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Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing PH.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



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Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of Law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Inter-country adoption laws from Uttarakhand University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, PH.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, PH.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University. More than 25 Publications in renowned National and International Journals and has authored a Text book on CR.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide 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

ALTERNATIVE DISPUTES RESOLUTION: ITS EVOLUTION AND EMERGING TRENDS

AUTHORED BY - RAJANDEEP KAUR

I. Introduction

Human society has always been fraught with conflict and violence from the beginning of time. Wars were fought in the past to prove that who was wrong or right, or disputes had to be resolved by going to the king's darbaar. Litigation followed the development of the legal system and jurisprudence across time. Currently, rules in different nations pertaining to certain areas of commercial contracts vary greatly from one another. The smooth and quick flow of international business is hampered by these discrepancies in both practical and legal aspects. UNCITRAL¹ has developed guidelines on a range of topics or created model laws and conventions in an effort to bring at least some fundamental concepts across the various business laws. The conventions are meant to offer practical ways to resolve the differences and disputes that currently exist between Common Law, Civil Law, and a number of other legal practices what are in use throughout the world. Harmonizing and globalizing every legal framework pertaining to international trade and alternative dispute resolution is a task that the Indian government has already engaged on. As individuals became aware that not all disputes needed to be heard in traditional courts, ADR, or alternative dispute resolution, entered the scene. Parties settle their disagreements in this scenario according to their legal rights, and an unbiased judge hears arguments from both parties before rendering a well-reasoned ruling.

Arbitration, conciliation, and mediation are forms of alternative dispute resolution, or ADR. Involving a third party who facilitates amicable dispute resolution, it operates outside the conventional legal system and is subject to specific regulations. A third party who delivers a decision with legal enforceability. An arbitrator or mediator is the third party that is involved. In the event of mediation, the third party is referred to as the mediator, and in the case of arbitration, the arbitrator. While the decision made in arbitration is binding on the parties, the decision made in mediation is not. In addition, one mediator may serve as a mediator in

¹ The United Nations Commission on International Trade Law established in 1966 is a subsidiary body of the General Assembly of the United Nations with the general mandate to further the progressive harmonization and unification of the law of international trade.

mediation while multiple arbitrators may serve as arbitrators in arbitration. While mediation is a more relaxed process and focuses mostly on a peaceful resolution of the conflict between the parties, arbitration is more akin to a court proceeding. In an effort to improve the mediation process in India, the Lok Sabha has passed the Mediation Act, 2023².

Contrarily, conciliation is a completely separate procedure in which a neutral third party is chosen to act as an expert and protect the parties' sensitive information. The 1908 Civil Procedure Code governs it. Conciliator is the term for the expert, and he is involved in the process actively.

ADR is one of the legal sector's fastest-growing and most emerging industries. The alternative dispute resolution method is being used by a lot of businesses, organizations, and recently established startups so that money and time can be saved by averting needless lawsuits in courtrooms. Due to alternative dispute resolution (ADR), minor conflicts arising from a relationship or transaction can be resolved quickly and easily without going to court. It addresses issues with families, business contracts, partnerships, carelessness, and public disagreements, among other things.

This article will throw light into the complexities of ADR (Alternative Dispute Resolution) and aims at enhancing the understanding of the new trends and legal challenges in the field of ADR.

This article will give a comprehensive understanding of the concept. It will further enhance understanding of the emerging trends and prevalent challenges in ADR.

II. The idea behind ADR

Through the application of ADR (alternative dispute resolution), disagreements between parties can be settled amicably and without the need for legal involvement. ADR can be applied to a range of conflict situations, such as the resolution of criminal, civil, familial, business, and industrial conflicts, among others. ADR may assist the parties in reaching a mutually agreeable resolution when they are unwilling to take their disagreement to court but still want to resolve

² This Act provides for a voluntary option to parties to mediate any civil and commercial dispute before instituting any legal proceedings in court.

it. It is an alternative to the conventional approaches for resolving conflicts. A third party, who is impartial, mediates disagreements between the parties involved in ADR (alternative dispute resolution). A successful and peaceful decision of the conflict between the parties may arise from the third party's facilitation of a constructive dialogue. Discussing the discrepancies between the parties' viewpoints is facilitated by the involvement of a third party. With cooperation from one another, it helps the individuals or groups resolve their differences and uphold law and order.

