



# Alternative Dispute Resolution (ADR) Mechanisms

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**For Prelims:** Alternative Dispute Resolution (ADR), Arbitration and Conciliation (Amendment) Bill, 2021, Online Dispute Resolution (ODR), NITI Aayog, Mediation Bill, Lok Adalats, Plea-Bargaining, NALSA.

**For Mains:** Dispute Redressal Mechanisms and their Effectiveness in India's Context, Scope of ODR in India, Amendments to the Arbitration and Conciliation Act, 1996 and its impacts.

## What is Alternative Dispute Resolution (ADR) Mechanism?

- ADR is a mechanism of dispute resolution that is **non adversarial**, i.e. **working together cooperatively to reach the best resolution** for everyone.
  - ADR can be **instrumental in reducing the burden of litigation** on courts, while delivering a well-rounded and satisfying experience for the parties involved.
  - It provides the **opportunity to "expand the pie"** through creative, collaborative bargaining, and fulfill the interests driving their demands.
- **Need for ADR:** The system of dispensing justice in India has come under great stress mainly because of the **huge pendency of cases in courts**.
  - In India, the number of cases filed in the courts has shown a tremendous increase in recent years resulting in **pendency and delays underlining the need for ADR methods**.
- **Types of ADR Mechanisms:** ADR is generally classified into the following types:
  - **Arbitration:**
    - The dispute is submitted to an **arbitral tribunal** which makes a decision (an "award") on the dispute that is mostly binding on the parties.
    - It is **less formal than a trial**, and the rules of evidence are often relaxed.
    - Generally, there is **no right to appeal an arbitrator's decision**.
    - Except for some interim measures, there is very **little scope for judicial intervention** in the arbitration process.
  - **Conciliation:**
    - A non-binding procedure in which an **impartial third party, the conciliator, assists the parties** to a dispute in reaching a mutually satisfactory agreed settlement of the dispute.
    - Conciliation is a **less formal form of arbitration**.
    - The parties are **free to accept or reject the recommendations** of the conciliator.
    - However, **if both parties accept** the settlement document drawn by the conciliator, **it shall be final and binding on both**.
  - **Mediation:**
    - In mediation, an impartial person called a "**mediator**" helps the parties try to reach a mutually acceptable resolution of the dispute.
    - The **mediator does not decide the dispute** but helps the parties communicate so they can try to settle the dispute themselves.

- Any person who undergoes the required **40 hours training** stipulated by the Mediation and Conciliation Project Committee of the Supreme Court (SC) **can be a mediator.**
- He also needs to **have at least ten mediations resulting in a settlement** and at least 20 mediations in all to be eligible to be accredited as a **qualified mediator.**
- **Mediation leaves control of the outcome with the parties.**
- **Negotiation:**
  - A non-binding procedure in which discussions between the parties are initiated **without the intervention of any third party** with the object of arriving at a negotiated settlement to the dispute.
  - It is the **most common method** of alternative dispute resolution.
  - Negotiation occurs in business, non-profit organizations, government branches, legal proceedings, among nations and in personal situations such as marriage, divorce, parenting, and everyday life.

## What are the Advantages of ADRs?

- The resolution of disputes takes place usually in private - **helping maintain confidentiality.**
- It is more **viable, economic, and efficient.**
- **Procedural flexibility** saves valuable time and money and absence of stress of a conventional trial.
- This often results in creative solutions, **sustainable outcomes, greater satisfaction,** and improved relationships.
- The possibility of ensuring that **specialized expertise is available** on the tribunal in the person of the arbitrator, mediator, conciliator or neutral adviser.
- Further, it offers **greater direct control over the outcome.**

## What is the Status of ADR in India?

- **Statutory Backing:** The [Legal Services Authorities Act](#) was passed in 1987 to encourage out-of-court settlements, and the new Arbitration and Conciliation Act was enacted in 1996.
- **Inclusion of Plea Bargaining:** Procedure for [plea-bargaining](#) was included in the [Code of Criminal Procedure](#) in 2005.
  - Plea-bargaining is best described as a "*pre-trial negotiation between the accused and the prosecution during which the accused agrees to plead guilty in exchange for certain concessions by the prosecution.*"
- **Lok Adalats:** [Lok Adalat](#) or "people's court" comprises an informal setting which **facilitates negotiations in the presence of a judicial officer** wherein cases are dispensed without undue emphasis on legal technicalities.
  - The **order of the Lok-Adalat is final and binding** on the parties, and is **not appealable** in a court of law.
- **Other Legal Provisions:**
  - In 2021, the [Lok Sabha passed the Arbitration and Conciliation \(Amendment\) Bill, 2021](#) to check misuse by "**fly-by-night operators**" who take advantage of the law to get favourable awards by fraud.
    - The Bill intends to replace the **Arbitration and Conciliation (Amendment) ordinance** issued in November, 2020.
  - More recently in July 2022, the Parliamentary Standing Committee on Law and Justice [recommended substantial changes to the Mediation Bill, 2021.](#)
- **Online Dispute Resolution (ODR):** The [NITI Aayog](#) in its recently released report - [The Future of Dispute Resolution](#) discusses the concept of [Online Dispute Resolution \(ODR\)](#) - its evolution, significance and present status in India.
  - ODR refers to the **usage of ICT tools to enable parties to resolve their disputes.**
  - In its first phase, ODR shares its fundamentals with ADR Mechanisms of negotiation, mediation and arbitration.

## Way Forward

- ADR has proven successful in clearing the backlog of cases in various levels of the judiciary – Lok Adalats alone have disposed more than 50 lakh cases every year on average in the last three years.
  - But there seems to be a lack of awareness about the availability of these mechanisms.
- The **National and State Legal Services Authorities** should disseminate more information regarding these, so they become the first option explored by potential litigants.
  
- The **future of dispute resolution revolves around ICT innovations** and new ideas to make dispute resolution efficient and accessible for every section of the society.
  - **ODR has the potential to decentralise dispute resolution in India** and empower innovators across communities to create targeted ODR processes to resolve disputes efficiently.

## UPSC Civil Services Examination, Previous Year Questions (PYQs)

### Prelims

#### **Q1. With reference to Lok Adalats, which of the following statements is correct? (2010)**

- (a) Lok Adalats have the jurisdiction to settle the matters at pre-litigative stage and not those matters pending before any court
- (b) Lok Adalats can deal with matters which are civil and not criminal in nature
- (c) Every Lok Adalat consists of either serving or retired judicial officers only and not any other person
- (d) None of the statements given above is correct

**Ans: (d)**

#### **Q2. With reference to Lok Adalats, consider the following statements: (2009)**

1. An award made by a Lok Adalat is deemed to be a decree of a civil court and no appeal lies against thereto before any court.
2. Matrimonial/Family disputes are not covered under Lok Adalat.

#### **Which of the statements given above is/are correct?**

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

**Ans: (a)**

### Mains

**Q.** What are the major changes brought in the Arbitration and Conciliation Act, 1996 through the recent Ordinance promulgated by the President? How far will it improve India's dispute resolution mechanism? Discuss. **(2015)**

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