

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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WANGLING THE IMPOSSIBLE BY ADR MECHANISM IN INDIAN SENSITIVE ISSUES: UTILIZATION, CHALLENGES AND PROSPECTS

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Abstract

The contemporary Indian socio-legal landscape presents a plethora of sensitive issues that require judicious resolution mechanisms, particularly in the contexts of communal discord, caste-based disputes, and socio-economic inequalities. In this evolving milieu, the Alternative Dispute Resolution (ADR) mechanism has emerged as a pivotal approach to address these multifaceted challenges, offering an avenue for peace-building, dialogue, and conciliation. This paper explores the utilization of ADR in navigating sensitive issues within the Indian context, critically examining its challenges and prospects.

Initially, the paper delineates the foundational concepts of ADR, emphasizing its intrinsic value in promoting amicable settlements and reducing the caseload burden on traditional judicial systems. ADR encompasses various methods, including mediation, arbitration, and conciliation, which are increasingly recognized for their ability to afford parties greater agency in their dispute resolution processes. In regions fraught with tensions, the flexibility and informal nature of ADR are particularly advantageous, fostering an environment conducive to open dialogue and understanding.

However, the efficacy of ADR in dealing with sensitive issues is not without its challenges. This analysis identifies several barriers to effective ADR implementation, including a lack of awareness among the populace regarding ADR processes, the socio-cultural stigmas associated with disputes, and the dominance of power imbalances that can skew the negotiation

dynamics.

Despite these challenges, the prospects for ADR in addressing India's sensitive issues are promising. The ongoing legal reforms aimed at strengthening the ADR framework, coupled with increased advocacy for its adoption among diverse communities, signal a positive shift towards embracing these methodologies.

This paper posits that while considerable obstacles must be surmounted for the full realization of ADR's potential in sensitive Indian issues, the path forward is illuminated by a growing recognition of its merits. With concerted efforts towards public awareness, institutional support, and innovative practices, ADR can indeed be a transformative force capable of wilfully engaging with and resolving the seemingly impossible challenges that permeate the socio-legal fabric of India. As such, it is imperative that stakeholders—ranging from government entities to civil society organizations—collaborate in promoting the utilization of ADR, thereby laying the groundwork for a more harmonious and equitable society.

Keywords: Arbitration, Conciliation, Mediation, Dispute.

Introduction

The Indian Constitution's preamble, which aims to "justice-social, economic, and political," embodies the core of what justice is all about and what a civilized society's ultimate goal is. Additionally, it is reflected in Article 39-A of the Indian Constitution,¹ which guarantees equal access to the courts. Henceforth, the nation depends on adversarial litigation to attain the ultimate purpose of justice. However, the overcrowding in the courts, the shortage of personnel and resources, and the difficulties, expenses, and delays associated with the legal process under this system underscored the need for more effective conflict resolution mechanisms. As a result, the world has seen that the need may be met by Alternative Dispute Resolution.

In the Indian context, the idea of using alternative dispute resolution to settle issues amicably or with assistance from other parties is not new. In ancient India, conflicts were resolved by the participation of *Parishads*, *Kulai*, or family councils, and *Srenisi*, or guilds of similar vocation.² The Alternative Dispute Resolution System is implemented with the goal of

¹ The Constitution of India, art. 39-A.

²Hon'ble Justice SB Sinha "ADR and Access to Justice: Issues and Perspectives", available at:

providing easy, quick, affordable, and accessible justice while also eradicating delay, frustration, and costs. The main precursor to the goal of law is the denial of justice, which is exacerbated by delay. Any argument gets more the longer it is treated, much like cancer. The right to a speedy trial is one of the rights guaranteed by Article 21 of the Constitution, along with life and liberty.³

The alternative dispute resolution procedure differs greatly from standard court procedures. It entails the parties resolving conflicts on their own or with the help of a third party, and the procedures are straightforward, efficient, and completed within the time frame decided upon by the parties. Therefore, this approach does not apply procedural laws like The Bhartiya Sakshya Adhiniyam of 2023,⁴ the Code of Civil Procedure 1908,⁵ and etcetra. As a result, the goal of the Alternative Dispute Resolution System is to settle conflicts at a significantly lower cost in terms of money, time, and resources. In addition to using conflict resolution to achieve justice, alternative dispute resolution also seeks to improve party relations.⁶

