

Alternative Dispute Resolution

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) refers to a set of methods and processes used to resolve conflicts, disputes, or disagreements between two or more parties outside of the traditional court system. The goal of ADR is to find a mutually agreeable resolution that satisfies the interests of all parties involved. It is considered an alternative to formal litigation and provides a more flexible and collaborative approach to dispute resolution. [ADR](#) is often sought because it can be quicker, less expensive, and less adversarial than going to court. Additionally, it provides parties with more control over the resolution process and can lead to more creative and customized solutions that may not be available through traditional litigation. Many legal systems encourage or require parties to attempt ADR before proceeding to a formal court trial.

Alternative Dispute Resolution in India

In India, [Alternative Dispute Resolution](#) has gained prominence as a means to resolve disputes efficiently and reduce the burden on the traditional court system. ADR methods are widely used in various sectors and have been institutionalized through legislation and court judgments. The three main forms of ADR commonly practiced in India are [mediation](#), arbitration, and conciliation. The Indian legal system actively encourages the use of ADR methods to resolve disputes. The Code of Civil Procedure, 1908, and the Commercial Courts Act, 2015, mandate pre-litigation mediation in certain types of disputes. Additionally, the Supreme Court and various High Courts have established mediation centres to promote and facilitate mediation across the country. Apart from mediation, arbitration, and conciliation, other ADR mechanisms, such as Lok Adalat (People's Courts) and Judicial Settlement Schemes, are also used in India to resolve disputes quickly and effectively. These mechanisms focus on resolving pending court cases and encouraging settlements among the parties. The primary law governing ADR is the **Arbitration and Conciliation Act, 1996**. This comprehensive legislation was enacted to provide a legal framework for the conduct of arbitration and conciliation proceedings and to promote ADR methods as an efficient and effective means of dispute resolution. It is based on the **UNCITRAL Model Law on International Commercial Arbitration**, which aims to harmonize and streamline [international arbitration](#) practices.

Alternative Dispute Resolution methods

1. **Mediation:** Mediation is a popular alternative dispute resolution method in India, regulated by the **Arbitration and Conciliation Act, 1996**. It involves a neutral third party, the mediator, who assists the disputing parties in communicating and negotiating to reach a voluntary and

mutually acceptable resolution. Mediation is commonly used in civil and commercial disputes, family matters, labour disputes, and even in criminal cases with the consent of the parties. The mediator is a neutral and impartial third party who assists the disputing parties in communicating, understanding each other's perspectives, and finding a mutually agreeable resolution. Mediation proceedings are confidential. All discussions, offers, and proposals made during mediation are treated as confidential and cannot be disclosed or used as evidence in subsequent legal proceedings. Mediation is less formal than a court trial. It allows parties to interact in a more relaxed and non-adversarial environment, encouraging open communication and collaborative problem-solving. Mediation empowers the parties to actively participate in finding a solution that meets their interests and needs. They have control over the outcome and can craft creative and customized agreements.

2. **Arbitration:** Arbitration is another prevalent alternative dispute resolution method, governed by the ***Arbitration and Conciliation Act, 1996***. It involves a neutral third party or a panel of arbitrators who hear the arguments and evidence presented by the parties and render a binding or non-binding decision, known as an arbitral award. Arbitration is often used in commercial contracts, construction disputes, international disputes, and other complex matters. The parties may appoint one or more arbitrators to act as neutral third parties in resolving the dispute. The arbitrator should be impartial and have no vested interest in the outcome of the case. Parties have the flexibility to choose the arbitration procedure, subject to certain legal requirements. They can agree on the rules, venue, language, and governing law of the arbitration. The Arbitration and Conciliation Act aims to minimize judicial interference in the arbitration process. Courts are generally supportive of arbitration and intervene only when necessary, such as appointing arbitrators or enforcing arbitral awards. Arbitration proceedings are generally private and confidential. The confidentiality of the process encourages parties to be more open in their discussions.
3. **Conciliation:** Conciliation is similar to mediation and is another alternative dispute resolution mechanism also regulated by the ***Arbitration and Conciliation Act, 1996***. A neutral third party, the conciliator, assists the parties in finding common ground and reaching an agreement. The conciliator may take a more active role in suggesting possible solutions compared to a mediator. Unlike mediation, the conciliator may take a more active role in suggesting potential solutions to the parties. The conciliator may propose compromises or settlement options to help the parties reach an agreement. The conciliator's role is to facilitate communication and negotiation, but the conciliator does not have the power to impose a decision or award. The outcome of the conciliation process is non-binding on the parties.
4. **Lok Adalats:** Lok Adalats, or People's Courts, are unique to India's legal system and are established under the Legal Services Authorities Act, 1987 as alternative dispute resolution mechanism. These are informal, community-based ADR forums that aim to resolve disputes through conciliation or mediation. Lok Adalats have the authority to pass binding consent awards, which have the same legal force as a court decree. Lok Adalats are organized and supported by the National Legal Services Authority (NALSA) and State Legal Services Authorities under the ***Legal Services Authorities Act, 1987***. The primary objective of Lok

Adalats is to provide accessible and speedy justice to the masses, especially to those from economically weaker sections of society.

5. **Judicial Settlement Schemes:** Some Indian courts have introduced Judicial Settlement Schemes as alternative dispute resolution to encourage parties to settle their disputes amicably. These schemes provide incentives for parties to participate in mediation or negotiation and may offer reduced court fees or other benefits.