Furthermore, it is taking a very long time for all of the reputable legal courts to decide the numerous cases that are currently outstanding. As a result, ADR significantly contributes to lessening the workload of the Indian courts. It includes several conflict resolution techniques like arbitration, mediation, negotiation, conciliation, and Lok Adalat. Alternative dispute resolution is also covered by Articles 14³ and 21⁴ of the Fundamental Rights, which deal with the right to life and liberty and equality before the law, respectively. As stated in the Preamble of the Indian Constitution, the goals of Alternative Dispute Resolution (ADR) include social, economic, and political justice as well as integrity preservation. Ensuring free legal aid and justice for economically disadvantaged groups is its primary goal. Free legal help for the poor is required by Article 39A⁵ of the Indian Constitution.

III. Ancient Times: Evolution of ADR

Since ancient times, India's legal system has included alternative conflict settlement. The Brihadranyaka Upanishad, which mentions Puga, Shreni, and Kula, is where it first appears. Panchayats were also used as a means of resolving a lot of issues in villages and towns. This was the ADR format. They used to handle any kind of issue you could imagine, including economic, matrimonial, civil, criminal, and contractual problems. Similar rules can also be found in Muslim law, as the Hedayas are a primary source of legal precedent. Step-forward in time to the British occupation of India, which brought with it certain legislation and regulations pertaining to ADR procedures. In Calcutta, Bombay, and Madras, these methods were implemented.

³ The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

⁴ No person shall be deprived of his life or personal liberty except according to procedure established by law.

⁵ The State shall secure that the operation of legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

IV. The Timeline of the Development of Indian ADR Provisions

As discussed above, Alternative Dispute Resolution has progressed in wider nature *ante and post* the independence of India in the era of Britishers. In India, the first specific legislations which deals with the Alternative Dispute Resolution were the Bengal Resolution Act 1771 and Bengal Regulation Act 1781. The Civil Procedure Code, 1908 came into existence, even though both acts remained in force, which is still operative.

Without mentioning Sub-section (1) of Section 89 of the Civil Procedure Code, 1908⁶, which gives authority to the court to use ADR techniques to reach a mutually agreeable resolution, no study on ADR would be complete. Nevertheless, in the *Salem Advocate Bar Assn. v. Union of India* (AIR 2005 SC 3353) judgement, when the legitimacy of Section 89 was contested, the highest Court of India maintained its validity. In addition to this, the court noted that since the laws pertaining to Alternative Dispute Resolution proved to be so effective in other nations, India ought to maintain them in its judiciary in order to foster the development of its legal system. The court further stated that achieving such a goal requires maintaining Section 89's legislative language. A committee was also mandated by the court to examine the obstacles to revision and the enforceability of these measures. The committee then turned in its findings, and the court mandated that all High courts pass unique and targeted legislation pertaining to alternative dispute resolution (ADR).

The Indian Arbitration Act, 1899 then came into picture, which gave a significant meaning of 'submission' which generally stands for a written agreement that, even if it is not specified who will be the arbitrator, the parties can refer their matter of past and future to a neutral third person known as arbitrator.

Formerly, three separate enactments—the Foreign Awards (Recognition and Enforcement) Act of 1961, the Arbitration Act, 1940 (henceforth referred as 1940 Act), and the Arbitration (Protocol and Convention) Act, 1937—contained statutory provisions on arbitration. Whereas the two Acts addressed the foreign award's enforcement, the 1940 Act exclusively addressed domestic arbitration. The Arbitration and Conciliation Act, 1996 (henceforth referred as 1996

⁶ Where it appears to the Court that there exist elements of settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the Court may reformulate the terms of a possible settlement and refer the same for arbitration, conciliation, judicial settlement including settlement through Lok Adalat or mediation.

Act) is the comprehensive piece of law that has superseded these three acts. Generally speaking, this law adopts the full UNCITRAL Model Law.

