
THE INTERSECTION OF ADR AND PUBLIC WELFARE: ADDRESSING SECTORAL CHALLENGES IN INDIA

Mann Parashar, The London School of Economics and Political Science

ABSTRACT

This paper explores the impact of various Alternative Dispute Resolution mechanisms on public welfare and Public Policy. Beginning with an overview of ADR, it explains its role in resolving disputes outside traditional court settings and examines its intersection with welfare development in key areas like environmental law, urban planning and development, education and healthcare policy. Each sector is analysed through the lens of ADR, highlighting how resolving sector-specific issues through ADR could potentially shape and influence policy decisions, and questioning whether ADR offers a vital pathway for conflict resolution in these domains.

The discussion then shifts to community mediation, which offers effective approaches for resolving disputes among individuals, groups, and organisations. The analysis considers how community mediation could serve as a transformative tool for reform and development in India, particularly through its potential to improve consensus-building and local governance.

Finally, the paper presents a comprehensive analysis of ADR's effectiveness and its limitations as a tool for public policy formation in India, considering practical, economic, and regulatory factors. Concluding with a summary of key insights, the paper integrates the author's perspective on the role of ADR in shaping policy, providing a well-rounded, reflective closing to the study.

Introduction

A variety of dispute resolution procedures known as "alternative dispute resolution" can assist people in settling their conflicts outside of the conventional judicial system. One of the main reasons that alternative dispute resolution (ADR) is becoming more and more popular is the workload and backlog of cases that are already placing a strain on traditional courts. Currently, approximately 5 crore cases are pending in courts of the country which are over 30 years old¹. Each year, less disputes are disposed of than those initiated in court, which means that the number of backlog cases keeps growing². In broad terms, there are four primary methods for resolving disputes: arbitration, mediation, negotiation, and lok adalat hearings. This article will primarily discuss and examine mediation and arbitration, with a focus on how they interact with the establishment and growth of the public welfare sector.

Public policy and welfare plays an essential role in forming a nation and expressing the needs of its people for the advancement and enhancement of society. However, there are numerous gaps in policy implementation that can result in troublesome circumstances such as failing to provide citizens with facilities, meeting deadlines outlined in the laws, or occasionally even failing to follow the restrictions imposed by the laws or policies themselves. Considering the court backlog, it is crucial to develop alternative conflict resolution procedures that can hear cases involving public policy, particularly those involving healthcare, urban planning and displacement, or educational policies. Therefore, it becomes imperative that these dispute resolution methods accelerate and assist individuals in obtaining justice and resolving their difficulties more quickly.

However, due to the complexity of the case and the issues involved, as well as the fact that it then becomes a public matter rather than a private one, it can occasionally become very difficult to find ways to accommodate ADR mechanisms in public policy disputes. This is particularly prevalent when it comes to urban planning, healthcare, and various other fields. To solve this specific problem, we first have to separate the public welfare spectrum into different industries. Then, we must focus on issues that can be settled through alternative

¹ The Hindu, 'Nearly 62,000 of cases pending in high courts are over 30 years old' (*The Hindu*, 7 September 2024) <<https://www.thehindu.com/news/national/nearly-62000-of-cases-pending-in-high-courts-are-over-30-years-old/article68616991.ece>> accessed 26th October 2024

² Konoorayar, 'Alternative Dispute Resolution in India- ADR status/ effective study' (2014) <https://www.ssoar.info/ssoar/bitstream/handle/document/41034/ssoar-2014-konoorayar_et_al-Alternative_Dispute_Resolution_in_India.pdf?sequence=1&isAllowed=y&lnkname=ssoar-2014-konoorayar_et_al-Alternative_Dispute_Resolution_in_India.pdf> accessed 26th October 2025

dispute resolution in order to relieve pressure on the traditional courts and expedite the process of delivering justice.

ADR in public policy and welfare sectors

Healthcare and Medical Sector

The emergence of healthcare policies began prior to independence, and ever since, they have been incorporated in every five-year plan³. The lack of attention to a proper healthcare system for individuals, as well as the low level of investment and allocation of resources to this sector, makes healthcare and medical disputes a significant concern that must be taken into account when discussing public disputes under ADR. A significant number of medical negligence cases are arising, which can also occasionally result from inadequate healthcare policies that can impact a significant amount of people broadly and cause conflicts that require prompt action. ADR becomes an important process to investigate. When medical professionals, such as physicians or nurses, violate their duty of care or even the established public policy, it can be classified as medical negligence and may have a detrimental effect on a patient. In the *Balram Prasad v. Kunal Saha*⁴ case, the court took fifteen years to provide the aggrieved party with justice after Dr. Kunal Saha's wife passed away as a result of medical malpractice. Additionally, in *P. Sreekumar v. State of Kerala*⁵, the Supreme Court of India highlighted the use of alternative dispute resolution in matters involving negligent medical care. According to the court, alternative dispute resolution could offer a more rapid, economical, and less commercial means of settling disagreements between patients and medical professionals.

