

# **The Role of Government and Policies in Promoting ADR in India: A Comparative Analysis of ADR Systems with the UK and USA**

Bhoomika C B\*

## **Abstract**

India, characterized by its diverse legal environment and mounting caseload, has acknowledged the importance of Alternative Dispute Resolution (ADR) in easing the strain on the traditional court system. Conversely, countries globally have implemented various strategies to advance the adoption of ADR. This research critically assesses the initiatives undertaken by the Indian government, including the promotion of mediation centers, legislative reforms, and the integration of ADR into contract clauses, in comparison to global best practices. The paper delves into the pivotal role of government policies in nurturing the growth and acceptance of ADR mechanisms within the Indian legal framework. Through a comparative analysis with international practices, the study scrutinizes the strategies, initiatives, and regulatory frameworks employed by governments to promote ADR as an efficient means of dispute resolution. The study's findings provide insights into the evolving landscape of ADR in India, highlighting both the successes and shortcomings of government-led efforts. Furthermore, it pinpoints areas where policy enhancements and adjustments are required to align with international standards and boost the utilization of ADR mechanisms.

**Keywords:** alternative dispute resolution system, comparative analysis, government policies, international standards, legal framework

## **Introduction**

---

\* Student of VIII Semester, B.A., LL.B. (Hons.), School of Legal Studies, CMR University

The dynamic evolution of dispute resolution mechanisms is particularly evident within India's legal system. As the caseload continues to escalate, placing a burden on traditional courts and causing delays in the delivery of justice, the adoption of Alternative Dispute Resolution (ADR) methods has emerged as a transformative remedy. These methods, encompassing arbitration, mediation, conciliation, negotiation, and judicial settlement offer an alternative avenue for a cost-effective and efficient way of addressing conflicts, thereby significantly alleviating the strain on the conventional judicial system.

In recent years, India, celebrated for its rich and diverse legal heritage, has experienced a noteworthy shift towards the widespread adoption of ADR mechanisms. The government, recognizing the potential of these alternative approaches, has implemented a range of policies and initiatives to promote their integration. These efforts encompass legislative reforms, the establishment of mediation centers, and the promotion of ADR clauses in contracts.

### **ADR Mechanism and its Relevance in India**

The concept of Alternative Dispute Resolution (ADR) encompasses a range of non-adversarial methods designed to address disputes outside the traditional courtroom environment. In the Indian context, these methods primarily consist of arbitration, mediation, conciliation, and negotiation. The significance of these approaches in India arises from the urgent need to tackle the overwhelming backlog of cases burdening the formal court system. Traditional court proceedings often lead to prolonged litigations, incurring significant costs and consuming excessive time. In contrast, ADR mechanisms provide swift, cost-effective, and private resolutions to conflicts, thereby substantially easing the burden on the overloaded judiciary.

Section 89 of the Code of Civil Procedure of 1908, also known as the ADR section, mentions different ADR mechanisms adopted by the Indian judiciary system, including:

1. Arbitration
2. Mediation

3. Conciliation
4. Judicial settlement which includes Lok Adalat<sup>1</sup>

Arbitration, a prominent ADR method, involves the resolution of disputes by impartial individuals. Arbitration is a method in which a disagreement is referred to by one or more neutral and unbiased arbitrators who render a binding award on the dispute by the consent of the parties. Instead of going to court, the parties choose arbitration as a private dispute settlement mechanism. This approach is highly favoured in commercial matters due to its flexibility, party autonomy, and the enforceability of arbitral awards. Arbitration can take place only if both parties agree to it. In the event of future contract problems, the parties include an arbitration clause in the relevant contract. A submission agreement between the parties can be used to send an existing dispute to arbitration. In contrast to mediation, a party cannot withdraw from arbitration unilaterally.

