
OVERCOMING JUDICIAL BACKLOGS: THE CRITICAL ROLE OF ADR IN DELIVERING SWIFT JUSTICE

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ABSTRACT

The Indian judicial system, while constitutionally robust, is still beset by grave structural and procedural flaws in the delivery of timely justice. The study critically examines the Indian judiciary's shortcomings with a focus on grave problems such as excessive case pendency, corruption, transparency in judicial appointments, delay-ridden proceedings, and the escalating cost of litigation. These systemic inefficiencies have led to increasingly higher calls for effective alternatives to traditional adjudication. The study analyses Alternative Dispute Resolution (ADR) mechanisms—Arbitration, Mediation, Conciliation, and Lok Adalat—as effective and useful tools in preventing judicial overload and enabling quicker resolution of disputes. Analysing landmark cases that trace the judicial acceptance of ADR mechanisms. Additionally, the research examines how ADR facilitates fewer formal processes, becomes more accessible in terms of infrastructure, lowers the cost and duration of proceedings, and encourages frequent relationships between disputing parties. Party confidence, flexibility of venues, and binding arbitration increase the attractiveness of arbitration as a reasonable complement to the formal judiciary. Lastly, the research emphasises the need for ADR to minimise the judicial process, enhance access to justice, and enhance public confidence in dispute resolution, thus transcending the limitations of the Indian judiciary and enhancing the overall justice delivery system.

Keywords: The Indian judicial system, Excessive case pendency, Corruption, Transparency, Arbitration, Mediation, Conciliation, Lok Adalat, Alternative Dispute Resolution

1. Introduction

Despite the independence of the judiciary from the executive and legislative bodies, the Indian judicial system faces a lot of problems.¹ In an alarming scenario, a whopping 2.66 crore cases are pending in district courts across the country, which are short of nearly 5,000 judicial officers. The situation has led to suggestions in two Supreme Court reports to increase the judicial manpower “manifold”, at least seven times, to overcome the crisis by appointing about 15,000 more judges in the coming few years. The suggestions and some sharp remarks came out in two reports issued by the Supreme Court in ‘Indian Judiciary Annual Report 2015-2016’ and ‘Subordinate Courts of India: A Report on Access to Justice 2016’. This also highlighted that nearly 15,000 more judges would be required in the next three years to overcome this critical situation.²

One of the oldest legal systems in the world today is the Indian judicial system, and it still incorporates certain features inherited from the British judicial system during their centuries of colonial rule in India. The Indian Constitution, which is the supreme law of the country, provides the framework of the present legal and judicial system of the country. India’s judicial system follows a “common law system” along with the regulatory law and the statutory law. Another important feature of our legal system is that it is based on the adversarial system, in which two sides of the story are presented in every case to a neutral judge, who then gives a judgment based on the arguments and evidence of the case.³ However, this process is time-consuming and complex, as it includes the presence of all evidence, following of law, and more technicalities. Hence, many people are expecting changes in this system or the presence of another mechanism for the resolution of disputes. So there was a desperate need for another mechanism for the resolution of disputes to prevent unnecessary delay and trouble.⁴ Then there was the idea of an alternate dispute resolution mechanism to protect the overburdened judiciary. Its history will be discussed in my research regarding the establishment of the ADR

1 Pranav Rudra, ISSUES WITH INDIAN JUDICIAL SYSTEM, 5 July 2023 available on <https://blog.ipleaders.in/issues-indian-judicial-system/>, Visited on 4 Feb 2026.

2 INDIAN EXPRESS ARTICLE, 15 January 2023, available on <http://indianexpress.com/article/india/district-courts-2-81-crore-cases-pending-5000-judges-short-across-india-4475043/>, visited on date 4 Feb 2026.

3 Rumani shaikiya Phukan, FIVE MAJOR PROBLEMS OF THE INDIAN JUDICIARY IS FACING, 13 Oct. 2022, available on <https://www.mapsofindia.com/my-india/society/five-major-problems-the-indian-judicial-system-is-facing>, Visited on 4 Feb. 2026.

4 INDIAN JUDICIAL SYSTEM, available on <http://shyrti.blogspot.in/2011/01/disadvantages-of-indian-judiciary.html>, visited on 4th Feb. 2026.

Mechanism.⁵

Arbitration as an institution of dispute resolution has been in existence and practised in many societies for immemorial time. Mercantile men preferred arbitration to litigation in court, but it was found not to be the best because of certain defects in arbitration law.⁶ This resulted in a newer and better mechanism for the resolution of disputes. The United States took more initiative to modify the arbitration law and developed a more competent mechanism for the resolution of disputes, which brought a new mechanism into existence called the alternative dispute resolution mechanism. It is called ADR in Abbreviated form.⁷ The actual meaning of ADR is to go for the resolution of disputes other than the formal court of justice. ADR can be differentiated into various categories, like Adjudicatory and non-adjudicatory, consensual and non-consensual. In Arbitration, the decision of the arbitrator is binding on both parties, while in conciliation and mediation decision depends on the will of the parties. In this case party has the right to decide the outcome of the dispute. This mechanism of dispute resolution is beneficial between the parties as it helps the parties in resolving the dispute without damaging the relationship between them. This protects the long-lasting partnership of parties to dispute and can also lead to a satisfactory resolution of the dispute, which will preserve their culture.⁸

This mechanism is very effective at the stage where the party feels that a settlement can be done by the collaborative efforts of the parties. Even if the ADR mechanism fails, it is never a waste since it helps the parties to see each other's viewpoint and understand the case better. ADR techniques can be resorted to in almost all types of contentious matters capable of resolving an agreement between parties under the law, where both parties are generally interested in litigation. It can be particularly useful in all types of dispute resolution, especially those which are related to business, civil, commercial, industrial, and family disputes.