It becomes imperative for lawmakers and policymakers to find a more rapid and affordable solution to these kinds of instances, and alternative dispute resolution becomes an important method to consider. Germany, which boasts one of the best healthcare systems in the world, supported healthcare mediation by forming distinct Healthcare Ethics Committees in each participating institution. Subsequently, some authors also expressed the view that these committees may be set up in Indian government organisations or hospitals, and they could also act as a pre-mediation conflict resolution process to keep disagreements from becoming more

³ Sisodiya, D. S., & Dwivedi, S. 'The Role of ADR in Resolving Disputes Related to Medical Negligence' (2024) 9(1), 34–41 International Journal of Law and Social Sciences
<<https://www.journalsalliancepub.com/index.php/ijls/article/view/82/79>> accessed 26 October 2024

⁴ *Balram Prasad v. Kunal Saha*, (2014) 1 SCC 384

⁵ *P. Sreekumar v. State of Kerala*, (2018) 4 SCC 579

serious⁶.

Environmental Disputes

Environment policies play a crucial role in achieving the goals of sustainability, climate control and forest protection. However, disputes related to the environment have risen with a great hike over the years which the traditional courts take a lot of time to tend to due to which a lot of problems are created. India has the highest number of environment related disputes in the world⁷. Furthermore, most of these cases are put in favour of the more powerful authorities or the government which does not leave anything with the other party.

Principle 10 of the Rio Declaration on Environment says that “Environmental issues are best handled with participation of all concerned citizens, at the relevant level”⁸. Another convention of Aarhus in 1998⁹ encouraged that disputes related to the environment should be solved using methods like conciliation or mediation or even binding methods such as arbitration. However, it is also said that these disputes should be put forward in the appropriate method looking at factors such as nature and urgency of the dispute as disputes related to the environment can affect the public at large and should be construed very carefully¹⁰.

Education

In India, one of the most significant economic sectors is education. Due to the growing number of young people in India, thousands of eager students enrol in institutions around the country each year to fulfil their aspirations of pursuing higher education. But as the education industry

⁶ Akshita Singh & Rituparna Padhy, Healthcare Mediation in India: A pound of cure for adversarial Litigation? (Mapping ADR, 12 April 2024)

<<https://jgu.edu.in/mappingADR/healthcare-mediation-in-india-a-pound-of-cure-for-adversarial-litigation/#:~:text=To%20mitigate%20this%2C%20mediation%20has,in%20a%20less%20destructive%20manner>> accessed 26 October 2024

⁷ Isha Ahlawat, ‘Alternate Dispute Resolution in Environmental Disputes in India: Learning from International Experience’ 3(2) International Journal of Advanced Legal Research <https://ijalr.in/volume-3/issue-2/alternate-dispute-resolution-in-environmental-disputes-in-india-learning-from-international-experience-isha-ahlawat/#_ftn6> accessed 26 October 2024

⁸ Report of the United Nations Conference on Environment and Development (adopted 14 June 1992) Conf. 151/26 UNCED

⁹ The Aarhus Convention (adopted on 25 June 1998, entered into force on 30 October 2001) 2161 UNECE 447

¹⁰ J Alkhayer, ‘Role of ADR methods in environmental conflicts in the light of sustainable development’ (2022) 1084 (012057) IOP Publishing <<https://iopscience.iop.org/article/10.1088/1755-1315/1084/1/012057/pdf>> accessed 26 October 2024

expands, so do educational conflicts, particularly between students and university officials¹¹.

The use of Alternate Dispute Resolution can be a solution to many educational conflicts, involving student attendance, disciplinary issues, suspension, etc., which have been brought before Indian courts in recent years and have taken a lot of time leading to monetary and time wastage for both the parties. Instead, ADR mechanisms such as mediation, counselling and negotiation can be taken up by the universities and education centres themselves. One example can be a few institutions such as public institutions in Minnesota, Georgia, and Washington, as well as the little church-affiliated Eastern Mennonite University in Virginia in USA, which have created different integrated conflict management systems¹². This helps the parties have a comfortable and quicker way to resolve their disputes without going to the traditional courts for issues which can be settled between the parties.

Is Community Mediation one way to resolve sectoral challenges?

