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## ADR a Justice Saviour of Courts

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*This essay focuses on the advantages of ADR over the court system. It describes some of the problems with our legal system, such as how slowly justice is handed out. The protracted legal fights have resulted in several problems for the citizens. When they finally get justice, it might already be too late. This essay also emphasizes the advantages of ADR. Some of the benefits are that it is less expensive than going to court, that it is private, and that it gives the party a sense of independence. Time is the best feature of ADR. The time it saves people is enormous. The concept of ODR is also briefly covered in this paper. The introduction of ODR significantly reduces the carbon impact. The Code of Civil Procedure of 1908 and the Arbitration and Conciliation Act of 1996 both adopted the idea of ADR, however, the majority of people are either unaware of it or do not support selecting ADR over litigation. This essay's main goal is to show how beneficial it is for both the court and the public when some disputes are settled outside of the court's scope. Although courtroom litigation is often necessary to resolve disputes, some situations can be settled out of court. This lessens the workload on the court and allows people to receive what they desire.*

**Keywords:** *alternative dispute resolution, online dispute resolution, litigation, justice, legal system.*

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## INTRODUCTION

A typical definition of alternative dispute resolution, or ADR for short, is a method of resolving disagreements other than through litigation. The history of how ADR came about varies

between nations. For instance, the origins of ADR in the West date back to the ancient Greeks. A well-known arbitration story has been mythologized over time. The Greeks built a rather formal arbitration system. The arbitrator for a particular case was chosen by a lottery.<sup>1</sup> Many other nations have various origin tales that explain how they came up with distinct strategies for resolving conflicts in their nation. Everyone has a unique historical background that explains why they initially chose various alternative methods of dispute resolution over using established courts. Interestingly, practically every village in India has its systems for resolving conflicts, including the Panchayat system, the Village Headman, and so forth. Therefore, alternative dispute settlement was rather common in ancient India.

When the Indian East Company set foot in India, these conventional practices further matured into an appropriate mechanism for delivering justice. It developed into the current ADR. The reason ADR is less common today than before the advent of court action, however, is the question that now has to be answered. Numerous cases are still pending in the courts. It is reported that as of August 2022 more than 71,000 cases are pending in Supreme Court, 59 lakhs in High Courts, and over 4.1 crore cases pending in the subordinate courts in the country.<sup>2</sup>

What has caused people generally to be so reliant on the legal system that they have disregarded these conventional approaches? There must be a reason why the public disregarded these conventional, simple approaches and, to some part, considered ADR to be an unreliable source given the enormous number of outstanding cases. It is horrifying that people often choose to go through drawn-out, stretched court proceedings. The underlying explanation of this needs to be identified, it's possible that it has to do with how we learn or with another aspect that contributed to the popularity of litigation over ADR, a long-established method. One of the

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<sup>1</sup> Astha Dhawan, 'ORIGIN OF ADR ACROSS THE GLOBE' (*Via Mediation & Arbitration Centre*)

<<https://viamediationcentre.org/readnews/MjY3/Origin-of-ADR-across-the-globe#:~:text=In%20the%20Western%20world%2C%20the,arbitrator%20for%20a%20given%20case>> accessed 13 October 2022

<sup>2</sup> 'Over 71,000 Cases Pending In Supreme Court, 59 Lakhs In High Courts: Law Minister Tells Rajya Sabha' (*Live Law*, 5 August 2022) <<https://www.livelaw.in/top-stories/over-71000-cases-pending-in-supreme-court-59-lakhs-in-high-courts-law-minister-tells-rajya-sabha-205784#:~:text=71%2C000%20Cases...-Over%2071%2C000%20Cases%20Pending%20In%20Supreme%20Court%2C%2059%20Lakhs%20In,Law%20Minister%20Tells%20Rajya%20Sabha&text=Over%204.1%20crore%20cases%20are,subordinate%20courts%20in%20the%20country>> accessed 13 October 2022

issues may be the lack of education in this area. We have emphasized courtroom litigation so much that we have neglected more straightforward alternatives.

### **BRIEF UNDERSTANDING OF HOW THE COURT SYSTEM FUNCTIONS**

We must first grasp how the court system functions before we can see how ADR is better than court litigation. Civil litigation may be a protracted, pricey, and frequently frustrating process. The court adheres to specific processes. The parties' obligation to pay court costs, the summoning procedure, the scheduling of hearing dates, attorney fees, extra expenses like filing, copying, expert witness, and court reporter fees, as well as time, make the process highly difficult. Additionally, if the judge or jury sides with the opposing party, one might not get what one wants out of it and end up owing the other side money. Sometimes, its overly formal approach prevents problems from being solved. And the appeals process typically makes the process much longer. The higher court has the authority to remove and overturn the judgments and awards made by the lower court. Thus, a court can overturn a decision that took the parties a long time to make and that required a lot of effort, which would then trigger a new round of litigation.