The Act of 1940 (i.e., the Indian Arbitration Act, 1940), was created to introduce innovation while maintaining tradition and was passed during the pre-independence era. The arbitrator's decision was subject to judicial oversight, which might take the form of attempts to establish the arbitrator's award as precedent or the consideration of objections and possible independent actions to reverse the decision on fixed grounds. It was anticipated that this procedure mentioned in the Act would move rapidly. In reality, the involvement shown that the protracted court proceedings had betrayed the expectations regarding the arbitration statute and violated the confidence regarding its effectiveness. In the matter of *Rattan Singh & Others v. Guru Nanak Foundation (AIR 1981 SC 2075)*, the Indian Supreme Court ruled that:

“Attorneys have cackled and legal philosophers have whined at the manner in which the proceedings of the Act proceedings are being handled, and questioned in court without irregularity. Events and reports by legal authorities provide ample evidence that the procedures of the Act have evolved into ones that are extremely sophisticated and endlessly detailed. Providing a legal trap for the unsuspecting at every turn, as seen by the volume of arbitration litigation, arbitrations are now more feared than lawsuits by regular litigants.”

Given the aforementioned judgment, it is evident that the Indian Supreme Court is dissatisfied with how arbitration law is applied. Occasionally, the Indian government has received orders from the national court to modify its municipal law to align with international law.

As Compare the 1940 Act with the Arbitration and Conciliation Act, 1996, the latter is less thorough. The objectives of the new Act are to resolve the issues pertaining to international commercial arbitration, domestic arbitration, and the enforcement of foreign arbitral awards. It also formally allowed conciliation as a form of dispute resolution.

- A solution reached by the parties through a conciliator is given finality by the new Act and becomes valid and enforceable under its Sections 73(3) and 74. Confidentiality must be maintained by either the conciliator or the conciliators.
- The new Act limits access to court proceedings by narrowing the grounds for contesting the verdict and gives an arbitrator the authority to issue temporary orders. The new Act is better than the old one because it requires the arbitrator to provide an award with reasons. The Court

decided that an arbitrator might provide interest *pendente lite*⁷, the 1996, Act also embodied the provisions that the Supreme Court stated.

□ Under Section 8, the court empowered to make an order to the concerned parties to use arbitration if the agreement of arbitration between the concerned parties comes under the extent of legal proceedings.

□ Two components comprise the 1996, Act. Part I covers internal arbitration (i.e., domestic), and Part II covers external arbitration (i.e., foreign) made in harmony with the Conventions of New York and Geneva. As signatory to the Convention of New York in 1958, the Indian Government, must ensure that the awards made in other countries may be enforced in courts of India with dominion over the concerned subject matter. The Protocol on an Arbitration Clause is contained in the Second Schedule, and the Convention on the Execution of Foreign Arbitral Awards is contained in the Third Schedule. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards is legislated as the First Schedule to the new Act. Therefore, by virtue of their incorporation into the Schedules, the international conventions have been incorporated into the laws passed by the Indian Parliament.

□ Under Section 34(2)(b)(ii), a new clause has been added, explaining that an arbitral ruling that is at odds with Indian national policy will be deemed void. Because of its extreme elasticity, the term "public policy" can also make reference to fraud, wrongdoing, corruption, deceit, partiality, etc. In order to guarantee that the award abide with all other applicable legislations in India, including enforceable case law, it can also be expanded.

□ One significant lacuna in the 1996, Act is the lack of a judicial remedy or institutional mechanism for replacing an arbitrator early on in the process, should it be determined that the arbitrator has a high probability of bias. Although the Model Law of UNCITRAL contains many of the new legal provisions, according to section 12 of the new Act empowers an arbitrator to disclose any circumstances that give rise to reasonable doubts related to his impartiality or independence as soon as possible. However, because there is no remedy for this lack of transparency, the legislators are now faced with the challenge of offering an injured party a sufficient and effective remedy that complies with expedition norms. If not, the impacted party would only be able to contest the decision using the extremely uncommon defense of the arbitrator's non-disclosure, alternatively, as experience has shown, this defense would become less potent and effective the later it is used.⁸

⁷ G.C. Roy Case, 1992, (1) SCC 508.

⁸ Jus. G. Radhakrishna Rao, Retired Judge, Hyderabad, "The New Law of Arbitration: A Peripheral Look: Chartered Secretary, July, 2002.p. 992-993.

