

# ADR Mechanism

By – Manisha Singh

ADR includes [dispute resolution](#) processes and techniques that act as a means for disagreeing Alternative Dispute Resolution (ADR) (also known as external dispute resolution in parties to come to an agreement short of [litigation](#). ADR basically is an alternative to a formal court hearing or litigation. It is a collective term for the ways that parties can settle disputes, with (or without) the help of a third party. ADR are ways and [methods of resolving disputes outside the judicial process](#) . , [ADR has gained widespread](#) acceptance among both the general public and the [legal profession](#) in recent. The rising popularity of ADR can be explained by the increasing caseload of traditional courts, the perception that ADR imposes fewer costs than [litigation](#), a preference for confidentiality, and the desire of some parties to have greater control over the selection of the individual or individuals who will decide their disputant years. In fact, some courts now require some parties to resort to ADR of some type.

In India, laws relating to resolution of disputes have been amended from time to time to facilitate speedy dispute resolution. The Judiciary has also encouraged out of court settlements to alleviate the increasing backlog of cases pending in the courts. To effectively implement the ADR mechanism, organizations like ICA, ICADR were established, Consumer redressal forums and Lok Adalats revived. The Arbitration Act, 1940 was repealed and a new and effective arbitration system was introduced by the enactment of the Arbitration and Conciliation Act, 1996. This law is based on the United Nations Commission on International Trade Law (UNCITRAL) model law on International Commercial Arbitration. The Legal Services Authorities Act, 1987 has also been amended from time to time to endorse use of ADR methods. Section 89 of the Code of Civil Procedure as amended in 2002 has introduced conciliation, mediation and pre-trial settlement methodologies for effective resolution of disputes. Mediation, Conciliation, Negotiation, Mini Trial, Consumer Forums, Lok Adalats and Banking Ombudsman have already been accepted and recognised as effective Alternative dispute resolution methodologies. . The Constitution of India has defined and declared the common goal for all of us as — "to secure to all the citizens of India Justice social, economic and political; Liberty; Equality and Fraternity". ADR is a vehicle to achieve these principles and objectives.

The salient features of each type are as follows:

1. In [mediation](#), there is a third party, a mediator, who facilitates the resolution process ", but does *not* impose a resolution on the parties. In some countries (for example, the [United Kingdom](#)), ADR is synonymous with what is generally referred to as [mediation](#) in other countries. When mediation succeeds and the parties agree to the terms of settlement, the mediator will report to the court and the court after giving notice to the parties and hearing them effect the compromise and pass a decree in accordance with the terms of settlement accepted by the parties.

2. In [arbitration](#), participation is typically voluntary, and there is a third party who, as a private judge, imposes a resolution. Arbitrations often occur because parties to contracts agree that any future dispute concerning the agreement will be resolved by arbitration. Any party to the dispute can start the process of appointing arbitrator and if the other party does not cooperate, the party can approach the office of Chief Justice for appointment of an arbitrator. There are only two grounds upon which a party can challenge the appointment of an arbitrator – reasonable doubt in the impartiality of the arbitrator and the lack of proper qualification of the arbitrator as required by the arbitration agreement. A sole arbitrator or a panel of arbitrators so appointed constitute the Arbitration Tribunal. Except for some interim measures, there is very little scope for judicial intervention in the arbitration process. The arbitration tribunal has jurisdiction over its own jurisdiction. Thus, if a party wants to challenge the jurisdiction of the arbitration tribunal, it can do so only before the tribunal itself. If the tribunal rejects the request, there is little the party can do except to approach a court after the tribunal makes an award. Section 34 provides certain grounds upon which a party can appeal to the principal civil court of original jurisdiction for setting aside the award.

3. [conciliation](#), is a less formal form of arbitration. This process does not require an existence of any prior agreement. Any party can request the other party to appoint a conciliator. One conciliator is preferred but two or three are also allowed. In case of multiple conciliators, all must act jointly. If a party rejects an offer to conciliate, there can be no conciliation.