Negotiation in alternative dispute resolution

Negotiation is a fundamental and widely used method within Alternative Dispute Resolution (ADR). It involves direct communication and bargaining between the parties themselves, without the involvement of a neutral third party like a mediator or arbitrator. Negotiation is an essential skill in resolving disputes, and it can be conducted in various settings and contexts, including legal, business, interpersonal, and international matters. Negotiation can be an effective way to resolve disputes when the parties are willing to engage in good faith and work towards finding common ground. It offers flexibility, autonomy, and the potential for creative solutions that can preserve relationships and avoid the adversarial nature of formal legal proceedings. Negotiation aims to achieve win-win solutions, where both parties benefit from the agreement. The focus is on mutual gain rather than a zero-sum game where one party's gain comes at the expense of the other. Effective negotiation requires open and constructive communication between the parties. Active listening is essential to understand each other's perspectives and concerns better. Negotiation discussions are usually confidential. This encourages parties to be more open and allows for frank discussions without fear that statements made during negotiations will be used against them later in court.

Key features of alternative dispute resolution

- **Voluntary Participation:** Alternative dispute resolution is generally a voluntary process, meaning that parties must agree to participate in the resolution of their dispute through ADR methods. This voluntary aspect ensures that parties are willing to engage in the process and work towards a mutually acceptable resolution.
- **Informality:** ADR processes are often more informal compared to court proceedings. They do not follow strict rules of evidence or formal procedures, allowing for more flexibility and adaptability to the unique needs of each case.
- **Speed and Efficiency:** ADR mechanisms are typically faster and more efficient than traditional litigation. They aim to resolve disputes in a timely manner, reducing the time and resources required for prolonged court battles.
- **Confidentiality:** Many ADR methods, such as mediation and conciliation, ensure confidentiality. Parties can freely discuss the issues at hand without the fear of their statements being used against them in court.

- Party Autonomy: Alternative dispute resolution methods emphasize party autonomy, allowing the parties involved to have greater control over the outcome of the dispute. The parties actively participate in shaping the resolution.
- Cost-Effectiveness: ADR can be more cost-effective than traditional litigation. It reduces the expenses related to court fees, lengthy legal proceedings, and discovery processes.
- Preservation of Relationships: ADR methods are designed to foster cooperation and constructive communication between parties. This can help preserve relationships, especially in ongoing business or personal interactions.
- Flexibility in Solutions: ADR encourages creative and flexible solutions that may not be available through rigid court judgments. It allows parties to explore options tailored to their specific needs and interests.
- Expert Neutrals: ADR often involves the use of neutral third parties, such as mediators or arbitrators, who possess expertise in the subject matter of the dispute. These neutrals facilitate communication and assist parties in reaching an agreement.
- Applicability in Various Contexts: ADR methods are applicable to a wide range of disputes, including commercial, family, community, labor, and environmental disputes, among others.
- Emphasis on Win-Win Solutions: Alternative dispute resolution encourages win-win solutions, where both parties can benefit from the resolution, fostering a more collaborative and constructive approach to dispute resolution.

Enforcement of Domestic Arbitral awards

- Filing an application: To enforce a domestic arbitral award, the successful party must file an application for enforcement in a competent court. The application must be made within the limitation period of three years from the date of the award.
- Grounds for Refusal: The court may refuse to enforce a domestic award on limited grounds mentioned in Section 34 of the Arbitration and Conciliation Act. These grounds include instances where the award is contrary to public policy, affected by fraud or corruption, or in violation of the fundamental principles of justice.
- No Automatic Stay: The filing of an application for setting aside an arbitral award (under Section 34) does not automatically stay the enforcement of the award. However, the court may grant a stay of enforcement if it is satisfied that there are grounds to do so.
- Enforcement as a Decree: The arbitral award is deemed to be a decree of that court and can be executed as such.

Landmark cases on Alternative dispute resolution

- ***Bhatia International v. Bulk Trading S.A.*** (2002): This landmark Supreme Court judgment dealt with the issue of the applicability of Part I of the Arbitration and Conciliation Act, 1996, to international commercial arbitrations seated outside India. The court held that the provisions



of Part I of the Act would apply to international commercial arbitrations unless expressly excluded by the parties.

- ***Venture Global Engineering v. Satyam Computer Services Ltd.*** (2008): In this case, the Supreme Court clarified that an arbitration clause in a main agreement would also apply to the subsidiary or ancillary agreements between the parties, unless there is a contrary intention.
- ***S.B.P. & Co. v. Patel Engineering Ltd. and Another*** (2005): This case dealt with the power of Indian courts to grant interim relief in international commercial arbitrations. The Supreme Court held that Indian courts had the power to grant interim relief even in arbitrations conducted outside India.
- ***BCCI v. Kochi Cricket Pvt. Ltd.*** (2018): This case involved disputes arising out of the termination of an Indian Premier League (IPL) franchise contract under alternative dispute resolution. The Supreme Court upheld the validity of the arbitration clause and the appointment of an arbitrator. It emphasized the pro-arbitration approach and minimal court intervention in arbitration proceedings.
- ***M/s. Centrotrade Minerals and Metal Inc. v. Hindustan Copper Ltd.*** (2017): In this case, the Supreme Court emphasized the importance of adhering to the timelines for disposal of arbitration proceedings, stating that it is necessary to prevent undue delay in resolving disputes.
- ***Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.*** (2020): The Supreme Court ruled on the issue of whether a non-signatory to an arbitration agreement could be compelled to participate in arbitration. The court held that in certain circumstances, a non-signatory could be bound by the arbitration agreement and compelled to arbitrate.

Conclusion

Alternative dispute resolution has become an integral part of India's legal landscape, offering parties a more efficient and cost-effective way to resolve disputes while easing the burden on the overburdened courts. While ADR presents numerous advantages, it may not be suitable for all types of disputes. Complex legal matters or cases involving sensitive issues may still require traditional methods. However, ADR continues to evolve and improve, and it plays a crucial role in providing efficient, cost-effective, and accessible means for resolving disputes.