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## HISTORICAL EVOLUTION OF ADR IN INDIA AND EMERGING TRENDS IN ADR IN TODAY'S CORPORATE WORLD

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### ABSTRACT

*For as long as humans can remember, they've been disagreeing and getting into fights. In the olden days, wars were fought to figure out who was right or wrong, or people had to go to the king's court to sort things out. As time went on, the way we handle these disagreements changed. We developed a system of rules and courts, and that's when lawsuits became a thing. In this process, people settle their differences by arguing about their rights. There's a fair and neutral judge who listens to both sides and then makes a fair decision. But over time, folks realized that not every argument needs to go to a traditional court. That's when Alternative Dispute Resolution (ADR) showed up. It's a different way to solve problems. Instead of going to court, people find other solutions. It's like finding a different path to fix things without a big legal battle.*

*ADR, which stands for Alternative Dispute Resolution, refers to a set of processes and techniques used to resolve conflicts in a fast and effective way outside of traditional courtroom proceedings. Mediation and arbitration have grown in popularity because they provide a speedier, less expensive, and more collaborative approach to conflict resolution. This article attempts to study the legal framework and evolution of Alternative Dispute resolution methods over a period of time.*

**Keywords:** *Arbitration, Courts, Disagreements, Dispute Resolution and Mediation.*

## 1. INTRODUCTION

In recent years, Alternative Dispute Resolution (ADR) has become more and more important in the business world. It's a way for people who are having a disagreement to agree on solving it without going through the usual court process<sup>1</sup>. The reason ADR is getting popular is because it has a lot of benefits for companies. It can help sort out conflicts quickly and without making a big fuss. It can also help keep the relationship between the parties involved from getting worse. The Indian Judicial System is one of the oldest legal systems in the world, but it's not so great at handling a lot of cases. Indian courts have a hard time dealing with cases that have been waiting for a long time. Even though they made special fast-track courts to help with this, many cases are still waiting to be solved. That's where ADR comes in handy. It's a good way to solve problems without making things worse. It can help both sides of the argument agree on something and keep things peaceful.

## 2. ALTERNATIVE DISPUTE RESOLUTION: MEANING AND CONCEPT

Alternative Dispute Resolution, or "ADR," is a substitute for the traditional court system. It is a method of resolving disagreements without resorting to litigation. It should be noted that it is not a cure for all disputes or disagreements. Section 89 of the Civil Procedure Code particularly defines the methods for resolving conflicts between the parties<sup>2</sup>. Alternative Dispute Resolution is a means of resolving disputes that is both faster and less expensive than going to court.

## 3. HISTORY OF ADR IN INDIA

### 3.1 Ancient Vedic Period

ADR developed in India during the ancient Vedic period, when texts such as the Vedas and the Dharmashastras, among others, underlined the importance of resolving disputes through negotiation, mediation, and arbitration. Local communities would appoint impartial elders or

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<sup>1</sup> Preeti Kumari, Alternative Dispute Resolution (ADR), SSRN (July 25, 2023, 6:45PM), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3626625](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3626625)

<sup>2</sup> Civil Procedure Code, 1908, § 89, No. 05, Acts of Parliament, 1908 (India).

important members to mediate disputes, with an emphasis on fairness, equity, and the preservation of community ties.

### **3.2 Maurya and Gupta Empire**

During the Maurya and Gupta empires (321 BCE to 550 CE), royal courts played a vital role in resolving conflicts through arbitration and mediation<sup>3</sup>. To ensure a fair verdict, the courts deployed officers known as "dharmasthas" or "amatyas" to help resolve disputes by following Dharma (righteousness) principles. Sharia law principles provided a new dimension to ADR with the development of Islamic rule in India. Qazis (Islamic judges) have been appointed to use Islamic law to mediate disputes within the Muslim community, whilst Hindu communities rely on traditional dispute resolution procedures.

### **3.3 During British Rule**

In the 18th and 19th centuries, formal legal systems were established under British colonial administration, eventually eliminating local ADR practises. However, the value of arbitration was understood by British courts, who included it in a variety of legislation. In the Bengal Regulations of 1772 and 1780, arbitration was instituted as an alternative to lawsuits.