Mediation entails the involvement of a third party, or mediator, in a dispute in order to help the parties in seeking mutually acceptable resolutions to matters in conflict. The mediator meets with the parties in a neutral setting where they can discuss the disagreement and consider various solutions. Each party is encouraged to express his or her point of view in an open and candid manner. As a neutral third party, the mediator can assess the conflict objectively and assist the parties in contemplating alternatives and ideas that they may not have considered previously. This is a confidential process.

Conciliation, like mediation, is a voluntary, flexible, confidential, and interest-driven procedure. The parties attempt to establish an agreeable dispute resolution with the help of the conciliator, who serves as a neutral third party. The fundamental distinction between conciliation and mediation proceedings is that the parties will ask the conciliator to offer them a non-binding settlement suggestion at some point during the conciliation. A mediator, on the other hand, will, in most situations and on principle, refrain from making such a proposition.

---

<sup>1</sup> Section 89 of the Code of Civil Procedure, 1908

Judicial settlement denotes a final compromise solution before a Lok Adalat or an appropriate institution or person, which is recognised to be a settlement before a Lok Adalat under the Legal Services Authorities Act, 1987.

The significance of ADR in India is multifaceted. Firstly, it offers a pathway to swift justice, expediting the resolution process that might otherwise languish in the complexities of the judicial system for years. Secondly, ADR methods provide a level of confidentiality and informality often lacking in traditional courts, preserving the privacy and business relations of the involved parties. Furthermore, the cost-effectiveness of ADR stands as a crucial advantage, especially in a country where legal expenses associated with court proceedings frequently discourage individuals and businesses from seeking justice.<sup>2</sup>

Consequently, understanding the nuances and promoting the effective utilization of ADR mechanisms are crucial for fostering a more efficient means of conflict resolution in India.

## **Government Initiatives and Policies to Promote ADR in India**

The Indian government has actively engaged in the promotion and advancement of Alternative Dispute Resolution (ADR) mechanisms within the nation. Various measures and policies have been introduced to foster the growth and acceptance of ADR as a viable approach to dispute resolution. These endeavours are directed at establishing a robust framework, generating awareness, and ensuring the effective operation of ADR mechanisms in India. Key government initiatives and policies advocating for ADR in India include:

### **1. Arbitration and Conciliation Act, 1996**

---

<sup>2</sup> Nishita Medha, “ADR in India-Concepts, techniques and provisions”  
[https://www.fdrindia.org/old/publications/AlternativeDisputeResolution\\_PR.pdf](https://www.fdrindia.org/old/publications/AlternativeDisputeResolution_PR.pdf)

An Act to consolidate and revise the legislation governing domestic arbitration, international commercial arbitration, and the enforcement of foreign arbitral awards, as well as to define the law governing conciliation and related subjects.

This legislation serves as the cornerstone of arbitration in India, offering a comprehensive framework for conducting arbitration proceedings. Amendments in 2015 and 2019 aligned it with international standards and aimed to expedite the arbitration process, streamline procedures, reduce delays, and enhance efficiency and cost-effectiveness.<sup>3</sup>

## **2. Legal Services Authority Act, 1987**

The Parliament established the Legal Services Authorities Act in 1987, which is in line with Article 39A of the Constitution. The Act went into effect on November 9, 1995, to build a nationwide standard network for delivering free and competent legal services to the weaker parts of society on the basis of equal opportunity. The Legal Services Authorities Act of 1987 established the National Legal Services Authority (NALSA) to oversee and assess the implementation of legal aid programmes and to establish policies and principles for making legal services available under the Act. A State Legal Services Authority has been established in each state, and a High Court Legal Services Committee has been established in each high court. District Legal Services Authorities and Taluk Legal Services Committees have been established in the districts and the majority of the Taluks to carry out the NALSA's policies and orders, provide free legal services to the public, and hold Lok Adalats throughout the State.<sup>4</sup>

## **3. Setting up Mediation and Conciliation Project Committee (MCPC)**

---

<sup>3</sup>Arbitration and Conciliation (Amendment) Act, 2015, <https://lawmin.gov.in/sites/default/files/ArbitrationandConciliation.pdf>

<sup>4</sup> Department of Justice, “National Legal Services Authority” (04-08-2023) <https://doj.gov.in/access-to-justice-for-the-marginalized/>

Established to encourage mediation as an effective alternative to litigation, the MCPC has played a crucial role in creating mediation centers and training mediators across different Indian states. These centers offer parties an informal and efficient avenue for resolving disputes.