Arbitration in which the dispute is submitted to an arbitral tribunal consists of an odd number of arbitrators. The arbitral tribunal gives the decision in the form of an award, which is binding

5 ADR IN INDIA, available on <https://academy.gktoday.in/article/alternative-dispute-resolution/>, visited on 4th Feb. 2026.

6 S.Chaitanya Shashank, Kaushalya T. Madhavan, ARBITRATION IN INDIA, 7 January 2019, available on <https://www.lawctopus.com/academike/arbitration-adr-in-india/>, visited on 4th Feb. 2025.

7 Caroline Ming, ALTERNATE DISPUTE RESOLUTION MECHANISMS, available on <https://www.acc.com/chapters/euro/upload/106program.pdf>, visited on 4th Feb. 2025.

8 Pavel Leshchinskiy, TYPES OF ADR, January 22, 2025, available on <https://www.legalmatch.com/law-library/article/types-of-alternative-dispute-resolution-adr.html>, visited on 6th Feb 2026.

on the parties to the arbitration.⁹ Negotiation can also be used for the resolution of disputes where parties do not choose any third party for any type of interference in the matter of dispute between the parties. Mediation and conciliation are also a part of the dispute resolution mechanism, which are non-binding procedure in which a neutral third party assist the parties to a dispute resolution by reaching a mutually satisfactory, agreed-upon settlement of the dispute.¹⁰ The terms mediation and conciliation are often used interchangeably. They are used as synonyms several times. But there are some differences between them¹¹. Like in conciliation, a neutral third party is involved in settling the dispute amicably, but the settlement is with the parties themselves, while in the case of mediation, the mediator, for the assistance to the parties in resolving the dispute, plays a more positive role. The process for resolving disputes is the same in both mechanisms.¹²

Bryon A. Garner distinguishes two terms in the following words¹³.

The distinction between mediation and conciliation is widely debated among those interested in ADR, arbitration and international diplomacy. Some suggest that conciliation is non-binding arbitration, whereas mediation is merely assisted negotiation.¹⁴ ADR movement in India was in need of certain things like good law, professionally trained ADR lawyers and infrastructure for holding the ADR proceedings. The International Centre for Alternative Dispute Resolution and Arbitration, and the Conciliation Ordinance were the two facets for the advancement of the ADR regime.¹⁵

ICADR is an independent non-profit-making organisation established by certain eminent persons in the legal, administrative and commercial fields. It was registered under the Society Registration Act, 1860, on 31st May, 1995. It is located in Delhi, and it has plans to function

9 OVERVIEW OF ADR, available on https://www.indiaonline.com/article/news/overview-of-adr-alternate-dispute-resolution-mechanisms-in-india-5514204080_1.html, visited on 4th Feb. 2026.

10 ARBITRATION AND CONCILIATION ACT 1996, available on <http://www.wipo.int/edocs/lexdocs/laws/en/in/in063en.pdf>, visited on 5th Feb 2026.

11 PRINCIPLE AND PROCESS OF ARBITRATION, <http://www.legalservicesindia.com/article/article/principles-&-procedure-of-conciliation-under-arbitration-&-conciliation-act-1996-725-1.html>, visited on 5th Feb. 2026.

12 ARBITRATION AND CONCILIATION ACT, Ministry of Law and Justice official website, <http://lawmin.nic.in/ld/PACT/1996/The%20Arbitration%20and%20Conciliation%20Act,%201996.pdf>, visited on 5th feb 2026.

13 DICTIONARY OF MODERN LEGAL USAGE, 2nd edition 1995. Visited on 5th Feb. 2026.

14 C.P Veena, C Jamnadas and Co. ARBITRATION AND CONCILIATION AND ALTERNATE DISPUTE RESOLUTION MECHANISMS, Page no. 17.

15 AMENDMENT TO ARBITRATION AND CONCILIATION ACT 1996. Law commission report, available on <http://lawcommissionofindia.nic.in/reports/report246.pdf>, visited on 5th Feb. 2026.

through an office setup in the country. The main objective of the ICADR is to promote, propagate, and popularise the resolution of disputes in domestic and international trade by the ADR mechanism. ICADR seeks to provide an institutional framework for new laws to be better and to provide a structural process for the various modes of ADR (Conciliation, arbitration, Mediation, fast-track arbitration).

The ADR mechanism was in India during the period of the British Raj. ADR was introduced in India through various regulations and acts. The Indian Arbitration Act 1940 was the first legislation in India regarding the ADR mechanism, but the interference of the court is much in that act. The litigious nature of the parties, judges, and arbitrators, encouraged by the legal profession, led the process of ADR to become more formal and judicial; hence, the intention and objectives could not be fulfilled through the Indian Arbitration Act, 1940. The mechanism was there for speedier, easier, effective and less expensive, which turned out to be more complex and time- and money-consuming.¹⁶

Hon'ble Justice Shri. D. A. Desai and Shri A.P. Sen in *Guru Nanak Foundation v Rattan Singh and Sons*¹⁷ held that an indeterminate, time-consuming, complex and expensive court procedure implied the parties to search for an alternative forum for quick resolution of dispute, which is a less formal, less expensive and speedy resolution of dispute. However, the resolution through arbitration is more complex under the Indian Arbitration Act, 1940. A need was felt to provide a better mechanism for the resolution of disputes. To make the Arbitration Act 1940 more responsible, several amendments were proposed by the bodies of trade and industry and experts in the field of arbitration, as well as the Law Commission of India. There was also a need to bring the domestic and international law of arbitration into conformity with each other to make our economic reform fully effective.¹⁸ Because of the huge increase in global trade and commerce, and with the advent of globalisation, liberalisation and the introduction of economic reform, a need was felt for a model law and rule designed for universal application, which could harmonise the concept of arbitration and conciliation of different legal systems of the world. The Model Law on international commercial arbitration and conciliation rules was adopted by UNCITRAL and recommended by the General Assembly of the United Nations for adoption by all countries for the long-term benefit.¹⁹

16 Amendments to Arbitration and conciliation Act 1996. Law commission report, available on [HTTP://LAWCOMMISSIONOFINDIA.NIC.IN/REPORTS/REPORT246.PDF](http://LAWCOMMISSIONOFINDIA.NIC.IN/REPORTS/REPORT246.PDF), visited on 5th Feb. 2026.