The Arbitration and Conciliation Act, 1996 is an upgrade on the Arbitration Act 1940, which solely addresses domestic arbitration. The Act of 1996 is primarily intended to resolve disputes pertaining to international trade. It was derived from provisions included in the Model Law of UNCITRAL.

In order to bring this arbitration rules into compliance with international norms and advance arbitration as the go-to means to settling the disputes arising from international business transactions, India, on International Commercial Arbitration, adopted the Model Law of UNCITRAL, in 1996. Despite being based on the Model Law of UNCITRAL, the 1996, Act deviates from it in several ways–

- Section 10(1) of the Act of 1996, addresses the count of arbitrators in an arbitral tribunal and stipulates that the arbitrators cannot be in even number. Such a restriction is absent from the Model Law. In the situation where the parties are not in a situation to agree upon the numbers of arbitrator, the Model Law stipulates that three arbitrators will be chosen.
- According to section 10(2) of the 1996 Act, the arbitral tribunal will be made up of just one arbitrator. Regarding the arbitrator's appointment, if the concerned parties are unable to come to an agreement, then the Model Law allows the concerned parties to request the third arbitrator's appointment, or the sole arbitrator, as applicable, from a court or other authority designated by the National Law. The 1996 Act's section 11, however, gives the Chief Justice of the relevant High court, or any other authority or organization that he designates, the authority to choose the arbitrator. Furthermore, the appointment of the arbitrator in the commercial arbitration at international level, dispute may be made by the Chief Justice of India or by any other individual or organization that he may designate.
- Section 11 of the 1996 Act, sub-section (10), gives the Chief Justice of India, or the concerned High Court, relevant to the situation, the authority to create any plan he thinks fit for handling these appointments.
- The process for contesting an arbitrator is outlined in the Model Law. In the event of an unsuccessful challenge, the concerned party can file an application to the court of law or other authority to adjudicate the matter. This gives the ability to the arbitral tribunal to adjudicate on the challenge. In the interim, the arbitral panel has the authority to proceed with the arbitral procedures and issue an award. At such point, the challenging party is not allowed to approach the court by the analogous clause included in section 13 of the 1996 Act. Nevertheless, the concerned party may contest the award after it has been rendered on the grounds that the arbitrator erred in rejecting the challenge. Likewise, in accordance with the Model Law, the aggrieved party can file the petition in the court to resolve the issue if the tribunal rejects the

argument that it lacks the required jurisdiction. A court proceeding at that point is not provided for the relevant clause in section 13 of the Act of 1996.

The 1996 Act includes the following extra clauses that are not mentioned in the UNCITRAL Model Law.

- Some specifics regarding the arbitral tribunal's award of interest are contained in section 31's subsection (7).
- The arbitration fee is covered in Section 31 as well.
- According to section 36, an award will be enforceable in the same way as a court decision in two scenarios: either it will be contested within the allotted time frame, or it will be challenged and the challenge will be rejected.
- Section 37 provides for appeals regarding specific issues.
- The amount of the deposit, or additional deposit, as applicable, as an advance for the arbitration's costs can be determined by the arbitral tribunal under Section 38.
- The parties' rights regarding the proceedings in relation to their solvency are outlined in Sections 39 to 43. They also specify the exclusive jurisdiction of the court over the arbitral proceedings, how to identify the lien on the arbitral award and deposits regarding costs, and how the Limitation Act of 1963 applies to arbitrations under the Act of 1996.

The Arbitration and Conciliation Act, 1996 is now the Act that administers the ADR procedures in India. Amendment was made in this Act in 2015 to modernized the procedure of mediation, conciliation, arbitration. The enforceability of arbitral awards is strengthened by this amendment, and also to deal with tons of cases, the problem of burgeoning burden on Indian Courts. Here, it is important to mention the Model Law which is abided in today's times, i.e., the United Nations Commission on International Trade Law (UNCITRAL). While framing legislations along with guidelines relating with alternative dispute resolution, it is the Model that must be abided by the countries around the world which governs the international standards.