#### **4. Establishment of Commercial Courts**

Specialized commercial courts have been established by the government to address commercial disputes. These courts often encourage parties to consider ADR mechanisms such as arbitration or mediation before resorting to traditional litigation.

#### **5. Mediation Act of 2023**

The Rajya Sabha and Lok Sabha passed the Mediation Bill, 2023 on August 1, 2023, and August 7, 2023, respectively. Following presidential assent on September 14, 2023, the Mediation Bill, of 2023 was enacted as the Mediation Act of 2023 ("the Act").

Quintessentially, the Act seeks to "promote and facilitate mediation." To that end, the Act includes pre-litigation mediation, online mediation, private mediation, community mediation, conciliation, or a similar expression, in which parties attempt to reach an amicable settlement of their dispute with the assistance of a third person. This Act is a cornerstone for mediation in India. Through this act, mediation shall be encouraged as an effective medium to resolve disputes. The Act explicitly mentions the structure and process of mediation including the role of mediator and parties. It also provides a time frame under which mediation has to be completed. The Act includes a list of disputes that cannot be referred to mediation, including criminal offences, proceedings initiated in relation to the misconduct of any registered professional, and disputes relating to the levy and collection of any direct or indirect tax or refunds, as well as any proceeding relating to any subject matter that falls within any enactment over which the National Green Tribunal Act, 2010 has jurisdiction.<sup>5</sup>

---

<sup>5</sup> Nishith Desai Associates, "Decoding the Mediation Act, 2023" (September 2023)  
<https://www.nishithdesai.com/NewsDetails/10748>

## **6. Promotion of Online Dispute Resolution (ODR)**

The government has actively explored and endorsed the use of technology for ADR, particularly through ODR platforms. These platforms are encouraged, especially for resolving small-scale disputes, providing a convenient and efficient means for conflict resolution online.

## **7. Incorporation of ADR Clauses in Contracts**

The government has advocated for the inclusion of ADR clauses in contracts, particularly in commercial agreements. These clauses specify that disputes will be resolved through arbitration or mediation, promoting ADR as the primary mode of dispute resolution.<sup>6</sup>

## **8. Awareness Campaigns and Training Programs**

Various awareness campaigns and training programs have been initiated by the government to educate the public, legal practitioners, and stakeholders about the benefits and procedures of ADR. Workshops, seminars, and educational initiatives aim to promote the understanding and use of ADR.<sup>7</sup>

These government initiatives and policies underscore a significant commitment to advancing ADR mechanisms in India. Their objectives include creating a supportive environment, establishing infrastructure, and providing essential support for the effective operation and widespread adoption of ADR as a preferred method for dispute resolution. Despite these initiatives, challenges persist, necessitating ongoing evaluation and refinement of policies to further strengthen the ADR framework in the country.

---

<sup>6</sup> Mahboob Ali, “ADR Mechanism in Modern Indian Society”  
<https://ijtr.nic.in/Alternative%20Dispute%20Resolution%20Mechanism%20inModern%20Indian%20Society.pdf>

<sup>7</sup> Government of India Ministry of Law and Justice, “Starred Question No. 160-Disposal of Cases through ADR System” <https://sansad.in/getFile/loksabhaquestions/annex/1710/AS160.pdf?source=pqals>

## **Comparative Analysis of ADR in India and International Practices**

### **The United Kingdom**

Alternative Dispute Resolution (ADR) mechanisms have become indispensable tools for resolving conflicts outside the conventional court systems. A comparative analysis of ADR practices in India and the United Kingdom (UK) sheds light on both shared principles and distinctive approaches that mold their respective landscapes. This examination provides valuable insights into how ADR functions within diverse legal and cultural contexts.