17 *Guru Nanak Foundation v rattan Singh and sons* (AIR 1981 S.C 2075)

18 Available on Indian Kannon, <https://INDIANKANOON.ORG/DOC/660585/>, Visited on 5th Feb. 2026.

19 UNICITRAL Arbitration rules, available on http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2010Arbitration_rules.html, visited on 5th Feb. 2026.

The Arbitration and Conciliation Act 1996 has been enacted on the lines of the UNCITRAL Model Law and UNCITRAL conciliation rules. In the spirit of the Constitution mandate and the United Nations recommendation, the UNCITRAL Model Law and conciliation rules have been adopted by India by the promulgation of the ordinance of the Arbitration and Conciliation Ordinance, 1996. started its operation on 25th January 1996, which was later enacted into the Act called the Arbitration and Conciliation Act, 1996. The preamble of the ordinance expressly mentions that it is promulgated, as it is expedient to make a law respecting arbitration and conciliation, considering the Model Law of UNICITRAL and the rules.²⁰

The Arbitration and Conciliation Act of 1996 repeals the three statutes hitherto in force, the Indian Arbitration Act 1940, the Arbitration (Protocol and Convention) Act 1937, and the Foreign Awards (Recognition and Enforcement) Act 1961. It comes into force on the 22nd day of August, 1996 and applies to arbitration proceedings commenced on or after 25th January 1996. In *Fuerst Day Lawson Ltd V Jindal Exports Ltd*²¹, it was observed that the Act was brought into force on 22 August 1996, but it is a continuation of the Arbitration and Conciliation Ordinance, and it will continue to have effect from 25th January 1996. 25th January is the date when the first ordinance was brought into force.²²

In this research, the researcher is willing to find out what the lacunas are in our judicial system, which can be fulfilled through the ADR mechanism; hence, limits of the judiciary will be examined, and the strength of the ADR mechanism will be explored to solve disputes speedily. The researcher is willing to find out the importance of the Alternative dispute resolution mechanism for the resolution of disputes due to certain limits of the judiciary to resolve disputes satisfactorily.

2. Limits of the Judiciary in India

In this chapter, the researcher is willing to examine the limits of the Indian judiciary in solving disputes in courts. What are the problems or hindrances that the judiciary is facing due to its incompetence? What can be done? And what contribution can be made through the ADR mechanism for the speedy resolution of disputes?

20 INTERNATIONAL COMMERCIAL ARBITRATION AND CONCILIATION, available on http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration.html, visited on 5th Feb. 2026.

21 AIR 2001 SC 2293

22 A. Alam, *FUERST DAY LAWSON LTD V JINDAL EXPORTS LTD* available on <https://indiankanoon.org/doc/1851595/?type=print>, Visited on 5th Feb. 2026.

Some factors are affecting the judiciary for the speedy functioning and in resolving disputes, which require study for its betterment or the establishment of another system for the resolution of disputes. Despite the independence of the judiciary from the executive and legislative bodies, the Indian judicial system faces a lot of problems. We will now discuss a few problems that the Indian judicial system faces.

The major issues that the Indian judicial system faces are:

- The pendency of cases.
- Corruption.
- Lack of transparency (particularly in the appointment of judges).²³
- Time-consuming
- More expensive

2.1 The Factors that are Affecting the Functioning of the Judiciary are as Follows:

2.1.1 Pendency of Cases:

The pendency of cases in Indian Courts is not a new phenomenon to read or discuss. But coming out of the problem, the Indian Judiciary, along with the legislative and executive wings, is trying to overcome the situation. The reason for the pendency of cases is due to a smaller number of judges in India. The population per judge ratio in India is much less than that of a country with a larger number of judges, like America.²⁴

Chief Justice of India (CJI) T.S. Thakur's dramatic outburst in April about the much liability being placed on the judiciary firmly brought the spotlight back onto the issue of judicial delays and backlogs in India. He mourned the delay in trials, which has seen the number of under-trial prisoners increasing. Trials take years to complete, he said, pointing to the shortfall of judicial strength as the prime cause. With India's population being at 1.3 billion as of May 2024,

23 Pranav Rudresh, ISSUES WITH INDIAN JUDICIARY SYSTEM, available on <https://blog.ipleaders.in/issues-indian-judicial-system/>, visited on 5th Feb. 2026.

24 WHY REFORM NEED TO BE START FROM LOWER COURTS, 31st MARCH 2019, available on <http://www.firstpost.com/india/pendency-in-indian-judiciary-why-reform-needs-to-start-with-the-lower-courts-3361444.html>, visited on 23rd Feb. 2026.

applying this benchmark, India should have approximately 60,000 judges. As of 1 January 2024, according to Court News, a publication of the Supreme Court of India, there were 19,781 judges in the subordinate judiciary, 606 in high courts and 26 in the Supreme Court. On 11 July 2016, as seen from the National Judicial Data Grid and Department of Justice data, tell us that there are 16,438 judges at the subordinate judiciary level, 621 in high courts and 33 in the Supreme Court.²⁵ If we want to resolve the cases pending in Indian courts, we need 25,081 Judges compared to the present 19,781. As per the Law Commission and the Chief Justice of India, we need at least 60,476 judges for the betterment of the judicial system, as 2.86 crore cases were pending in Indian courts on 15 January 2017.