### **ONLINE DISPUTE RESOLUTION**

ADR is regarded as the saviour of justice because of its easier procedures, shorter time commitment, and lower costs. People have recently begun to support and embrace the concept of online dispute resolution. Before the disastrous Covid years, the concept of online conflict resolution was generally unwelcome. We frequently shop online, yet we are not receptive to the idea of resolving conflicts online. Human nature makes it so that we only come up with solutions when under pressure. Without an outside force, we often get lethargic and fail to devise solutions. As it should be, it sounds like a strange idea and an impossibility to carry through. Before this, we were unfamiliar with many of the technology and legal frameworks that will ensure privacy when dealing with issues online. We were forced to work from home because the Lockdown was approaching. We can't just let things be. We started looking for solutions and approaches online. As courts began using online conflict resolution techniques, other dispute

resolution techniques also needed to find their footing. As a result, online dispute resolution was born. There is no distinction between online and offline conflict settlement. The approaches are similar. There were a few minor adjustments here and there, like where the issue was resolved, and that was it.

## **ADVANTAGES OF ADR**

In modern times many industries opt for alternate dispute resolution almost all of the time. The most common industries that opt for ADR the majority of the time are Financial Services, Insurance, Entertainment, Construction, Real Estate, Energy, Technology, and Aviation. ADR is well-known in these fields since it allows for dispute resolution outside of the courtroom. Procedures in court are notorious for taking a very lengthy time. They don't do it on purpose, but some laws and rules must be obeyed; if one of them is broken, the court cannot continue. Therefore, we might state that it is unfair to hold the entire court responsible.

The majority of the time, arbitration is referenced in the contract as a way to address any future disputes that may arise from the quickly resolved issues. ADR may reduce the expense or risk of settling conflicts. Second, ADR might produce better incentives due to more accurate results or other factors. Third, ADR may lead to better incentives for parties to settle disputes amicably or not at all. ADR also expresses its beneficial character by granting the parties engaged autonomy. Unlike in court proceedings, where the parties must pay attention to the judge's rulings. ADR is exclusively private, which is another reason why many sectors choose it since it protects the parties' reputations.

ODR's introduction has given the parties even more advantages. Even if the parties are unable to travel, they can choose a hybrid matter to settle their differences. This has somewhat assisted in lowering carbon footprint. Online conferences can reduce energy consumption and carbon emissions by 90% and 94%, respectively, according to a recent study. Additionally, it found that by carefully choosing venues, hybrid events—those with both in-person and online

attendance – could reduce their energy and carbon impact by two-thirds.<sup>3</sup> Technology for online dispute resolution is especially well adapted to our ever-expanding online connectivity across time zones and geographic boundaries. Time and money can be saved through ODR for the lawyer and the clients.<sup>4</sup>

## **THE ROLE PLAYED BY SECTION 89 OF CPC AND THE ARBITRATION AND CONCILIATION ACT 1996**

Section 89 has already been applied in the Indian legal system to initiate ADR. We can acknowledge that ADR has been publicly acknowledged by the judicial system to resolve disputes, even though section 89 does not have the same status as the Arbitration and Conciliation Act 1996. Section 89 of the Code of Civil Procedure states that

*89. Settlement of disputes outside the Court -*

*(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for*

*(a) arbitration;*

*(b) conciliation;*

*(c) judicial settlement including settlement through Lok Adalat; or*

*(d) mediation.*

*(2) Where a dispute has been referred*

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<sup>3</sup> 'Moving Conferences Online Can Save Up To 94% Of Event Carbon Footprints New Study Finds' (*Green Queen*, 11 Jan 2022) <<https://www.greenqueen.com.hk/online-conferences-reduce-carbon-footprints/>> accessed 14 October 2022

<sup>4</sup> Jeff Aresty, 'Daniel Rainey and Robin Page West, 'Expand Your Practice with Online Dispute Resolution Technology' (2015) 32(1) American Bar Association <<https://www.jstor.org/stable/1341152>> accessed 14 October 2022

*(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act*

*(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat by the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987), and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;*

*(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;*

*(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.<sup>5</sup>*

Sections 7 and 20 of the CPC Amendment Act implemented Section 89 along with Rules 1A, 1B, and 1C of Order X of the First Schedule, which covers the scope of the law relating to ADR. The decisions made by the forums listed in Section 89 must be as binding and effective as court orders or decrees, but they must also be reached quickly and at a relatively lower cost. The provisions added under Order X outline when the court may order the use of alternative conflict resolution mechanisms, the obligation of parties to attend before such forums, and the presiding officer's duty to act in the interests of justice and dismiss the case if it is better suited for the court.