Methods of Alternate Dispute Resolution

Alternative Dispute Resolution (ADR) is the term used to describe different techniques and processes for resolving disputes outside of the standard court litigation process. These approaches are generally less formal, more adaptable, and frequently quicker than proceeding through the court system.⁷

Arbitration: Arbitration includes a third neutral party, the arbitrator or arbitration panel, who examines evidence submitted by each side and issues a binding ruling. It is less formal than litigation, and the parties consent beforehand to be bound by the arbitrator's award. It is applied in commercial contracts, construction disputes, and international business disputes.⁸

Mediation: During mediation, there is a third party who remains neutral and assists in

<https://www.tnsja.tn.gov.in/article/ADR-%20SBSinha.pdf> (last visited on October 11, 2024).

³ The Constitution of India, art.21.

⁴ The Bhartiya Sakshya Adhiniyam, 2023 (Act 45 of 2023).

⁵ The Code of Civil Procedure, 1908 (Act 5 of 1908).

⁶ B.S. Kumar, "ADR system in India: Challenges", *International Journal of Law Management & Humanities*, available at: <https://www.ijlmh.com/paper/adr-system-in-india/> (last visited on October 11, 2024).

⁷ Law Commission of India, "Lcr 98-2010 Report on Alternative Dispute Resolution: Mediation and Conciliation" 13-18 (November, 2010)

⁸ Jaiswal, Sneha, Arbitration Law in India – an Overview (December 11, 2020). Available at SSRN: <https://ssrn.com/abstract=3788312> or <http://dx.doi.org/10.2139/ssrn.3788312>

communication and negotiation between the parties in dispute. The mediator does not take decisions but aids the parties in arriving at an agreement that suits both parties. It is applied in family dispute cases, community conflict cases, commercial dispute cases, employment dispute cases.⁹

Conciliation: Like mediation, conciliation also involves a third party, the conciliator, to facilitate the parties to talk and reach an agreement. The conciliator can make proposals but cannot make binding decisions. It is applied in consumer dispute cases, labour disputes, family cases.¹⁰

Negotiation: Negotiation is a face-to-face settlement process in which the parties in dispute talk to one another in an attempt to settle their dispute without involving third parties. It is the most informal process of dispute resolution. It is applied in business transaction-related cases, employment disputes, and personal disputes.¹¹

Lok Adalat (People's Court): Lok Adalats are an ADR mechanism in which disputes pending before a court or at pre-litigation stage are resolved. They are headed by retired judges, social activists, or members of the legal fraternity. The awards are binding on the parties and are non-appealable.¹²

Online Dispute Resolution (ODR): With the revolution in technology, ODR has emerged as a very popular mode of resolving disputes. It uses online technologies to enable the resolution of disputes between parties. It is mostly helpful for cross-border disputes and where parties are incapable of meeting in person. It is helpful in E-commerce dispute resolution, and small claims dispute resolution.¹³

Mini-Trials: A mini-trial is a structured settlement procedure in which both sides put across a

⁹ Deepika Kinhal and Apoorva __, "Mandatory Mediation in India - Resolving to Resolve" 2 *Indian Public Policy Review* 49 (2021).

¹⁰ Dhingra, Aarushi, Arbitration and Conciliation Act, 1996 - An Overview (April 22, 2020). Available at SSRN: <https://ssrn.com/abstract=3582896> or <http://dx.doi.org/10.2139/ssrn.3582896>

¹¹ Nachiappan, K. (2019). *Does India Negotiate?*. Oxford University Press.

¹² Dr Koneru Anuradha, "Lok Adalat: A Blessing for the Indian Legal System" 4 *Indian Journal of Law and Legal Research* (2021).

¹³ Government of India, "Designing the Future of Dispute Resolution: The ODR Policy Plan for India" 1-20 (The NITI Aayog Expert Committee on ODR, 2020)

brief version of their case to a panel, typically made up of senior decision-makers from both sides and an impartial advisor. The panel does not render a decision but encourages negotiation between the parties. It is employed in Large-scale commercial disputes, and corporate disputes.

Expert Determination: The parties to a dispute can agree that an expert in the subject area make a binding ruling on particular technical or factual matters.

Collaborative Law: Commonly applied in family law disputes, collaborative law requires the parties and their lawyers to cooperate with each other to negotiate a settlement. If the process breaks down, the lawyers have to withdraw from the case, promoting commitment to resolution.

Peer Review: In some industry and professional-related conflicts, peers or colleagues who are experts in the field can review the conflict and give suggestions for resolving the conflict.