Summary Report of Pending Cases in Indian Court as On Date July 10, 2025



Table 1: Source: National Judicial Data Grid, https://njdg.ecourts.gov.in/njdg_v3/

Another reason for the pendency of cases is that a party to the trouble, the other party, filed false cases in court. Delhi Commission of Women (DCW) uncovered shocking statistics that 53.2 per cent of rape cases filed between April 2021 and July 2022 in Delhi were found untrue. The report says that between the aforesaid dates, the number of rape cases filed in the capital was 2,753, out of which, only 1,287 cases were found to be true, and the remaining 1,464 cases were found to be bogus, which is more than half. This is causing an overburden on the judiciary, which leads to inefficiency in the Indian courts.²⁶ As a result of this, the person actually in need

²⁵ Alok Prasanna Kumar, HOW MANY JUDGES DOES INDIA REALLY NEED? Available on <http://www.livemint.com/politics/3b97smghseobyhz6qpayon/how-many-judges-does-india-really-need.html>, visited on 5th Feb. 2026.

²⁶ Anubhav Pandey, PENDENCY OF CASES IN INDIA, 5th June 2025. Available on <https://blog.ipleaders.in/pendency-of-cases-in-india/>, visited on 5th Feb. 2026.

of justice is denied justice because of the delay, because a delay in justice is actually a denial of justice, as is famously known. Sometimes the party only claims the next date of hearing due to not being prepared, which extends the time of the case as well as wastes the time of the courts. Even after the advancement of technology, proper infrastructure has not been built for the judiciary, as there is a need for the admission of electronic evidence, and its enforceability in Indian courts has not been transformed into e-courts in India. This further leads to time-consuming resolution of disputes.²⁷

2.1.2 Corruption in Judiciary

Like the other pillars of democracy, the executive and the legislative, the judiciary, too (in some instances), has been found to engage in corruption. In the case of judicial processes, even the media is unable to give a proper and clear picture of the corruption scenario. The media seems to be more focused on exposing corruption in other fields, especially political affairs. A minister taking a bribe or distributing money during elections may become front-page news, but a courtroom clerk taking money and altering the date of the trial remains undetected. As per the constitutional provision, there is no provision yet for registering an FIR against a judge who has taken a bribe without taking the permission of the Chief Justice of India. Visiting the CJI, seeking his consent, and then registering an FIR is not what a poor man will prefer to do. This will prove to be more costly and time-consuming for him, besides the court and lawyer's expenses.²⁸ The Professional self-centeredness of the judges, whereby judges do not do their homework and arrive at decisions of grave importance while ignoring precedent or judicial principle, delays justice. In 2011, Soumitra Sen, a former judge at the Calcutta High Court, became the first judge in India to be impeached by the Rajya Sabha, accused for misappropriation of funds.²⁹

2.1.3 Lack of Transparency (Particularly in Appointment of Judges)

There has been debate in the nation regarding the appointment of judges' process. The debate is between the collegium system and a new appointment commission that the government was

27 ELECTRONIC COURT AND ELECTRONIC JUDICIARY IN INDIA, May 2021, available on <http://www.electroniccourts.in/blog/>, visited on 5th Feb. 2026.

28 Sanjeev Sabloke, SHODDY JUSTICE? CORRUPT JUSTICE? THE QUALITY OF THE INDIAN SUPREME COURT, available on <https://www.sabhlokecity.com/tag/corruption-in-the-indian-judiciary/>, visited on 7th Feb. 2026.

29 MOTION FOR REMOVAL OF SUMETRA SEN IN RAJYA SABHA, available on http://rajyasabha.nic.in/rsnew/soumitra_sen_judge.pdf, Visited on 5th Feb. 2026.

willing to introduce, NJAC (National Judicial Appointments Commission).³⁰ National Judicial Appointments Commission (NJAC) was a proposed body which would have been responsible for the appointment and transfer of judges to the higher judiciary in India. The Commission was established by amending the Constitution of India through the Ninety-Ninth constitution amendment vides Constitution (Ninety-Ninth Amendment Act, 2014, passed by the Lok Sabha on 13 August 2014 and by the Rajya Sabha on 14 August 2014.³¹ Narendra Modi lead government wants to introduce NJAC to bring transparency in the appointment of judges. While the Supreme Court and the Bar Council of India want to bring changes in the NJAC to bring the Chief Justice of the Supreme Court and senior Judges of the Supreme Court into the commission.³² Hence, we can say that the process for appointment of judges is not transparent or clear, and this leads to Further Corruption in the Judiciary. However Supreme Court struck down this system as unconstitutional on 16 October 2015.

2.1.4 Procedural Technicality

The technicalities ensure strict adherence to the letter of the law and may prevent the spirit, intent or purpose of substantive law from being enforced. There is no single and conclusive definition of the term legal technicality, but the court attempted to define it in the case of *James Muriithi Ngotho & 4 others v Judicial Service Commission*,³³ where they defined the terms separately using Black's Law Dictionary and the Concise Oxford English Dictionary. Some of the legal technicalities, which govern the legal procedure, either enable or restrict access to justice in courts. Examples of these technicalities include: statutes of limitation, rules of appellate procedure, civil procedure, and stay of proceedings. So there was a need to avoid as many technicalities as possible by the court to make justice accessible to all individuals irrespective of any discrimination.³⁴

30 NJAC V COLLEGIUM- THE DEBATE DECODED, News article from the Hindu, 23rd Sep. 2022, <http://www.thehindu.com/specials/in-depth/njac-vs-collegium-the-debate-decoded/article10050997.ece>, and visited on 7th March. 2026.

31 THE CONSTITUTIONS (NINETY-NINTH) AMENDMENT) BILL, 2014" (PDF), Govt. of India. Retrieved 15 August 2019. Visited on 7th April. 2026.

32 Pranav Rudresh, ISSUES WITH INDIAN JUDICIAL SYSTEM available on <https://blog.ipleaders.in/issues-indian-judicial-system/>, visited on 7th Feb. 2026.

33 [2012] eKLR, Case of Republic of Kenya.