Parties may submit statements to the conciliator describing the general nature of the dispute and the points at issue. Each party sends a copy of the statement to the other. The conciliator may request further details, may ask to meet the parties, or communicate with the parties orally or in writing. Parties may even submit suggestions for the settlement of the dispute to the conciliator.

When it appears to the conciliator that elements of settlement exist, he may draw up the terms of settlement and send it to the parties for their acceptance. If both the parties sign the settlement document, it shall be final and binding on both.

4. [Lok Adalat](#) roughly means "people's court". India has had a long history of resolving disputes through the [mediation](#) of village elders. The system of Lok Adalats is an improvement on that and is based on Gandhian principles. These are usually presided by retired judge, social activists, or members of legal profession. It does not have jurisdiction on matters related to non-compoundable offences.

There is no court fee and no rigid procedural requirement (i.e. no need to follow process given by Civil Procedure Code or Evidence Act), which makes the process very fast. Parties can directly interact with the judge, which is not possible in regular courts.

Cases that are pending in regular courts can be transferred to a Lok Adalat if both the parties agree. A case can also be transferred to a Lok Adalat if one party applies to the court and the court sees some chance of settlement after giving an opportunity of being heard to the other party.

The focus in Lok Adalats is on compromise. When no compromise is reached, the matter goes back to the court. However, if a compromise is reached, an award is made and is binding on the parties. It is enforced as a decree of a civil court. An important aspect is that the award is final and cannot be appealed, not even under Article 226 because it is a judgement by consent.

All proceedings of a Lok Adalat are deemed to be judicial proceedings and every Lok Adalat is deemed to be a Civil Court.

Despite many advantages of using Alternative dispute resolution mechanisms, our society has been reluctant to give it its due recognition. The predominant reason being that a litigation ridden society is generally unable to explore consensual dialogue or arrive at an amicable solution. The ADR practitioner therefore acts like a healer of conflicts rather than a combatant. It is similar to the Panchayat system we have in our villages. The resolution of disputes is so effective and widely accepted that Courts have more often recognised them. In *Sitanna v. Viranna*, AIR 1934 SC 105, the Privy Council affirmed the decision of the Panchayat and Sir John Wallis observed that the reference to a village panchayat is the time-honoured method of deciding disputes. It avoids protracted litigation and is based on the ground realities verified in person by the adjudicators and the award is fair and honest settlement of doubtful claims based on legal and moral grounds.

### Conclusion

Awareness of ADR through seminars, workshops and other means and its supervised and systematic implementation should be encouraged so that its effectiveness is proved and the message reaches a large section of populi. Also, apart from a good law that provides for resolution of disputes, it is rudimentary to extend or create facilities, services, and infrastructure that shall enable the implementation of such rules and lead to effective ADR practice. Effective coordination both at operational and structural level is a prerequisite of any successful ADR mechanism. Pre-trial conciliation and fixing the targets for dispensation of justice are imperative for successful implementation of any ADR mechanism. Proper training of the Mediators, Negotiators, and Conciliators should be a mandatory requirement for the understanding of the disputes/ cases and its efficient handling. The specialized firms or organizations are certainly more promising and reliable in this sphere and people choose to consult them and engage their services for dispute resolution. The Indian Council for Arbitration (ICA) established on April 15, 1965 provides arbitration facilities for all types of domestic and international commercial disputes and conciliation of international trade complaints received from Indian and foreign parties, for nonperformance of contracts or noncompliance with arbitration awards. It maintains comprehensive international panel of arbitrators with eminent and experienced persons from different lines of trade and professions for facilitating choice of arbitrators. The council has launched on internet a special web site called COMLAWNET to provide information on arbitration and commercial laws. We need more organizations such as the ICA, ICC and FICCI that render specialized services and promote ADR. One would agree that these organizations have a vital role to play in resolving disputes, in particular, commercial disputes across the globe!