Settlement Conferences: These are conferences that consist of a judge or a neutral third party who helps the parties explore options for settlement and resolve their conflict prior to trial.

Community-based ADR: Occasionally, conflicts are addressed through community-based mechanisms, i.e., restorative justice initiatives, focusing on repairing the damage and integrating the offenders into the community.

The selection of a particular ADR process to employ depends on the character of the dispute, the wishes of the parties, and the available law. ADR processes are flexible and can frequently result in more innovative and mutually acceptable solutions than is possible through traditional litigation.

Arbitration Practice Around the World (USA and UK)

• USA

Originally intended to resolve disputes, New York established arbitral tribunals in 1768,¹⁴ and other cities quickly followed. 1925 saw the initial passage of the Federal Arbitration Act contains the federal statutory law of arbitration. Since then, it has undergone many

¹⁴ Frank D. Emerson, *History of Arbitration Practice and Law*, 19 Clev. St. L. Rev. 155 (1970) Available at <https://engagedscholarship.csuohio.edu/clevstlrev/vol19/iss1/19>.

amendments.¹⁵ To mark the 70th anniversary of Dean Roscoe Pound's dissertation, "Public dissatisfaction with the American legal system," a Pound conference was conducted in 1976.¹⁶ The conference examined closely the causes for the criticism of American courts, one of which was the country's overburdened and expensive legal system. The Pounds Conference in 1976 marked the beginning of the ADR movement. The main strategy for resolving conflicts in Native American culture is peacemaking. Conflicts are resolved by addressing their root causes and mending relationships. The founding of the American Arbitration Association marked the institutionalization of ADR in the United States. Founded in 1926 to address the need for an arbitration organization able to handle all kinds of claims in all parts of America, the American Arbitration Association (AAA) is the primary arbitration body formed by lawyers and entrepreneurs for arbitration, conciliation, judicial settlements (including Lok Adalats), or mediation when the court finds that there is a settlement aspect that the parties might find acceptable.¹⁷

By the end of the 20th century, arbitration had permeated every tier of the American judicial system. Retired judges and attorneys accredited by the AAA with ADR experience are frequently employed by law firms to provide mediation, arbitration, and negotiation services to individuals and businesses. As a result, ADR is now a well-established legal system in the US.¹⁸

• UK

Arbitration has been utilized in the UK for a very long time. It was once used to settle disputes and torts, but as trade and commerce grew, so did the quantity of disputes that clogged the courts as disputes between dealers and merchants increased. It was thus thought that arbitration may be used to lighten the court's burden.¹⁹

The first laws encouraging arbitration were passed in 1698 which was set in motion by the

¹⁵ Imre Stephen Szalai, *Exploring the Federal Arbitration Act through the Lens of History Symposium*, 2016 J. Disp. Resol. (2016) Available at: <https://scholarship.law.missouri.edu/jdr/vol2016/iss1/9> .

¹⁶ RAY D. MADOFF, *LURKING IN THE SHADOW: THE UNSEEN HAND OF DOCTRINE IN DISPUTE RESOLUTION*, (2018) Available at: https://southerncalifornialawreview.com/wp-content/uploads/2018/01/76_161.pdf .

¹⁷ American Arbitration Association , available at: <https://www.adr.org/about-us> . (last visited on October 10, 2024).

¹⁸ Dr. S. R. Myneni, *Alternate Dispute Resolution* 58 (Asia Law House, Hyderabad, 6thedn., 2024).

¹⁹ Arbitration in United Kingdom, available at: <https://www.lexology.com/library/detail.aspx?g=1ea14eb7-32bd-4287-89b2-dda5c172bf24> (last visited on October 10, 2024).

newly established Board of Trade and drawn up by the philosopher John Locke to legislate for the existing rule of court procedure (Arbitration Act 1698).²⁰ It was enacted to resolve dispute related to personal wrong, personal chattels, real estate of disputant merchants and traders. The main laws of arbitration were codified in 1889 which repealed all earlier English enactments relating to arbitration.²¹ Several rules and amendments were subsequently implemented, and the arbitration act of 1996 was eventually created.