34 PROCEDURAL TECHNICALITY AND SUBSTANTIVE JUSTICE, 6th April 2013, available on <http://www.ckadvocates.co.ke/2013/04/prosedural-technicalities-versus-substantive-justice/>, visited 7th May. 2026.

2.1.5 Time Consuming

The litigation in court is time-consuming. There are cases which was not solved even after 10-20 years. Along with that, lawyers perform malafida practice and try to prolong the cases to earn more money from the parties. Lawyers deliberately ask for the next date of hearing to keep a particular matter pending. Even parties use this for their defence by filing the appeal in a higher court to let the case drag on for years. Even after the death of the parties, the court could not decide the matter. This time-consuming method is the biggest loophole in the Indian Judiciary, which needs to be eliminated. So, after knowing that there are various limitations of the Indian judiciary. This judiciary is not perfect. If the judiciary has these problems, why alternate mode of dispute resolution mechanism? Why should people suffer due to the inability of the judiciary to provide speedy and less expensive justice? If parties to a commercial agreement want to resolve disputes mutually on their terms and conditions, then why not allow them to do so? Hence, the Arbitration and Conciliation Act has been passed to reduce the burden on the judiciary and provide effective and mutually accepted justice to parties by resolving their dispute. In this research paper, the researcher is willing to find out the importance of the Alternative dispute resolution mechanism for the resolution of disputes due to certain limits of the judiciary to resolve disputes satisfactorily.

2.1.6 Expensive

The litigation in court is very expensive due to various reasons like continuous adjournment, greed of lawyers to earn more, appeal in a higher court, place of litigation.

3. Significance of Arbitration

The Arbitration Act of 1940 did not contain a definition of Arbitration. However, the Arbitration and Conciliation Act of 1996 gives the definition of arbitration under sec 2(1) (a), which states that arbitration means any arbitration, whether or not administered by a permanent arbitral institution.³⁵ This definition is not comprehensive; it does not assign any particular meaning to the term. So we need to study the act to understand the precise meaning of arbitration. Today, the arbitration proceedings are increasing day by day due to the incorporation of an arbitration clause in agreements to solve disputes in international, national,

35 C.P Veena, THE LAW OF ARBITRATION AND CONCILIATION 2017, C Jamnadas and Co., visited 8th Feb 2026.

and commercial spheres, especially in business transactions and employment contracts. The Indian equivalent of arbitration is a panchayat.

The arbitration is basically when parties to dispute get same settled through the intervention of third party, who will be the ultimate judge of the dispute gets its authorities from parties but in such cases the court of law is ruled out, court of law may have to intervene or parties may approach the court during initial stage during certain circumstances. The intervention of the court is very minimal. In Halsbury's Law of England, arbitration has been defined as the reference of a dispute or difference between not less than two parties for determination, after a judicial hearing of both sides by a person or persons other than a court of competent jurisdiction.³⁶

Supreme Court cited in the *Amar Chand v. Ambica Jute Mills*³⁷ with the words of learned author Russell, "the essence of arbitration is that a dispute is referred by parties for settlement to a tribunal of their choosing, a domestic forum, as the tribunal is generally called. Arbitration is a particular method for the settlement of disputes. Parties not willing to delay the law's delay, know or ought to know that in referring a dispute to arbitration, they take to arbitration for better or worse, and that arbitrator's decision is final both as to fact and law"

An analysis of the definition given above reveals the following ingredients of arbitration.

1. It is a means of resolving disputes by a domestic forum or tribunal
2. Parties to the dispute appoint the third impartial person as arbitrator for the resolution of the dispute by their consent.
3. It involves a dispute between at least two parties.
4. Reference is made to a person other than the competent court of law.

In the case of *Dharma Prathishthanum v. Madhok Construction (P) Ltd.*³⁸ Supreme Court has observed that the essence of arbitration without assistance or intervention of the court is the settlement of the dispute by a tribunal of the own choice of parties. The law of the arbitrator

³⁶ Halsbury's law of England, 4th edi, vol. 2, visited on 8th of Feb 2026.

³⁷ AIR 1966 SC 1036.

³⁸ AIR 2005 SC 214.

only aids implementation of the arbitration agreement. It remains a private adjudication by a forum consensually chosen by parties and made on consensual reference. *Indian Oil Corporation Ltd. v. Raja Transport (p) Ltd.*- it was said that it is a binding voluntary alternative forum chosen by the parties.³⁹ Parties to the submission of a dispute to arbitration sign an arbitration agreement. The arbitration agreement definition consists of a written agreement referred to in Section 7. According to Section 7 of the Arbitration and Conciliation Act, an arbitration agreement means a written agreement between parties to submit to arbitration all or certain existing or future disputes arising between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement can be in the form of an arbitration clause in a contract, a separate agreement or by incorporation of one document into another containing an arbitration clause, provided the terms must not be inconsistent with those of the other.

The arbitration agreement is separable from the principal contract, even though they are physically embodied in the same instrument. An Arbitration clause is considered a separate contract, which survives even if the underlying contract is voidable. In the case of *Firm Ashok Traders v. Gurumukh Das Saluja*,⁴⁰ it has been held that under the scheme of the Arbitration and Conciliation Act, 1966, the arbitration clause is separable from the other main contract document, that is, the partnership deed. The arbitration clause is an agreement by itself. Frustration of the principal contract leaves the arbitration clause standing and effective. However, if the contract itself is illegal, then the arbitration clause in the contract is itself illegal and void.⁴¹ In Arbitration, the parties have given powers to choose the arbitrator, the date of the arbitrator, the language to be used for the arbitration and the procedure of the arbitrator.