## **SECTION 8 IN THE ARBITRATION AND CONCILIATION ACT, 1996**

8. Power to refer parties to arbitration where there is an arbitration agreement. –

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<sup>5</sup> Code of Civil Procedure 1908, s 89

1. A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to the arbitration.
2. The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.<sup>6</sup> The goals of the provisions under Section 89 CPC and Section 8 of the Arbitration and Conciliation Act 1996 are to make it easier for parties to resolve disputes, save costs, and lessen the burden on the legal system. The primary goal of this law is to integrate extrajudicial and judicial conflict resolution procedures while also putting alternative dispute resolution procedures at the centre of the Indian legal system. Because litigation is a time-consuming procedure, both parties must pay for the same issue, and there are only a few adjudicators, Alternative Dispute Resolution has emerged as an important part of the court system to ensure quicker and more effective justice.<sup>7</sup> It should be mentioned that regulations in India do promote the use of ADR as a means of dispute resolution. After the 2002 law's passage, this is evident in Section 89 of the CPC. To reduce the cost of court meetings, they have incorporated this component.

### **ADR A JUSTICE SAVIOUR OF COURT**

The backlog of cases has gotten so terrible that even Prime Minister Modi in the inaugural session of the All India Conference of Law Ministers and Secretaries has lately addressed it by noting that Lok Adalats have also been formed in the nation as an additional means of swift justice. He demonstrated the benefits of Lok Adalats, one method for resolving conflicts, and the numerous cases that were successfully settled as a result. The conference PM has specifically

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<sup>6</sup> Arbitration and Conciliation Act 1996, s 8

<sup>7</sup> Gaurav Prakash, 'Section 89 of CPC- A Critical Analysis' (*Legal Service India*)

<<https://www.legalserviceindia.com/legal/article-385-section-89-of-cpc-a-critical-analysis.html>> accessed 14 October 2022

called attention to the fact that the discussion will centre on ADR for quick and affordable justice that cases will be discussed to be resolved quickly, that state bills will be uniformly proposed for better center-state coordination, and that those state legal systems will be strengthened.<sup>8</sup> Because it provides such an impartial assessment and forces parties to consider compromise earlier in the dispute, ADR is already used by many private litigants and courts. For instance, numerous businesses have been leaders in the use of these trials to settle significant and intricate business issues and they have proved incredibly effective at quickly settling cases, despite the non-binding nature of the outcome.

Instead of replacing litigation, ADR would be used to improve the effectiveness and efficiency of our current court systems. Many commentators believe that ADR has a significant potential to reduce caseloads by improving the effectiveness of settlement because the vast majority of court cases are settled rather than decided. At the same time, because ADR would be closely regulated by courts, there is significantly less risk that ADR will turn into a sinister plan to restrict the rights of the underprivileged in our society. Given that the judicial system has many flaws, alternative dispute resolution (ADR) can help resolve disputes quickly and effectively with justice facilitation

## CONCLUSION

*"Justice delayed is justice denied."*

Despite the legal system's best efforts to resolve conflicts and deliver justice continuously, with lawyers working round-the-clock to serve the needs of the public, there is still much that needs to be done. One of the causes is the rising population of the nation. Simply put, there are much too many lawsuits being filed every day. While the old cases are still open, there are also brand-new cases that need to be handled. In this procedure, countless cases have hearing dates established after two or three months, delaying the decision in one instance.

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<sup>8</sup> 'Poorest of poor should understand...' PM Modi bats for laws to be written in simple, regional languages' (*The Print*, 15 October 2022) < <https://theprint.in/india/poorest-of-poor-should-understand-pm-modi-bats-for-laws-to-be-written-in-simple-regional-languages/1168958/>> accessed 15 October 2022

On the plus side, we can say that the Indian judicial system does not allow for any opportunity for error in this way, allowing people to appeal so they may be certain and satisfied that the result they would reach is indeed correct. However, this has the drawback of adding more effort and setting back every time a new case is added. Instead of trying fresh cases, it appears as though they are repeatedly trying the same cases, which adds to the workload. It takes a lot of time for people to go through the litigation process, which is the most popular way to resolve disputes in today's fast-paced society. During this process, a judge will preside over the case and, if feasible, resolve it. In litigation, cases are frequently less private than they are in other private conflict resolution processes, such as arbitration, mediation, and negotiation.

Looking on the bright side, we can observe that ADR is slowly gaining acceptance, at least among business or private parties. This option has been chosen by those who do not want their private concerns to be made public. So in a sense, our objective of having more individuals choose ADR has been accomplished. ADR's ultimate purpose is to ensure that everyone receives justice on an equal basis.