History of ADR in India

In India, the historical evolution of ADR is deeply intertwined with the country's diverse cultural heritage and legal lineage. The early traditional practices of resolving disputes through community-based mediation align closely with the principles of restorative justice, which emphasizes repair and reconciliation. The ancient texts of Hindu law, such as the *Manusmriti* and the *Arthashastra*, provide insights into the operation of informal dispute resolution mechanisms, where local elders or panchayat members played central roles in mediating conflicts.²²

The advent of colonial rule brought significant changes to the Indian legal landscape, with British common law fundamentally altering the manner in which disputes were adjudicated. The introduction of formal courts and litigation processes overshadowed traditional methods of dispute resolution, leading to a growing estrangement from indigenous practices. Yet, even within this framework, the British recognized the utility of arbitration for commercial disputes. The Indian Arbitration Act of 1940 was one of the early legal instruments instituted to formalize arbitration processes, though it largely retained the characteristics of the British legal system.²³

Post-independence, the recognition of ADR mechanisms as efficient alternatives gained prominence, spearheaded by the need to alleviate the burden on an overwhelmed judicial system. The 1980s marked a critical juncture in this evolution with the establishment of the

²⁰ Francis Calvert Boorman, "Developments in the History of Arbitration: A Past for the Present?" 4 *Amicus Curiae* 109-128 (2022).

²¹ Dr.N.V. Paranjape, *Law relating to Arbitration and Conciliation in India* (Central Law Agency, Hyderabad, 4thedn., 2011).

²²K. Mody, "Alternate Dispute Resolution: A Perspective" 3 *Indian Journal of Arbitration Law* 1-20 (2009).

²³ Law of Arbitration in India & Alternative Dispute Resolution, India, available at: <https://www.lexology.com/library/detail.aspx?g=c74be5b9-f8c1-4d5a-ae87-936d0ca6de8b> (last visited on October 12, 2024).

Law Commission of India's 129th Report, which advocated for the promotion of arbitration, conciliation, and mediation.²⁴ This report laid the foundation for the comprehensive enactment of the Arbitration and Conciliation Act of 1996, which modernized legal provisions governing arbitration and recognized mediation as a legitimate process of dispute resolution under Indian law.²⁵

Moreover, the introduction of provisions for pre-litigation mediation and the encouragement of court-referred mediation significantly reinforced the role of ADR in the Indian context. The judiciary has played a critical role in promoting ADR practices, with the Supreme Court of India issuing various pronouncements underscoring the importance of mediation and conciliation in achieving expeditious justice.

In recent years, there has been a concerted effort by the Indian government and the judiciary to institutionalize and promote ADR. The establishment of dedicated mediation centers, increased awareness programs, and initiatives to train mediators have bolstered the efficacy of ADR as a reliable alternative to litigation. Furthermore, contemporary reforms and policy changes continue to reflect a commitment to enhancing the institutional framework surrounding ADR, ensuring that it remains a pertinent and effective tool for dispute resolution in India.

Alternative Dispute Resolution in India

In India, the Arbitration and Conciliation Act, 1996 governs arbitration and conciliation in addition to non-binding forms of alternative dispute resolution including mediation and negotiation. There are four components to the contested act. Part I covers "Arbitration," Part IA covers "Arbitration Council of India," Part II covers "Enforcements of Certain Foreign Awards," Part III covers "Conciliation," and Part IV covers certain "Supplementary Provisions." In addition to this, the Indian system of alternative dispute resolution is governed by seven schedules. As well as Section 89 of the Code of Civil Procedure, 1908,²⁶ directs parties to submit their issues to Alternative Dispute Resolution.

A number of measures for mediation and conciliation were included in The Hindu Marriage

²⁴ Law Commission of India, "129th Report on Arbitration and Conciliation" (Government of India, 1988).

²⁵ The Arbitration and Conciliation Act, 1996 (Act 26 of 1996).

²⁶ The Code of Civil Procedure, 1908 (Act 5 of 1908), s.89.

Act, 1955, The Industrial Disputes Act, 1947, and The Family Courts Act, 1984²⁷ prior to the creation of Section 89 CPC 1908. Naturally, the Arbitration and Conciliation Act of 1996 was created by the legislature in disregard for other laws that allow for the use of Alternative Dispute Resolution and that present legal issues in a number of court cases pertaining to its governance.

Originally regarded as a voluntary initiative by the parties, Alternative Dispute Resolution received official recognition in Section 89 of the Code of Civil Procedure 1908.²⁸ This recognition was enacted by the CPC (Amendment) Act, 1999,²⁹ and as of July 2002, it offers mandatory access to the Alternative Dispute Resolution System.