3.1 Appointment of Arbitrator - The Arbitration and Conciliation (Amendment) Act, 2015 grants the liberty to the parties to appoint an arbitrator mutually. The Act provides that the parties are free to determine the number of arbitrators, provided that such number shall not be an even number. However, if the parties fail to do so, the arbitral tribunal shall consist of a sole arbitrator.⁴²

3.2 Date of Arbitration - the parties are given opportunities to determine the date of

39 {(2009) 8 SCC 520}

40 [(2004) 3 SSC 155]

41 *Suwalal v. Clive Mill* [(1960) cal. 90]

42 Abhishek Kumar, SELECTION AND APPOINTMENT OF ARBITRATOR INDIA, 21st June 2018, available <https://singhania.in/selection-and-appointment-of-arbitrators-in-india/>, visited on 8th Feb. 2026.

commencement of arbitral proceedings; hence, the parties to the dispute can decide the date of the proceeding according to their will.

3.3 Language of Arbitration- The parties are given the liberty to decide by mutual agreement as to what language or languages to be used in the arbitral proceeding. In the event of there being no agreement in this regard or upon failure of parties to agree on a common language arbitral tribunal shall determine the language or languages to be used.⁴³

3.4 Place of Arbitration- The Venue where the arbitration proceeding will be held will be decided by the parties to the arbitration agreement according to their comfort.⁴⁴

3.5 Procedure of Arbitration - Parties are free to choose even the procedure or rules to be followed in arbitration. This makes the arbitration more independent to party, which brings confidence to them regarding the resolution of disputes.⁴⁵

4. Significance of Mediation, Conciliation and Lok Adalat

4.1 Mediation

Mediation is a process of resolving issues between parties wherein a third party assist them in agreeing. Mediation is governed by the Code of Civil Procedure, 1908. Confidentiality of the matter in dispute depends on the trust of the parties in the mediator. The third neutral party appointed as mediator has to perform the work as a facilitator. Mediation is an agreement between parties. Mediation is a form of alternative dispute resolution wherein parties mutually appoint an independent and impartial third party, called the mediator, who helps the parties in reaching an agreement, which is mutually accepted by the parties concerned.⁴⁶ Mediation is a systematic and interactive process which employs negotiation techniques to assist the parties in finding the best possible solution to their problem. As a facilitator, a mediator attempts to facilitate discussion and build an agreement between the parties to settle the dispute. The decision made by the mediator is not binding like an arbitral award.⁴⁷

⁴³ *ibid*

⁴⁴ *ibid*

⁴⁵ *ibid*

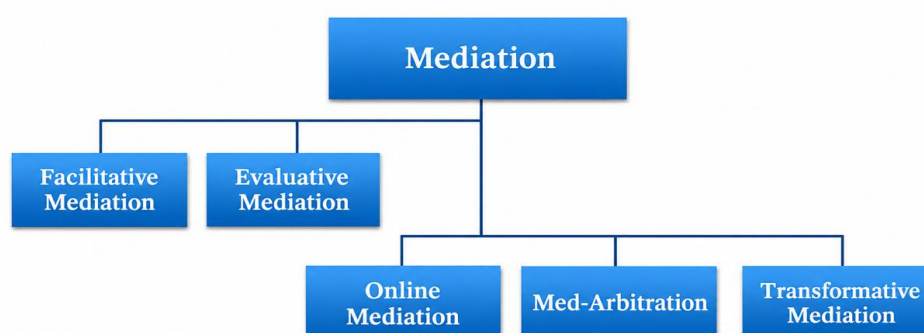
⁴⁶ WHAT IS MEDIATION? Available on <http://adr.findlaw.com/mediation/what-is-mediation-.html>, visited on Feb 18, 2026.

⁴⁷ *ibid*

India has seen a major shift in its dispute resolution system with the Mediation Act, 2023. This Act provides a legal framework for making mediation more formal. It requires pre-litigation mediation in all civil and commercial disputes. It also makes mediated settlement agreements enforceable as court decrees. The Act plans to set up a Mediation Council of India (MCI) to oversee standards, accreditation, and training. This reform aims to ease the burden on courts, encourage consensual dispute resolution, and offer a more accessible and cost-effective way to achieve justice. Additionally, the Supreme Court has started the “Mediation for Nation” campaign from July to September 2025. This campaign mobilizes courts at all levels to resolve pending cases through structured mediation. It shows a coordinated effort to integrate mediation into India’s legal culture.⁴⁸

The reform agenda goes beyond the courts to include community-level justice. In August 2025, President Droupadi Murmu called for mediation mechanisms to be extended to Panchayats. She recognised their traditional role in solving disputes and the need to formalise rural conflict resolution. Despite the Act’s implementation, challenges remain, such as delays in forming the MCI and concerns about its neutrality. However, the judiciary, led by CJI Sanjiv Khanna and Justice B.R. Gavai, continues to push for a cultural shift toward seeing mediation as a “wiser form of justice” instead of just an option to litigation. These reforms highlight India’s commitment to changing its justice system to focus on dialogue, involvement, and reconciliation.⁴⁹

4.2 Types of Mediation



⁴⁸ The Mediation Act, 2023, No. 23, Acts of Parliament, 2023 (India), available at <https://legislative.gov.in>, visited on June 25, 2026.

⁴⁹ Press Trust of India, President Urges Mediation in Panchayats, Tribune India (Aug. 10, 2025), <https://www.tribuneindia.com/news/india/extend-mediation-to-panchayats>, July 1, 2026.

