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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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HISTORICAL PROGRESSION OF ALTERNATIVE DISPUTE RESOLUTION IN BUSINESS AND CORPORATE CONFLICTS

AUTHORED BY - K P SANTHOSH

ABSTRACT

This paper examines the historical trajectory and rising importance of Alternative Dispute Resolution (ADR) in addressing business and corporate disputes. It traces the journey of ADR from its origins in ancient informal practices to its present-day status as a structured, legally recognized mechanism. As commerce grew increasingly global and complex, traditional litigation proved inadequate due to its procedural inefficiencies and high costs. This led to the wider adoption of more adaptive and less adversarial methods such as arbitration, mediation, and conciliation. The study delves into the early dispute resolution traditions in India, the impact of colonial legal policies, and the significant reforms that followed independence—especially those spurred by economic liberalization. Central to this evolution are landmark legislative developments like the Arbitration Act of 1940 and the Arbitration and Conciliation Act of 1996, which brought India's ADR framework in line with international norms. Viewed through a socio-legal perspective, this paper highlights how ADR has become an essential element of corporate dispute resolution, contributing to reduced litigation burdens and promoting quicker, more harmonious outcomes in commercial matters.

Keywords: ADR, Arbitration, Business Disputes, Indian Legal Framework, Corporate Conflict Resolution, Arbitration Act, Socio-legal Analysis

INTRODUCTION

The development of Alternative Dispute Resolution (ADR) within the sphere of corporate and business disputes signifies a broader global transition towards more adaptable and cost-effective methods of settling conflicts. In earlier times, commercial disagreements were primarily addressed through formal litigation—a process often criticized for its time-consuming procedures, high expenses, and potential to damage business relations. With the expansion of global trade and the increasing complexity of commercial transactions, traditional

court-based approaches began to appear insufficient for meeting the evolving demands of the business world. ADR gradually gained prominence as a more pragmatic and confidential alternative, with its origins traceable to informal practices such as community-based dispute resolution and merchant guild interventions. Over time, these informal customs transformed into structured processes like arbitration, mediation, and conciliation, supported by legislative and institutional efforts aimed at enhancing efficiency and reducing judicial backlog.

In modern commercial practice, ADR is valued not only for resolving disputes but also for supporting long-term business partnerships and operational stability. Key international instruments, including the New York Convention of 1958, have played a significant role in strengthening the enforceability and credibility of ADR, especially in cross-border settings. Many legal systems, including India's, have actively incorporated ADR frameworks into their statutory regimes—most notably through enactments like the Arbitration and Conciliation Act, 1996, which governs both domestic and international arbitration proceedings. The establishment of dedicated arbitration centers, the adoption of industry-specific procedural norms, and the emergence of online dispute resolution platforms all highlight the increasing institutionalization and reliance on ADR in corporate law. By examining the historical trajectory of ADR, we gain insights into its growing significance as a vital tool for modern commercial justice.

EVOLUTION OF ADR IN CORPORATE AND COMMERCIAL DISPUTES

Alternative Dispute Resolution (ADR) has undergone significant transformation over the time, evolving to meet the changing demands of corporate and commercial conflicts. Its origins can be traced back to informal negotiations in ancient societies, eventually progressing into well-structured, institutionalized systems that are now acknowledged under international law.

The Alternative Dispute Resolution (ADR) as a concept, has evolved over centuries so as a means, to resolve conflicts efficiently, particularly in corporate and commercial settings. Historically, businesses have sought alternatives to lengthy and costly litigation, which ultimately lead to the development of various ADR mechanisms. The origins of ADR can be traced back to ancient societies where commercial disputes were often settled through informal means. In India, trade guilds and village councils, such as the Panchayat system, played a crucial role in resolving conflicts between merchants and business entities. Similarly, in ancient

Greece and Rome, arbitration was a recognized practice for settling trade-related disputes, with arbitrators often being appointed based on their expertise in commerce.

One of the earliest methods of dispute resolution can be traced to the Hawaiian Highlanders of Polynesian descent¹, who relied on their traditional system to settle conflicts amicably. This practice involved family members coming together in order to address interpersonal disputes under the leadership of a respected group head. The leader, who was revered by both parties, played the role of an impartial mediator. After carefully listening to both sides and understanding the core issues, the head worked toward finding a fair and mutually acceptable resolution.

The biblical narrative suggests that King Solomon was the earliest known arbitrator, resolving a dispute between two women, where both the women claimed to be the mother of an infant boy². Some scholars argue that the method he employed bears similarities to modern arbitration practices.

As early as 337 B.C., Philip II of Macedon, father of Alexander the Great, utilized arbitration to resolve territorial conflicts in Greece. In later periods, arbitration emerged primarily in commercial matters, with trade disputes being settled by peers dating back to the Babylonian era³.

In Indian mythology, the epic *Mahabharata* presents Lord Krishna as a mediator striving to resolve conflicts between the Kauravas and Pandavas. He emphasized the importance of peaceful negotiations to prevent war. The concept of dharma in Indian mythology is deeply linked to peace and righteousness. Similarly, Alternative Dispute Resolution (ADR) methods prioritize amicable settlements, reflecting the belief that maintaining peace was a fundamental duty of a just ruler.