V. The Arbitration and Conciliation Act, 1996: Salient Features

The Act of 1940 grew outdated, and the Indian Law Commission and other trade and industry representative entities felt that it should be amended to better meet modern needs and increase the efficacy of Indian economic reforms. To make Indian arbitration procedures consistent with other legal systems worldwide, the President of India promulgated the Ordinance on Arbitration and Conciliation on January 16, 1996, which came into effect on January 25, 1996.

In addition to arbitration, other dispute resolution processes like mediation and conciliation should also be recognized by law, and the agreement of settlement made between the concerned parties as an outcome of concerned mechanisms must have the same effect and status as an arbitral award on agreed terms. On March 26, 1996, the President issued a new proclamation of the ordinance. The 1996 Second Ordinance on Arbitration and Conciliation is known as such. The 26th of January 1996 saw the repeal of the previous ordinance and the implementation of the new one. *Act No. 26 of 1996, the Arbitration and Conciliation Act*, took its place, and it is believed to have taken effect on January 25, 1996.

The 1940 Act is inferior than the 1996 Act in a number of ways. Regarding judicial participation with the arbitration process and result, the 1996 Act represents the most significant change from the prior law. This Act has a great deal of unique qualities. They are listed below:

First, the court must order the concerned parties to use arbitration in consistent with any arbitration agreements that may exist. Parties wishing to pursue arbitration in these circumstances, however, the application is required to submit, either prior to or concurrently with the completion of a written statement on merits.

Second, the 1940 Act has significantly reduced the reasons on which an award of arbitrator can be contested in court. Such a challenge is now only allowed in cases where the agreement is void, the arbitrator lacks jurisdiction, the party was not notified of the appointment of the arbitrator or the process of arbitration, or the party is unable to prove its point.⁹ Simultaneously, an award may be nullified on the grounds that it is against Indian public policy, which includes, but is not limited to, fraud and corruption.

Third, by adding specific provisions on a number of topics, including the applicable law, the authority to choose the arbitration venue in case of a dispute, the authority to appoint experts, the authority to act upon a party's report, the authority to request the assistance of court in gathering evidence, the authority to award cost, and so forth, the arbitrator's own powers have been increased. Fourth, a clause specifically stating that a party who knows to remain quiet and then abruptly procedural objection raised by such party, will not be permitted, sometimes-obstructive techniques used by parties in arbitration processes. Fifth, in encouraging and

⁹ The Arbitration and Conciliation Act 1996, Section 12.

organizing arbitration, for the first time in law, the capacity of arbitral institutions has been acknowledged.

Sixth, the Act of 1996, mandates comprehensive advancement in the form of the arbitrator's appointment, with the set-up of the Chief Justice Scheme which enables, outside the four walls of the process of litigation, the function of selecting an arbitrator by court and declares it an administration act. The parties can nominate the arbitrator of their own choice. The intervention of court becomes important, when there is a distinctive opinion on the appointment, by the parties. Also, the 1996 Act enables the court to nominate an arbitrator in case of failing agreement between the parties or enables an institution to take necessary actions. Consequently, the institutions in India which are under the recommendations of the Chief Justice of High Court for such purpose. Finally, the Constitutional Bench of the Supreme Court, has been determined the controversy in *Konkan Railway Corporation v/s Rani Construction (p) Ltd. (2002) 2 SCC 388*), observing that this authority is administrative in nature.

Seventh, the 1940 Act gave the arbitrator a four-month window in which to render his or her decisions. Nevertheless, in the past, the arbitration tribunal might extend this deadline with the consent of the parties; if that wasn't possible, the court could. There is now more time to submit awards.¹⁰

Eighth, the parties are under no obligation, to choose the law that would apply to the core of the issue, even if arbitration was to take place in India. This shows how important transnational commercial arbitration is.

Ninth, even an informal agreement may now qualify as meeting the 1940 Act's formal arbitral agreement criterion.

Tenth, the Act of 1996 has endowed the arbitrator to issue interim orders pertaining to property protection and security. In addition, a court may issue interim orders in addition to this.

