of the court is binding on both parties. As a result of litigation proceedings, one party would always be in loss. On the other hand, in case of Alternate Dispute Resolution, both parties come to a mutual agreement and are satisfied with the award.
- Alternate Dispute Resolution is more convenient and less stressful as compared to litigation. It is a much simpler process.
- Alternate Dispute Resolution proceedings are confidential and kept out of the public eye. The sensitive documents and other confidential information is not disclosed to the general public.
- Alternate Dispute Resolution avoids the complex procedures and formalities of litigation. It is a much simpler process.
- In the case of Alternate Dispute Resolution, the parties are free to select their arbitrator, mediator, or conciliator with expertise in the matter. In case of litigation, any random judge may be assigned who has no expert knowledge regarding the matter.

## **ISSUES FACED IN ADR MECHANISM**

- Lack of Government support- As India is a developing country, there is a lot of uneven development taking place throughout the country. Some areas are more developed while others are not. The Alternate Dispute Resolution has received limited support from the Indian Government.
- Insufficient funding and infrastructure- There are very limited Alternate Dispute Resolution centres available in India. This is because there is insufficient funding for the same. Alternate Dispute Resolution is not practiced in the country's small remote towns and thus people from such places have to travel long distances to other cities where such facilities are available.
- Lack of skilled lawyers- In India, there is a shortage of highly skilled and trained arbitrators, mediators and negotiators due to the country's faulty education system. There is non-availability

of proper institutions that would give the required practical training to the students and professionals.

- No appeal- Unless the appeal procedure is mentioned in the Alternate Dispute Resolution agreement, the ADR procedure is binding with the exceptions of very few circumstances.
- Stalling tactic- If the ADR procedure is not binding then it can be used as a stalling tactic by parties to delay the settlement of the issue. In such cases, the procedure may drag on for a long period of time.
- Delay in rendering awards- It often takes arbitrators a long time to render the awards. This becomes a matter of frustration for the parties. The delay in rendering awards is most noticeable in the arbitrations of construction industries.<sup>3</sup>

## **SOLUTION TO ISSUES FACED IN ADR**

- Limited court intervention- Indian courts need to minimize their interference in the proceedings of Alternate Dispute Resolution in order to ensure justice and maintain the effectiveness of ADR.
- Building infrastructure- In order to make the mechanism of Alternate Dispute Resolution accessible to every Indian citizen, ADR tribunals have to be built in every district.
- Create awareness- The citizens of India must be provided legal education in order to make them aware of their rights and remedies.
- Lowering the fees- In order to make Alternate Dispute Resolution affordable and accessible to all citizens of India, the fees charged by negotiators, conciliators and arbitrators must be regulated.
- ADR training programs- Lawyers who wish to work in the field of Alternate Dispute Resolution must be provided with proper ADR focussed training.

## **FUTURE OF ALTERNATE DISPUTE RESOLUTION IN A CHANGING WORLD**

The future of Alternate Dispute Resolution will be determined by several factors like developments in technology and globalization. There will be an ever increasing demand for simple and cost-effective mechanisms of dispute resolution.

Advancements in technology has made it possible to conduct Alternate Dispute Resolution

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<sup>3</sup> <https://legal.thomsonreuters.com/en/insights/articles/problems-and-benefits-using-alternative-dispute-resolution>

proceedings online via video conferences. This will make ADR more accessible to people in different parts of the country.

Globalization is a key factor in the growth of Alternate Dispute Resolution. In today's age, a large number of businesses operate in multiple different countries. Thus, there is an urgent need of for a dispute resolution mechanism that is able to handle international disputes. Alternate Dispute Resolution is a useful mechanism to settle cross-border disputes without having to deal with the complexities of different legal systems.

Alternate Dispute Resolution has a bright future ahead. It will continue to evolve and and prove to be a great mechanism for dispute resolution.

## **CONCLUSION**

Alternate Dispute Resolution is a great mechanism to get justice. This is because ADR is much cheaper, faster and more accessible as compared to litigation. There are also very few formalities involved. Any sort of disagreement can be resolved by following the procedure of Alternate Dispute Resolution. The disputes are resolved through compromise and communication instead of litigation proceedings. In conclusion, Alternate Dispute Resolution is the most simple way of getting justice. Although the mechanism of Alternate Dispute Resolution is relatively new, it will play a huge role in the` future. Many developed countries already prefer ADR as a mechanism to get justice instead of lengthy and expensive court proceedings. The Indian Government should support ADR and address its current flaws.<sup>4</sup>

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<sup>4</sup> <https://www.lawteacher.net/free-law-essays/commercial-law/alternative-methods-of-dispute-resolution-commercial-law-essay.php#:~:text=In%20conclusion%2C%20Alternative%20Dispute%20Resolution,formality%20involved%20and%20less%20adversarial.>