#### **1. Shared Principles and Approaches**

In both India and the UK, there is a recognition of the significance of ADR in alleviating the burdens associated with traditional litigation. ADR methods serve as efficient and cost-effective alternatives, effectively reducing the strain on overburdened courts. The emphasis on amicable solutions is a common thread, allowing parties to preserve relationships while achieving resolution. These shared principles underscore the global acknowledgment that collaborative and tailored dispute resolution is essential in modern legal systems.

#### **2. Unique Approaches in India and the UK**

India's approach to Alternative Dispute Resolution (ADR) is deeply rooted in its socio-cultural context, exemplified by the distinctive Lok Adalat system. Often referred to as "people's courts," Lok Adalats leverage community involvement and consensus-based resolution, aligning with India's tradition of village elders mediating conflicts. This community-centric method of dispute resolution underscores the importance of communal harmony and resonates strongly, especially in rural areas and among marginalized populations.

India's legislative framework, including the Arbitration and Conciliation Act of 1996, provides a structured foundation for its ADR practices. This Act governs arbitration and other methods,



ensuring enforceability and procedural clarity. However, a challenge in India lies in shifting a predominantly litigation-centric mindset towards embracing ADR as the primary choice. Overcoming this challenge requires awareness campaigns, legal literacy initiatives, and judicial encouragement to foster a cultural shift.

In the United Kingdom (UK), ADR is seamlessly integrated into the legal framework through the Civil Procedure Rules (CPR) and pre-action protocols. These rules underscore the exploration of ADR before resorting to litigation, reflecting a culture that values efficient resolution and cost savings. Mediation holds a prominent position, enabling parties to resolve disputes quickly and confidentially.

The UK's approach extends to the adoption of technology in ADR. The use of online mediation platforms and digital training courses for ADR practitioners showcases the country's commitment to innovation. This technological integration enhances accessibility, particularly in a digital age where remote solutions are becoming increasingly relevant. The UK also actively conducts impact assessments to ensure the ADR methods are being used efficiently and effectively.

### **3. Public Awareness**

Comparing the awareness and comprehension of Alternative Dispute Resolution (ADR) methods in India and the UK underscores the influence of cultural norms, legal frameworks, and historical contexts. While the legal culture in the UK actively promotes ADR as a fundamental option, India faces the challenge of dismantling deeply ingrained perceptions. Both jurisdictions stand to gain insights from each other's approaches to improve public awareness and understanding. In India, the adoption of culturally sensitive methods and the utilization of traditional dispute resolution practices, such as Lok Adalats, have the potential to significantly enhance awareness. Collaborative efforts with local leaders and influencers can foster trust and credibility. In the UK, sustained emphasis on judicial support, targeted education, and dispelling misconceptions can optimize the benefits of ADR methods. Drawing

inspiration from India's focus on grassroots initiatives and localized awareness campaigns can contribute to improved accessibility in diverse communities.<sup>8</sup>

## The United States of America

### 1. Legal Framework

**India:** The legal foundation for ADR in India is predominantly governed by the CPC and other statutes, amended in subsequent years to align with global standards.

**USA:** The USA possesses a well-developed ADR framework, incorporating the Federal Arbitration Act (FAA) that oversees arbitration at the federal level, along with various state laws regulating ADR processes at the state level.

### 2. Court-Annexed ADR

**India:** Court-annexed ADR mechanisms, such as Lok Adalats, play a significant role in India's legal landscape, aiming to resolve disputes outside the formal court system.

**USA:** In the USA, court-annexed ADR programs, encompassing mediation and arbitration, are commonly employed, offering alternatives to traditional litigation within the court system.

### 3. Arbitration Practices

**India:** Arbitration is extensively employed in commercial disputes, with efforts made to streamline procedures and enhance the enforceability of arbitral awards.