In India, mediation is nothing new. It was the core of the traditional, unofficial dispute resolution process. An intriguing attempt to expand the reach of mediation is community mediation. Community mediation is a kind of mediation which generally offers a process for resolving disputes between a larger set of groups and organisations. In ancient India, people took pride in cultivating their collectiveness despite their differences, and the motto was "coming together for everyone." Communities began using traditional and informal methods to settle conflicts. The idea of social peace and community power was mirrored in our scriptures. It was excellent how Panchayats and esteemed community elders worked together to resolve conflicts.¹³

Community mediation is defined under section 3(b) of the Mediation Act, 2023 defines "community mediator" as "a mediator for the purposes of conduct of community mediation under Chapter X"¹⁴. Furthermore, Section 43 and 44 deal with the procedure and nitty gritty of Community mediation. Currently, "any dispute likely to affect peace, harmony, and

¹¹ Smita Tyagi, 'Exploring ADR in Higher Education in India' (*Amity University*) <<https://www.amity.edu/UserFiles/Journal/Smita%20Tyagi.pdf>> accessed 26 October 2024

¹² Neil H. Katz, 'Mediation and Dispute Resolution Services in Higher Education' (eds), *The Mediation Handbook: Research, Theory and Practice* (Routledge 2017)

¹³ Prerna Kohli, 'The Power of Community Mediation' (*Livelaw*, 14 June 2024) <<https://www.livelaw.in/law-firms/law-firm-articles-/community-mediation-zeus-law-associates-260553>> accessed 26 October 2024

¹⁴ The Mediation Act 2023, s 3(b)

tranquillity among the residents or families of any area or locality" is addressed through community mediation. As is easily apparent, it is an area-based procedure that deals with the problems or conflicts that are specific to that region. The conflicts may arise within the local community or between communities. An official panel of three mediators, similar to a panchayat, is formed and they are obligated to report to the area DM and SDM on the settlements and non-settlements in the community¹⁵.

The Delhi Dispute Resolution Society, which is within the Government of the National Capital Territory of Delhi, provides us with a list of cases and disputes that can be brought before the state's various mediation centres for community mediation. These include disputes involving neighbours, family and relationship issues, consumer court disputes, and "cases by or against the government having elements of settlement." This implies that disagreements that bring up issues of governance or administration should only be of a resolved character. Therefore, everything can be decided by community mediation, with the exception of those matters that are specified in the law, have policies in place, or involve legislative disputes that cannot be settled.

Although community mediation is frequently used by residents of small towns and villages to settle conflicts, it has sadly not been able to fully connect with metropolitan residents and corporate establishments because there are few indications of this practice in the existing legal system. By definition, community mediation is a quick, collaborative, and cost-effective way to resolve conflicts. Therefore, it is ideal for parties who need relief immediately or who think that waiting would make it useless, as well as parties who wish to pursue a remedy outside of the legal system. It can also include parties who wish to pursue a remedy outside of the bounds of the law or those groups that lack the financial means to cover the high costs of litigation¹⁶.

Considering all of these factors, community mediation appears to be the most effective choice for civil cases involving the public welfare sector. Community mediation can be a very viable and approachable justice mechanism for people. It gives a platform to a group of people to resolve disputes at a much faster pace in the presence of an impartial mediator. As community mediation happens within a particular region, it can also help in better local governance and administration seeing the kind of grievances people have in that area by them as a bar to set.

¹⁵ The Mediation Act 2023, s 44

¹⁶ Disha Surpuriya, 'Community Mediation in India' (Centre for Alternative Dispute Resolution, 17 February 2022) <<https://www.rgnulcadr.in/post/community-mediation-in-urban-india>> accessed 26 October 2024

By identifying recurring issues within the locality, the authorities can contribute to a better administration set up for the people as well as have better supervision over the public welfare bodies within the area.

Conclusion

In conclusion, Alternative Dispute Resolution has a potential to elevate the burden of backlogs which continues to put India's judicial system in a lot of strain. ADR can offer an efficient way of giving justice to people while the traditional courts deal with an overwhelming volume of cases that are still pending and enabling disputes to be resolved without any litigation procedure. The strategic integration of ADR in sectors like healthcare, environmental policy, education, and community governance can significantly reduce the load on courts, promoting quicker and more accessible justice. Mediation, arbitration, and community-based resolutions provide individuals and communities with streamlined channels to resolve issues, bypassing the procedural complexities that prolong cases in traditional courts.

Creating awareness about ADR mechanisms is essential to enhance their adoption and to shift public reliance from court-based solutions to alternative methods. Educating the public on the advantages of ADR, namely cost effectiveness, timeliness, and reduced procedural formality can put a greater trust in these mechanisms.

Establishing dispute resolution centres within organisations and institutions can help promoting ADR as a mechanism, giving a personal touch to the parties to make them feel at ease as it also takes the willingness of the parties to engage in alternative dispute resolution mechanisms. By expanding the accessibility, ADR can be helpful in making public policies as well as local governance and administration of these sectors more accessible to the people. This approach stands to the benefit of all the people, government institutions, public welfare industries and the judiciary making a way for a more responsive legal system which tends to the needs of the society.