4.2.1 Facilitative Mediation

The general perception of Facilitative mediation is that the Mediator is focused on facilitating the disputing parties in coming to a resolution on their own.⁵⁰

4.2.2 Evaluative Mediation

Evaluative Mediation is often thought of as being more “hands-on” in terms of the mediator suggesting feasible outcomes and actively trying to bring the parties to a resolution. An unskilled evaluative mediator runs the risk of just telling people what to do and calling it mediation.⁵¹

4.2.3 Online Mediation-

While mediating via video-link may require a different approach, it still allows the mediator to use whichever technique he or she feels comfortable with, be it facilitative, transformative or evaluative.⁵²

4.2.4 Mediation Arbitration:

Med-arb has features of both mediation and arbitration. The parties first try to resolve their disputes through mediation. If that does not resolve it, then the process switches to binding arbitration.⁵³

4.2.5 Transformative Mediation

The key elements that characterise transformative mediation are empowerment and recognition. Empowerment is the capacity for parties to make decisions for themselves. This leads to self-determination; the ability for parties to know what their options are and make decisions accordingly. Recognition is the capacity for parties to understand others' perspectives

50 STYLE OF MEDIATION available on <https://www.mediate.com/articles/zumeta.cfm>, visited on 23rd March. 2026.

51 Dan Simon, EVALUATIVE MEDIATION- ITS FIVE FATAL FLAW, available on <http://www.transformativemediation.org/evaluative-mediation-five-fatal-flaws/>, visited on 23rd Feb. 2026.

52 Pon Staff, 8th Jan. 2018, USING E-MEDIATION AND ONLINE MEDIATION TECHNIQUES FOR CONFLICT RESOLUTION, available on <https://www.pon.harvard.edu/daily/mediation/dispute-resolution-using-online-mediation/>, visited on 23rd April. 2026.

53 ADR PROCESS- MED-ARB, available on http://www.resolutionremedies.com/adr_process/med-arb.asp, visited on 23rd July. 2026.

and be responsive to them.⁵⁴

4.3 Conciliation

The term conciliation is not defined in the Act. However, simply put, conciliation is a confidential, voluntary and private dispute resolution process in which a neutral person helps the parties to reach a negotiated settlement. This method provides the disputing parties with an opportunity to explore options, aided by an objective third party, to exhaustively determine if a settlement is possible.⁵⁵ The terms mediation and conciliation are often used interchangeably. They are used as synonyms several times. But there are some differences between them⁵⁶. Like in conciliation neutral third party is involved in settling the dispute amicably, but the settlement is with the parties themselves, while in the case of mediation, the mediator, for the assistance to party in resolving the dispute, plays a more positive role. The process for resolving is the same in both mechanisms.⁵⁷

4.3.1 Differences between Arbitration and Conciliation Process⁵⁸

Basics of Comparison	Mediation	Conciliation
Regulation	Code of Civil Procedure, 1908	Arbitration and Conciliation Act, 1996
Confidentiality	Confidentiality depends on trust.	Confidentiality is fixed by the Law.
Act of Third Party	As Facilitator	Facilitator, evaluator, Intervener

⁵⁴ TRANSFORMATIVE MEDIATION, available on <https://www.colorado.edu/conflict/peace/treatment/tmedtn.htm>, visited on 23rd Feb. 2026.

⁵⁵ CONCILIATION IN INDIA: AN OVERVIEW, Aug.2010, <http://psalegal.com/wp-content/uploads/2017/01/DisputeResolutionBulletin-IssueVII08092010070309PM.pdf>, visited on 21st Feb. 2026.

⁵⁶ PRINCIPLE AND PROCESS OF ARBITRATION, <http://www.legalservicesindia.com/article/article/principles-&-procedure-of-conciliation-under-arbitration-&-conciliation-act-1996-725-1.html>, visited on 5th Feb. 2026.

⁵⁷ Supra 12.

⁵⁸ Surbhi S., 16th Oct. 2017, DIFFERENCE BETWEEN MEDIATION AND CONCILIATION, available on <https://keydifferences.com/difference-between-mediation-and-conciliation.html>, visited on 21st Feb. 2026.

Result	Agreement between Parties	Settlement between parties
Agreement	It is enforceable by law.	It is executable as a decree of a civil court.

This difference parts away the Mediation and Conciliation into two different mechanisms for the resolution of disputes. Hence, even though sometimes these two worlds are used interchangeably, these are two different mechanisms for the resolution of disputes.

4.4 Lok-Adalat

The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the litigants for the conciliatory settlement of their disputes. The Legal Services Authorities Act was enacted in 1987 to give a statutory base to legal aid programs throughout the country on a uniform pattern. This Act was finally enforced on the 9th of November 1995 after certain amendments were introduced therein by the Amendment Act of 1994.⁵⁹

4.4.1 Characteristics of Lok Adalat are as follows-

- Lowest possible cost and without delay.
- You do not require appointing an advocate; instead, you can appear before the Lok Adalat.
- The conciliators, one of whom is a judge, will guide you to settle the dispute amicably.
- Compromise can be done only if you are satisfied with the relief suggested by the conciliators.
- The justice you get from the court can also be obtained in the Lok Adalat.
- Judgment rendered in Lok Adalat is final and is not appealable.
- You can get the judgments of Lok Adalat executed by filing an application in the civil court

⁵⁹ Diwyam Aggarwal, AN INTRODUCTION OF LEGAL SERVICES AUTHORITY ACT, 1987, available on <http://www.legalserviceindia.com/articles/legaut.htm>, visited on 21st July. 2026.

for its execution.

- If a case pending before the court is settled in Lok Adalat, the court fees paid in that case are refunded partially or fully as per law.⁶⁰

5. Significance of ADR In Enhancing Speedy Trial

ADR plays an important role in enhancing speedy trials and protecting people from the intimidating experience of the Indian judicial system. The significance of ADR in enhancing a speedy trial is more because of the following reasons:

5.1 Less Formal (Regarding the Procedure and Evidence)

The Arbitrator is not bound by the technical and strict rules of evidence and procedure, but he must obey the rule of natural justice. The proceeding before him is quasi-judicial. An arbitrator does not have to record all the findings and strictly adhere to any set of rules. The only thing he is to give is an intellectual decision, which will protect the right of a particular person in Arbitration (Mohinder Singh v Ravinder Singh)⁶¹. Similarly, in conciliation and mediation, parties are not bound to follow a procedure to achieve their objectives, nor are they required to strictly follow a particular rule in adjudicating a case. In this way, ADR plays an important role by giving a decision, which is not based on strict rules of law but on the basic principle of natural justice, equity and good conscience.