---

<sup>8</sup> Subhash Arbune and Dr. Priti Vijanarayan Yadav, "Analysis of the Efficacy of Alternative Dispute Resolution Mechanisms in India and the UK" (November 2023)  
[https://www.researchgate.net/publication/375517581\\_Analysis\\_of\\_the\\_Efficacy\\_of\\_Alternative\\_Dispute\\_Resolution\\_Mechanisms\\_in\\_India\\_and\\_the\\_UK\\_Section\\_A\\_-Research\\_paper\\_Eur](https://www.researchgate.net/publication/375517581_Analysis_of_the_Efficacy_of_Alternative_Dispute_Resolution_Mechanisms_in_India_and_the_UK_Section_A_-Research_paper_Eur)

**USA:** Arbitration is a prevalent method for resolving disputes in the USA, particularly in commercial contracts. The FAA provides a robust legal framework for enforcing arbitration agreements and awards.

#### **4. Mediation and Conciliation**

**India:** India actively promotes mediation and conciliation, with dedicated mediation centers and efforts to integrate these methods into the legal system.

**USA:** Mediation is widely utilized in the USA, both within the court system and through private mediation services. Many courts encourage parties to engage in mediation before proceeding to trial.

#### **5. Cultural Influences**

**India:** The cultural context in India, including a tradition of community-based dispute resolution, shapes the approach to ADR. Lok Adalats, embodying community participation exemplifies this cultural influence.

**USA:** The cultural emphasis on individual rights and autonomy in the USA contributes to a robust system of private ADR, allowing parties the freedom to choose alternative dispute resolution methods.

#### **6. Enforceability of ADR Awards**

**India:** Efforts have been made to enhance the enforceability of ADR awards in India, with the legal framework providing mechanisms for recognizing and enforcing arbitral awards.

**USA:** The FAA in the USA establishes a strong basis for the enforcement of arbitration awards, both domestically and internationally.

## **7. Use of Technology**

**India:** The use of technology in ADR, including Online Dispute Resolution (ODR), is gaining momentum in India, especially for resolving disputes in a digital environment.

**USA:** The USA has been a pioneer in adopting technology in ADR, with online mediation platforms and virtual hearings becoming more prevalent.

While both India and the USA have embraced ADR as an integral part of their legal systems, the specific practices, cultural influences, and legal frameworks vary, reflecting the unique characteristics of each jurisdiction.<sup>9</sup>

## **Challenges**

1. Urban regions typically exhibit higher awareness levels owing to increased exposure and educational opportunities, while rural areas often lack information about Alternative Dispute Resolution (ADR) methods.
2. In a society where legal proceedings are commonly perceived as the primary avenue for seeking justice, ADR methods might be regarded as less legitimate or authoritative.
3. Many awareness campaigns are conducted in English, potentially excluding non-English-speaking populations, and hindering effective communication about ADR methods.
4. Certain regions face challenges in accessing information about ADR methods, leading to a limited understanding of their benefits among the population

## **Recommendations for Policies and Techniques for Promotion of ADR in India**

The following are some suggestions that can be adopted by the Government of India to promote Alternate Dispute Resolution Mechanism in India:

---

<sup>9</sup> Vaibhav Sangam and Janmejay Singh, “Alternative dispute resolution & its comparative study with India and USA” – Jus Corpus Law Journal, <https://www.juscorpus.com/wp-content/uploads/2021/03/11.-Vaibhav-Sangam-Mishra-Janmejay-Singh.pdf>