¹ VIA Mediation Centre, Origin of ADR Across the Globe, <https://viamediationcentre.org/readnews/MjY3/Origin-of-ADR-across-the-globe>

² Michael H. LeRoy, *Crowning the New King: The Statutory Arbitrator and the Demise of Judicial Review*, 2009 J. Disp. Resol. 1 (2009).

³ Radhika Singhal, *History and Evolution of ADR Jurisprudence in India*, 5 INDIAN J.L. & LEGAL RSCH. 1 (2023).

Development of ADR in the Industrial Era (18th–19th Century)

The Industrial Revolution of the 18th and 19th centuries led to significant economic and social changes, accelerating the expansion of corporate and commercial enterprises⁴. As large-scale manufacturing, international trade, and corporate structures developed, business disputes became more frequent and complex. Traditional litigation was often slow, expensive, and inadequate for the fast-paced nature of commercial transactions⁵. Consequently, businesses increasingly sought alternative dispute resolution methods, resulting in the formalization of mechanisms such as arbitration and negotiation.

In England, arbitration was seen as a possible and a viable alternative to court litigation. The common Law Procedure Act of 1854 was a significant milestone as it granted the courts the authority to enforce arbitration agreements and also to put a stay to any ongoing proceedings when the parties had agreed to settle the dispute by arbitration⁶. This legislative move provided a more streamlined and efficient resolution process for the commercial disputes. The United States also witnessed parallel developments. In 1978, the New York Chamber of commerce was established, which incorporated arbitration into its framework so as to facilitate the expeditious resolution of commercial disputes among merchants⁷. Similarly, in 1817 the New York Stock Exchange, mandated arbitration for resolving disagreements between members, underscoring the growing institutional acceptance of ADR in commercial matters.

The Industrial Era played a significant role in shaping the evolution of Alternative Dispute Resolution (ADR) in India. During this period, India witnessed a transition from the indigenous methods for dispute resolution to a structured legal frameworks introduced by the British. Even prior to the British rule, India had a long-standing tradition of ADR mechanisms, particularly through panchayats and trade guilds, which focused on resolving disputes in a community-driven manner. The colonial administration recognized the efficiency of these systems and sought to regulate them through legislation. The Bengal Resolution of 1772, which was introduced by Warren Hastings, encouraged arbitration for commercial disputes, allowing merchants and business entities to resolve conflicts and disputes without direct court

⁴ Joel Mokyr, *The Lever of Riches: Technological Creativity and Economic Progress* 83–85 (Oxford Univ. Press 1990).

⁵ Lon L. Fuller, *The Forms and Limits of Adjudication*, 92 Harv. L. Rev. 353, 367 (1978).

⁶ Results of the Common Law Procedure Acts, 1852 and 1854, 6 Law Mag. & L. Rev. (3d ser.) 248 (1858-1859)

⁷ Jan Paulsson, *Arbitration Under the Rules of the International Chamber of Commerce*, in *Resolving Transnational Disputes Through International Arbitration* 235, 235 (Thomas E. Carbonneau ed., 1984).

intervention⁸.

Under the British rule, as the Industrial activity expanded, commercial disputes also increased significantly, particularly in sectors such as textiles, mining, and manufacturing. As a result, in order to streamline the dispute resolution, the British enacted the Regulation Act of 1781, which empowered courts to refer cases to arbitration with the prior consent of the parties. This marked one of the first formal introductions of arbitration in India's legal system. Further advancements came with the Indian Arbitration Act of 1899⁹, which closely followed the English Arbitration Act of 1899¹⁰. This law was initially introduced only to the Presidency towns which are, Calcutta, Madras, and Bombay, where commercial and corporate disputes were most prominent. The Act allowed disputing parties to resolve conflicts through arbitration instead of resorting to court procedures which were time consuming.

The Industrial Revolution introduced significant changes to India's labor landscape. As factories and industries expanded, disputes between employers and workers became more common. Due to the existing inefficiencies of litigation in resolving labor conflicts, the British administration introduced conciliation boards and industrial arbitration mechanisms. The Trade Disputes Act of 1929¹¹ was a direct outcome of these efforts, institutionalizing conciliation as a preferred method of resolving industrial disputes.

ADR IN POST-INDEPENDENCE ERA:

India post-Independence, witnessed several transformations in the Alternate Dispute Resolution. The new independent government recognized the need to develop effective and efficient mechanisms for resolving corporate and commercial disputes. India, even after gaining its independence utilized a British-style judicial system that was highly procedural and often resulted in prolonged litigation. Therefore, there was a need for a more efficient and business friendly mechanism for resolving disputes as the economy grew. Alternative Dispute Resolution emerged as a crucial mechanism to address these concerns.

Post the independence, Arbitration was the predominant ADR mechanism, governed by the

⁸ Akash Reddy, "Alternative Dispute Resolution: The Best Method of Resolving Disputes and Getting Justice?", 2 Jus Corpus L.J. 278 (2021-2022).

⁹ Indian Arbitration Act, 1899, No. 9, Acts of Parliament, 1899 (India).