Comparison between ADR and Judicial Settlement

Judicial settlement, as opposed to alternative dispute resolution, which is more flexible and can be formal or informal, is a formal process where parties settle disputes in court with the help of juries and judges under stricter guidelines that must be adhered to throughout the proceedings, such as formal evidence rules. A third party mediates conflicts on behalf of parties following predetermined guidelines and processes in an alternative dispute resolution process that is likewise more confidential.³⁰

Time: Thousands of lawsuits that are now pending in Indian courts demonstrate the State's judicial settlement. It can take months, years, or even longer for the court to observe this settlement, and the alternative dispute resolution method is more akin to a chop-chop procedure. Disputes can be settled swiftly since there are minimal appeals and the case can be heard right away when the arbitrator is selected.³¹

Cost –ADR is less expensive than litigation or judicial settlement because it does not include pre-trial discovery costs, lawyer fees, court costs, or the expense of lengthy trials in court. In contrast, the cost of ADR is limited to the arbitrator or mediator's fees, which are determined by the value of the claim, the arbitrator or mediator's experience, and lawyer fees.³²

²⁷ The Family Courts Act, 1984 (Act 66 of 1984).

²⁸ Ibid.

²⁹ Ibid.

³⁰ "Differences Between Alternative Dispute Resolution and Litigation", *Medium*, available at: <https://disputeresolution.medium.com/differences-between-alternative-dispute-resolution-and-litigation-ca9d5b85c00e> (last visited on Oct. 15, 2024).

³¹ Ibid.

³² Ibid

Privacy or confidentiality –Litigation is a formal process that can damage the reputations of the parties because it occurs in public courtrooms and is subject to public records, whereas alternative dispute resolution (ADR) processes are more private and confidential in nature and are not subject to public records unless a law requires it to be otherwise.³³

Appointment of judge/ arbitrator, mediator -In alternative dispute resolution (ADR), parties have the shared authority to select and designate their mediator or arbitrator; On the other hand, in a lawsuit, the parties have no influence on the choice of judge and jury.³⁴

Joinder of Parties -ADR procedures may only be enforced upon parties by mutual consent. Therefore, if any more parties are required for full relief, they must either have agreements mandating their involvement in the case or provide their assent to be joined in the proceedings. On the other hand, all sides to a disagreement may normally be joined as parties during legal procedures.³⁵

On – going relationship –Whether or if litigants are more adversarial in character is not taken into consideration during litigation. Conversely, disputes can be resolved more pleasantly and continuously maintained through alternative dispute resolution (ADR), which gives disputing parties freedom, control, and involvement.³⁶

Evidence allowed –While complete disclosure of all relevant information is necessary in litigation, the standards of evidence do not apply in alternative dispute resolution (ADR) because there are no interrogatories, discovery processes, or subpoenas.

Focus to the real problem – While litigation gives more weight to additional legal rights and obligations, alternative dispute resolution (ADR) focuses on the primary issue that gives rise to disagreement.³⁷

Ayodhya Dispute: The Highly Complex Legal History of India's Sacred Place

Even the Indian legal system acknowledges that arbitration is a useful mechanism for resolving disputes, which is why they have mentioned using the mediation process for the very consequential Ayodhya conflict. With a history spanning more than a century, it is among the longest disputes to ever occur in India. The Court dispute began in 1885 but historically it can

³³ Webnyay, “What is the Difference Between Adr and Judicial Dispute Resolution”, *Medium*, Feb. 26, 2024, available at: <https://www.scribd.com/document/713033800/What-is-the-difference-between-ADR-and-judicial-dispute-resolution> (last visited on Oct. 17, 2024).