### **3.4 After Independence**

After India's independence in 1947, there was renewed interest in ADR. The drafters of the Indian Constitution realised the significance of alternative dispute resolution and included Article 51(c) as a key element of state policy, urging the government to promote international conflict resolution through arbitration<sup>4</sup>. The passing of The Arbitration and Conciliation Act in 1996 was the most significant modern milestone in the growth of ADR in India<sup>5</sup>. This statute replaced the previous and obsolete Arbitration Act of 1940, bringing India's arbitration law up to international standards<sup>6</sup>. The Act encouraged parties to resolve conflicts through arbitration,

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<sup>3</sup> Anamika Yadav, The Evolution and Development of ADR in India and its Different Kinds, 3 INT'L J. L. MGMT & HUMAN. (2020)

<sup>4</sup> INDIA CONST. art. 51(c)

<sup>5</sup> Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

<sup>6</sup> Arbitration Act, 1940, No. 10, Acts of Parliament, 1940 (India).

created a sound structure for conducting arbitrations, and limited the role of courts in the arbitration process.

#### 4. RECENT TRENDS

- **Virtual ADR:** Virtual ADR is an intriguing technique. This strategy is both simple and effective. The rationale for this is that it eliminates the need for any party or attorney to go from one location to another due to jurisdiction. Both sides have the option of communicating with each other via video conferencing, which allows them to hear and see each other. However, it is crucial to remember that the development of Virtual ADR is still in its early stages due to issues such as troubleshooting. These roadblocks must be overcome as soon as possible in order to take such technologies to new heights. It is also worth noting that there are still some lawyers in India who have been practising for 2-3 decades and may find it difficult to adjust to the shifts that technology is bringing with it. In India, online virtual ADR may still be a distant dream.
- **Resolving Early-Stage Disputes:** ADR is increasingly being used to resolve early-stage disputes. This is due to the fact that alternative dispute resolution (ADR) can be a more cost-effective and efficient method of resolving these types of issues. ADR, for example, may be utilised to prevent a disagreement from turning into a lawsuit.
- **Resolving Cross border conflicts:** ADR is also gaining popularity in cross-border conflicts. This is because ADR can help overcome the challenges associated with resolving disputes between parties from different countries. ADR, for example, can help to ensure that the issue is dealt with fairly and objectively and that the parties' rights are protected.

##### 4.1 Arbitration and Conciliation (Amendment) Act, 2021

The 2021 Amendment<sup>7</sup> to the Arbitration and Conciliation Act of 1996<sup>8</sup> is the third change to the main Act in the previous six years. This indicates that the Indian lawmakers are actively modernizing the methods used for Alternative Dispute Resolution (ADR) to align with global standards. The key modifications introduced by this recent amendment are as follows:

- The amendment now allows for an automatic stay on enforcing any arbitration decision if the courts discover clear evidence that the decision was influenced by fraud or corruption.
- Additionally, the amendment removed the Eighth Schedule from the main Act. This schedule previously outlined the qualifications, experience, and guidelines to be followed by arbitrators.

## 5. CONCLUSION

In India, the way ADR has grown over time shows how the country values resolving disputes in a friendly manner. ADR has progressed significantly over the previous four decades and is now vital to many countries' mainstream dispute-resolution systems<sup>9</sup>. Initially presented as a substitute for litigation, alternative dispute resolution (ADR) has outperformed expectations and proven to be a flexible and adaptable solution for a wide range of disagreements and conflict situations. As the corporate sector encounters more complex challenges, alternative dispute resolution (ADR) has emerged as a favoured choice for speedy and cost-effective conflict resolution. ADR's importance in the business sector arises from its capacity to provide efficient, cost-effective, and confidential dispute settlement<sup>10</sup>. It allows businesses to focus on their core operations while addressing difficulties in a way that safeguards relationships and their reputation. As companies explore options to litigation, alternative dispute resolution (ADR) will remain an important tool for building cooperation, preserving economic partnerships, and ensuring smooth corporate operations.

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<sup>7</sup> Arbitration and Conciliation (Amendment) Act, 2021, No. 03, Acts of Parliament, 2021 (India).

<sup>8</sup> Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

<sup>9</sup> Anamika Yadav, The Evolution and Development of ADR in India and its Different Kinds, 3 INT'L J. L. MGMT & HUMAN. (2020)

<sup>10</sup> Preeti Kumari, Alternative Dispute Resolution (ADR), SSRN (July 25, 2023, 6:45PM), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3626625](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3626625)

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