¹⁰ Anirudh Hariani, Indian Arbitration and the Shifting Sands of Public Policy, 16 Asian Int'l Arb. J. 159 (2020).

¹¹ Trade Disputes Act, 1929, No. 7, Acts of Parliament, 1929 (India).

Arbitration Act, 1940, which was largely procedural and lacked modern efficiencies¹². Mediation and conciliation were not institutionalized during this period. But the 1940 act, faced various drawbacks. Courts could intervene at multiple stages, including appointing arbitrators, overseeing proceedings, and reviewing awards, leading to significant delays, in short, there was excessive court intervention. Apart from this, the Arbitration awards lacks finality, as these could be easily challenged in court, thereby making arbitration nearly as slow as litigation.

With India's post-independence focus on industrialization and economic self-sufficiency, labor and commercial disputes became a major concern. The then government therefore sought to incorporate ADR mechanisms such as Arbitration and Conciliation into industrial and business laws, to resolve conflicts efficiently. The industrial Disputes Act, 1947¹³ introduced arbitration and conciliation as ADR mechanisms to address industrial disputes. The act provided for the conciliation officers to mediate disputes between employers and workers¹⁴. Further in certain cases it allowed for compulsory arbitration, where industrial disputes threatened public interest. The Companies Act of 1956¹⁵ also encouraged corporate arbitration by allowing companies to include arbitration clauses in contracts. The Act provided mechanisms for dispute resolution within corporate entities, such as mediation in shareholder disputes.

In the 1980's, India revived Lok Adalats, i.e., People's Court, as an informal ADR mechanism to reduce the burden on courts, and to provide for speedy resolution of disputes. The Legal Services Authority Act, 1987 gave statutory recognition to Lok Adalats, whereby they were enabled to hear pending and pre litigation cases and issue binding awards¹⁶. The Lok Adalats, followed procedures that were informal and it did not require strict legal representation. The key element, was that there were no appeals form Lok Adalats, ensuring swift dispute resolution. While Lok Adalats were mainly used for small business disputes and debt recovery cases, they demonstrated our country's ability to integrate traditional dispute resolution practices with modern legal frameworks.

¹² Paul Whitley & Anish Dayal, Arbitration in India, 8 Asian Disp. Rev. 117 (2006).

¹³ Industrial Disputes Act, 1947, No. 14, Acts of Parliament, 1947 (India).

¹⁴ Debalina Roy, Resolution of Labour Disputes via ADR, 6 Int'l J.L. Mgmt. & Human. 2274 (2023).

¹⁵ Companies Act, 1956, No. 1, Acts of Parliament, 1956 (India).

¹⁶ Ronita Halder, The Legal Services Authorities Act, 1987 - Analysis & Developments, 3 Nyaayshastra L. Rev. 1 (2022).

In 1991, India's Economic landscape changed dramatically, as this was the year when the government introduced liberalization, privatization, and globalization (LPG) reforms¹⁷. As foreign direct investment increased and multinational corporations entered the Indian market, commercial disputes became more complex, and thus there was a need for a robust ADR system which aligned with the global standards. This was because, the 1940 Act was not suitable for dealing with international disputes. It was due to these underlying challenges the Government initiated reforms to create a modern arbitration law that would provide businesses with a more effective dispute resolution mechanism. This led to the introduction of the Arbitration and Conciliation Act of 1996¹⁸, which replaced the 1940 Act. The Arbitration and Conciliation Act of 1996 created a more internationally recognized ADR framework. The post-independence era, therefore, laid the foundation for India's transition from outdated arbitration practices to a modern, business-friendly dispute resolution system.

CONCLUSION

The progression of Alternative Dispute Resolution (ADR) in the field of corporate and commercial conflicts demonstrates a long-standing commitment to evolving dispute resolution practices in line with the shifting needs of trade and business. From informal beginnings rooted in customary practices—such as merchant guild decisions, Panchayat settlements, and other community-led solutions—ADR has gradually transformed into a recognized and structured legal process. This shift has been driven by the practical need for dispute mechanisms that emphasize speed, confidentiality, and the preservation of commercial ties, especially in an increasingly interconnected global economy.

India's experience with ADR captures a blend of its traditional conflict-resolution ethos and the legal modernization introduced during colonial and post-independence periods. While indigenous systems played a major role in earlier times, it was under British rule that arbitration laws were codified, setting the foundation for modern ADR in the country. After independence, reforms gathered momentum, particularly with the introduction of the Arbitration and Conciliation Act, 1996, which brought Indian arbitration law in closer alignment with global standards. As India opened its economy in the 1990s and welcomed international commerce, the need for effective dispute resolution became more pressing. ADR

¹⁷ Reeti Prakash, Reflections of 1991 New Economic Policy in Contemporary Times, 6 Int'l J.L. Mgmt. & Human. 2191 (2023).

¹⁸ Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

has since emerged as a crucial pillar in managing commercial disagreements, offering timely and efficient alternatives to court proceedings. Looking ahead, strengthening ADR institutions, increasing stakeholder awareness, and streamlining procedures will be key to making it the default choice for corporate dispute resolution in India.