- 1. Promoting Legal Literacy and Awareness:** To instil a culture of Alternative Dispute Resolution (ADR), a comprehensive awareness campaign should be initiated at both the national and grassroots levels. Launching legal literacy programs in local languages is crucial in educating the public on the advantages, procedures, and enforceability of ADR methods. Collaborative efforts with schools, colleges, community centers, and media outlets can effectively disseminate accurate information.
- 2. Engaging the Legal Community:** Bar associations and legal professional bodies should actively endorse ADR by organizing seminars, workshops, and training sessions. Continuing legal education programs should incorporate ADR components, encouraging lawyers to specialize in ADR practice. Offering incentives such as recognition and certification for ADR proficiency can foster active participation.
- 3. Elevating the Role of Lok Adalats:** While Lok Adalats have demonstrated success, their potential can be maximized through increased autonomy and resources. Collaborations with non-governmental organizations (NGOs), community leaders, and legal aid providers can expand their reach to marginalized populations. Encouraging decentralization and flexibility will accommodate a diverse range of disputes.
- 4. Public-Private Partnerships:** Collaborations between the government, legal institutions, and private enterprises can inject ADR mechanisms with resources, expertise, and efficiency. Partnerships can facilitate the establishment of more mediation centers, specialized ADR training programs, and pro bono mediation services.
- 5. Creation of Incentives:** Creating incentives for parties to choose ADR methods can expedite their adoption. Offering reduced court fees for cases undergoing arbitration or other ADR processes can motivate parties to explore these alternatives. Providing recognition and rewards for successful ADR outcomes can further encourage parties to opt for these methods.

- 6. The need for impact assessment:** Conducting an impact evaluation is critical for assessing the efficacy of government initiatives supporting Alternative Dispute Resolution (ADR). Such analyses are critical for understanding the effects and repercussions of these programmes, allowing for informed decision-making and prospective changes to increase their impact. To provide a thorough picture of the policy's efficacy, the evaluation method should include multiple elements.

To begin, an evaluation should concentrate on the Adoption Rates of ADR Mechanisms. This entails quantifying the utilisation of alternative dispute resolution (ADR) methods such as arbitration, mediation, or negotiation in comparison to traditional litigation. The purpose is to assess the degree to which the legal profession and disputing parties are embracing ADR processes, showing the policy's success in fostering a shift towards alternative dispute resolution methods.

Second, the effectiveness of dispute resolution is critical. This involves comparing the time required to resolve conflicts through ADR versus traditional judicial proceedings. A reduction in the backlog of cases and more timely resolution of disputes would show that ADR regulations have had a beneficial impact on the efficiency of the legal system.

The effectiveness of Dispute Resolution Outcomes should also be evaluated. This includes assessing the fairness, equity, and satisfaction of ADR participants. Stakeholder input, surveys, and case studies can reveal if ADR processes are regarded to provide reasonable and acceptable outcomes.

Another essential aspect of impact evaluation is economic considerations. It is critical to evaluate the cost-effectiveness of ADR to traditional litigation. This entails investigating the financial implications for both the government and the disputing parties, taking into account issues such as legal fees, court costs, and potential savings connected with alternative dispute resolution techniques.<sup>10</sup>

---

<sup>10</sup> Government of UK, “Impact Assessment of ADRS”,  
<https://assets.publishing.service.gov.uk/media/60f67285e90e0764cfc22a5d/rccp-alternative-dispute-resolution-ia.pdf>

## **Conclusion**

To conclude, the promotion of Alternative Dispute Resolution in India has the potential to significantly improve the efficiency and accessibility of the judicial system. The evaluation of the impact of government programmes reveals both triumphs and opportunities for improvement. A multimodal approach is proposed to increase the effectiveness of ADR promotion. As the legal landscape evolves, collaboration between government agencies, legal professionals, educators, and civil society becomes pivotal in transforming ADR from an alternative to a mainstream method of dispute resolution. The road to an enhanced ADR ecosystem in India requires a collective effort and unwavering commitment from all stakeholders. The integration of ADR into the fabric of the Indian legal system not only has the potential to unclog overburdened courts but also to empower individuals with a more expedient and cost-effective means of resolving conflicts. By adopting and implementing the recommendations set forth in this paper, India can redefine its approach to dispute resolution and usher in an era of accessible and effective justice for all.