The eleventh, arbitrator may now choose his own jurisdiction. This will significantly lessen judicial intervention. The arbitrator's power to decide on jurisdictional issues was limited by

¹⁰ The Arbitration and Conciliation Act 1996, Section 29A.

the Supreme Court in *Renu Sagar Power Co. v. General Electric Co. (1984) 4 SCC 6791*. By this, the parties almost always having to approach courts for adjudication, which caused a great deal of delay. This was done prior to the 1996 Act. Since the 1996 Act established the arbitrator's jurisdiction, court involvement and the ensuing delay will undoubtedly be avoided.¹¹

Twelfth, in addition to these time-saving measures, the 1996 Act also mandates that any potential bias be disclosed by the arbitration at the threshold itself.

Thirteenth, his proceedings are safeguarded when he is replaced as an arbitrator. As opposed to needing de-novo proceeding before the new arbitrator, this will save time.

Finally, the arbitrators are under obligation to give reasons for the award, unless the agreement provides otherwise. The awards, itself, has now final, been entrusted on the footing of a decree, insofar as (subject to the power of the court to set aside the award) the award, itself, is become executable as a decree of the court and it is not required to applied to the court of law for a decree in terms of the arbitral award.

VI. Latest Developments

- **Online Dispute Resolution, often known as Virtual ADR:** Virtual Dispute Resolution [Online Dispute Resolution (ODR)] is a fascinating phenomenon. This is productive and hassle-free. This is because jurisdictions prevent any party or attorney from having to travel back and forth. It is possible for both parties to hear and see one other when they converse with each other via video conferencing. By shifting from ADR (alternative dispute resolution) to ODR (online dispute resolution), legal processes are becoming more technologically integrated. This shift is expected to bring dispute resolution more in line with 21st-century reality. ADR has evolved into the primary method for quickly, efficiently, and economically resolving disputes, in addition to serving as an alternative dispute resolution platform. If we look more closely at the new trends in ODR, we see that they are changing the ADR landscape and paving the way for a day when justice and resolution are easier to get, more effective, and flexible enough to meet the demands of a world that is changing quickly.

During a brief speech at an Online Dispute Resolution (ODR) event, Honorable Justice

¹¹ The Arbitration and Conciliation Act, 1996, section 16.

Dhananjaya Yeshwant Chandrachud stated that the virtual hearing system has been greatly impacted by online hearings. ODR has made the procedure even more structured with a number of little adjustments, like putting all the files in one location, allowing parties to access digital files, and enabling digital note-taking.

On the other hand, it is crucial to acknowledge that issues like troubleshooting still exist and that Virtual ADR development is still in its early stages. These obstacles must be overcome immediately if we are to see such provisions develop to new dimensions. It is important to remember that some lawyers in our country have been in practice for 30 to 40 years, and it may be strenuous for them to adjust to the substitutes that technology has introduced. In India, the idea of an online virtual ADR may still seem unlikely.

- **The Arbitration and Conciliation Act, 1996 and the Amendment of 2021:** The 1996 Act has been amended recently by the amendment of 2021 (Arbitration and Conciliation (Amendment) Act of 2021). The aforementioned amendment makes alteration and the following two significant changes are made:

- i. In cases where the court has prima facie evidence of "fraud" and "corruption" tainting the contract upon which the award is based, the Act provide an automatic stay.
- ii. The removal of the Eighth Schedule from the 1996 Act is the other significant alteration to the Act of 1996. It outlines the requirements for qualified arbitrators as well as the experience, rules, and conventions that must be adhered to.

- **The following are the consequences of the amendment enacted in 2021:**

- The influence of the automatic stay on awards.
- The most significant modification to the Arbitration Awards provision was inserted in Section 34 of the 1996 Act by the Amendment Act of 2021. Provision 34 of the main Act stipulates that a party may submit an application with the court of law to set aside the award of arbitrator. However, following the Amendment Act of 2015, it was provided that an automatic stay on the implementation of arbitral awards would not be adjudicated with the simple filing of an application for setting aside the award. By adding a clause under Section 36(3), the Amendment of 2021 has now made a significant alteration. This allows that the court should gather the *prima facie* evidence which shows that the case is based that the agreement that serves as the basis for the arbitral award or on the arbitration contract, or that the arbitral award was influenced by fraud or corruption, then the court will be reassured. The award must remain

in effect indefinitely while the challenge is being resolved. It is applicable retroactively as of October 23, 2015.

□ The unconditional or total stay has been condemned numerous times in Parliament during the Bill's presentation in the Lok Sabha. Experts have noted that India's attempts to establish a pro-arbitration regime will be severely hampered by this total stay on awards, which is akin to a blanket stay.