5.2 Availability of Infrastructure

The judicial system today lacks judicial officers, staff and proper infrastructure to deal with the backlog of cases, which is being stretched for years and decades without reaching a final decision. Such situations call for ADR to step in where the justice system fails. Because an ADR proceeding can be set in any venue where the parties wish. So, there are no issues regarding infrastructure in ADR, as the parties can undergo an ADR proceeding in any place at any time according to their agreement.

5.3 Repeated Adjournment

⁶⁰ WHAT ARE THE SPECIAL FEATURES OF LOK ADALT?, Odisha state legal service authority, 8th Aug. 2024, available on <http://oslsa.in/faq/what-are-the-special-features-of-lok-adalats/>, visited on 21st Feb. 2026.

⁶¹ CM No. 9973-C of 2014.

The exercise of seeking adjournments is predominant, specifically in India. It is a fact that unwarranted adjournments prolong the life of litigation; it is, however, being prolonged rather than being extended due to repeated adjournments granted. But in ADR, parties can decide regarding adjournments, and an unwarranted adjournment can be denied in ADR. Similarly, an ADR proceeding can be set at any time, which will not extend the time for the final awards.

5.4 Cost of Proceeding

Alternatives to the civil legal system would bring the legal bills down by 75% which is a large amount compared to the amount being spent at the moment. However, this would reduce the number of employees taken on by the court systems, as there would be fewer cases going through the legal system. Lawyers are already working; therefore would not like the new system in the court system. This could result in lawyers not talking to the parties involved in a dispute to go through the ADR process.⁶²

5.5 Maintain Relationship between Parties to Dispute-

Alternative Dispute Resolution is more likely to preserve goodwill or at least not escalate the conflict, which is especially important in situations where there is a continuing relationship. This will help parties to understand each other's conditions; hence, no malafida intension will be there regarding the belonging the proceeding or creating further trouble.

5.6 Resolve Nearly all kinds of Disputes

ADR techniques can be resorted to in almost all types of contentious matters capable of resolving an agreement between parties under the law, where both parties are generally interested in litigation. It can be particularly useful in all types of dispute resolution, especially those which are related to business, civil, commercial, industrial, and family disputes.⁶³

5.7 Binding Arbitration

Arbitration is binding if, during the preceding, the arbitrator has followed the rule of natural

62 IMPORTANCE OF ALTERNATIVE DISPUTE RESOLUTIONS, available on <https://www.lawteacher.net/free-law-essays/civil-law/importance-of-alternative-dispute-resolutions.php>, visited on 22nd Feb. 2026.

63 METHOD OF RESOLVING DISPUTE, available on <http://www.okbar.org/public/Brochures/methodsForResolvingConflictsAndDisputes.aspx>, visited on 22nd Feb. 2026.

justice. This will help the party to resolve disputes quickly. There will not be an appeal from any decision of the arbitrator, so that there will not be abuse by any party to prolong the case unreasonably or with the malicious intention to trouble the party. This makes the award more powerful and enforceable by the court if given in good faith.⁶⁴

5.8 Confidence of Party

Nearly all ingredients of ADR are appointed or selected by the parties of their own will under the agreement between the parties. So, there is more confidence in the party in this dispute resolution mechanism. So, there is no doubt in the mind of the party that can cause the hindrance in the proceeding, which further supports in speedy resolution of justice. Considering the above benefits of ADR, there must be an improvement in the laws for ADR. This benefit of ADR will support the judiciary in resolving disputes. Arbitration should be encouraged to support the overburdened judiciary in resolving matters. A wide variety of matters should be brought for the resolution of disputes, so that a large number of cases will be brought under the ADR mechanism.

5.9 Place of Arbitration and other ADR Mechanisms

The place of proceeding in the ADR mechanism will be decided by the parties through their agreement; hence party will choose the place which will be comfortable for them. This will further contribute to the speedy resolution of disputes and also help parties from travelling and spending money for the same.

6. Conclusions and Suggestions

Increasing numbers of people are choosing the ADR mechanism as it is supporting them against various problems faced by the Indian Judiciary. There is improvement in ADR laws as the importance of it is increasing for resolution of dispute amicable and satisfactorily.

There is a need for advertising this mechanism of dispute resolution, as various groups of people are not aware of ADR in India. There is a need to create a special body that will lay down roles and regulations that will remove the hindrance to the speedy resolution of disputes

⁶⁴ MEDIATION VS. ARBITRATION VS. LITIGATION: WHAT'S THE DIFFERENCE? Available on <http://adr.findlaw.com/mediation/mediation-vs-arbitration-vs-litigation-whats-the-difference.html>, 22nd Feb. 2026.

by ADR. The Government of India should take the initiative to encourage people to go for ADR to resolve disputes, as this mechanism of dispute resolution will protect the goodwill of the relationship between the parties. As we have already studied the limitations of the judiciary in previous chapters, it is completely justified not to overburden the already less effective judicial framework of the Indian Judiciary. For the resolution of disputes between two multinational companies, the government should provide them with the instruments for the resolution of disputes through ADR, like Infrastructure (venue), a qualified arbitrator, and speedy decision. So that more companies will invest in India, as it will reduce the time taken by the Indian courts, which run for years and years.

Personal matters in villages must be resolved through mediation or Lok Adalat so that the time-consuming and expensive litigation process will not torture the poor and ignorant people. A special post must be there in the village area having the well qualification as a person who resolves disputes as a mediator or conciliator, so petty cases from the court can be reduced, and the judiciary can be made effective. ADR should be made separate from the judiciary as much as possible so that there will be no clashes between the two bodies of dispute resolution mechanisms. Only cases of grave importance and technicality should be dealt with by the judiciary by following the procedure laid down by the court. Simple cases, which can be decided on their face, should not be made time-consuming and complex by the use of formal procedure and the rule of law.