□ Furthermore, by sending parties to court and making this subject to litigation, it has been claimed that this will undermine the primary goal of alternative dispute processes. Corruption and fraud are not defined in the Act, which is another crucial issue with this modification. If the party on the other side of the dispute is correct, the defendant may still face the standard litigation process, which will inevitably lead to a complex legal issue and could lead to an overabundance of cases in the courts.

□ This contains two amendments, one of which being the 2019 Amendment, which has a connection to the 2021 Amendment. The experience, qualifications, or standards for accreditation were provided in Section 43J of the 1996 Act¹², which was amended. Furthermore, the Act's eighth schedule—which permits a comprehensive list of criteria for anyone wishing to hold the job of arbitrator—was ordered by this clause. The Schedule outlines the prerequisites for obtaining a degree at the minimal level of education, which includes the experience of ten years, in a scientific or technical area. In addition to the qualifications of professional level, this Schedule provided the general conditions that an arbitrator must fulfill in order to be accredited, encompasses impartiality, fairness, integrity, and neutrality.

□ The qualifications and general criteria in this area, along with other things, limited the qualified foreign advocates' capacity to serve as arbitrators within the territory of India. It appears to be a significant obstacle when contrasted with arbitration-friendly countries like France and others.

□ In addition to replacing Section 43J of the Act, the Amendment of 2021 also eliminated the Act of 1996's Eighth Schedule. It specified that the parties may choose the arbitrator, notwithstanding their differences in qualifications. Appreciation of the Bill expressed by the Lok Sabha, noting that it will help establish India as a major international arbitration hub and draw distinguished foreign arbitrators.

¹² The qualifications, experience and norms for accreditation of arbitrations shall be such as may be specified by the regulations.

VII. Conclusion

Alternative conflict resolution in India has developed to reflect a dynamic shift in the field's approach, embracing techniques that are adaptable, effective, and in step with the demands of a society that is changing quickly. Alternative Dispute Resolution history in India is a fascinating combination of tradition and progress, spanning from the ancient panchayats to the contemporary mediation and arbitration systems. India is a major economic force on the world stage, and as such, its laws have undergone constant revision to better align with the legal frameworks of other top commercial law countries. This has been done in the purpose of better serving business communities worldwide. Arbitration is one of the conflict resolution techniques that has been around for a while. The Arbitration and Conciliation Act, 1996 was designed to modernize the arbitration law in India, align it with international best practices, and establish India as a hub for arbitration worldwide. These goals were defined in the UNCITRAL (United Nations Commission on International Trade Law) report.

ADR procedures are trouble-free, and the judiciary of India needs to become flexible enough to evolve with the times as technology advances in the nation, according to recent observations made by Honorable Chief Justice of India Dhananjaya Yeshwant Chandrachud. Courts have noted again and time again that in order to reduce paper waste, the Indian legal system has to streamline case processing and go paperless. Alternative Dispute Resolution is one way to achieve this goal.

As time goes on, ADR's mechanism and form are also created in new ways to settle disputes and facilitate communication between the parties. Numerous recently developed provisions contributed in various ways to the enhancement of ADR's aspects. In order to ensure that the process functions well, the recent modifications have given a comprehensive structure and revelation to the mechanism of ADR.

However, because ADR is quicker and easier to use, it has surpassed litigation in popularity. It should be noted that institutional arbitration makes up a very small percentage of all arbitration conducted in India; the majority of arbitration in the country is ad hoc. Consequently, India currently lacks institutions that are comparable to those found in some prestigious countries, like LCIA (the London Court of International Arbitration), SIAC (Singapore International Arbitration Centre), HKIAC (Hong Kong International Arbitration Centre), ICC (International

Court of Arbitration), etc. On occasion, it has been observed that a large number of businesses who sign into contracts or do business with India favor international arbitration facilities outside.

This piece demonstrated how the scope of alternative dispute resolution (ADR) systems in India has changed and how cases are handled differently. Since this is a very effective strategy, the Indian court system stands to gain a great deal from the general growth of such systems and methods. On the other hand, several obstacles and gaps must be addressed.