³⁴ Ibid

³⁵ Ibid

³⁶ ibid

³⁷ Ibid

be traced back in 1528-29 (935) AH³⁸ when Mir Baqi, Babar's commander, built the Babri Masjid and a dispute emerged over it. The local Hindu population undoubtedly thought that this mosque was constructed after their lord Ram's temple in Ayodhya was destroyed. In 1717 the British authorities mediated this by dividing the site into two sections and enclosing them with a fence. The Muslims were given the interior portion of the site, while the Hindus were given the outside portion. From 1853 until 1859, that conflict also led to rioting between the Muslim and Hindu factions.³⁹ **In 1885 the first suit was filed regarding this matter for seeking to build a temple on land adjoining the mosque. The District Magistrate (DM) of refuses him permission. After that Mahant Raghbir Das filed a suit in Faizabad Court against the Secretary of State for India, he was seeking permission to build a temple on the chabutra (courtyard) of the mosque but Faizabad Court rejects his plea.⁴⁰ On the night of December 22, 1949, a Ram idol mysteriously appeared inside a mosque. Many Hindus perceived this event as a divine revelation, while others argued that the idol had been smuggled in during the night. As a result, Hindus began offering prayers to the idol. In 1950 Secound suit was filed by Gopal Simla Viharad and Paramhansa Ramachandra Das in Faizabad Court for Hindu pujas to Ram Lalla. This time court granted the permission to parties for pujas. But the inner courtyard gates remain locked. After that in 1959 Nirmohi akhara filed a suit for seeking possession of land against this in 1961 UP Sunni Wakf board filed a case for seeling possession of masjid. In 1984 Ram Janambhoomi Movement came into existence led by Vishwa Hindu Parisad whose leader was LK Advani. On 1st Feb 1986 Faizabad court allow pooja to hindu in inner part of masjid. In 1989 all the suits were clubbed and shifted to Allahabad High Court on the landmark name Ram Lalla Virajman case. On 25th September 1990 A Rath Yatra was started by LK Advani with intention to Unite Hindu for the Movement. Yatra was started from Gujrat to Uttar Pardesh but In between Communal riots break out. As a result Babri Masjid was Demolished on 6th December 1992 by Kar shewak. A temporary Ram Mandir was erected in its place after the Babri Masjid. This episode had serious repercussions since it infuriated Muslims, who then rioted across the**

³⁸ Available at : [https://en.wikipedia.org/wiki/Babri_Masjid#:~:text=According%20to%20the%20mosque's%20inscriptions,mosque%20of%20the%20birthplace%22\).](https://en.wikipedia.org/wiki/Babri_Masjid#:~:text=According%20to%20the%20mosque's%20inscriptions,mosque%20of%20the%20birthplace%22).) (last visited on October 13,2024).

³⁹ Babri mosque to Ram temple: A timeline from 1528 to 2024, India, available at: <https://www.aljazeera.com/news/2024/1/22/babri-mosque-to-ram-temple-a-timeline-from-1528-to-2024#:~:text=Hindus%20claim%20the%20Babri%20Masjid,mosque%20allegedly%20by%20Hindu%20priests.> (last visited on October 13,2024).

⁴⁰ Timelines: Key Event in Babri Masjid Ram Mandir Controversy, Available at : <https://www.scobserver.in/journal/timeline-key-events-in-the-babri-masjid-ram-mandir-controversy/> (last visited on October 13,2024).

nation. The Liberhan Committee was established to look into and mediate this awful incident.⁴¹ This committee was led by retired High Court Justice M. S. Liberhan. Initially, the Commission was required to provide its findings within three months of its establishment. In order to resolve the Ayodhya issue, the ruling Congress party suggested constructing a temple and a mosque in addition to a library and museum. However, the opposing parties rejected this plan, hence it was never put into existence. The BJP government decided to find a solution in 2002 as the Ayodhya dispute continued. To provide themselves with the precise facts, ASI (Archaeological Survey of India) had to help. On orders from the Allahabad High Court, the Archaeological Survey of India starts to excavate the area beneath the contested site. It claims to have discovered the remains of a Hindu temple from the tenth century. The ASI report is criticized by Muslims. The Allahabad High Court's Lucknow Bench rendered a decision on September 30th 2010 after learning that there was a Ram Mandir there. They suggested splitting the plot into three sections equally between the Sunni Wakf Board, Nirmohi Akhara and Ram Lalla Virajman to appease the three sections composed of Muslims and Hindus. This increased tensions, which prompted the Supreme Court to declare in 2011 that the ruling would be overturned.⁴²

On March 21th 2017 Khehar who was the Former Chief Justice suggested an out of court settlement among all parties.⁴³ A three-member panel has been assigned to mediate the long-running *Ram Janambhoomi Babri Masjid* controversy. It is difficult to reverse the history of the conflict, but everyone is aware that it is a sensitive issue that affects a large number of people. This is a matter of some public interest because of its wide implications. The Supreme Court itself believed that a final attempt at mediation was necessary to settle this dispute. Three panel members—Sri Sri Ravishankar, Kulifijullah, and Sri Ram Panchu—were chosen by the Indian Supreme Court's constitutional bench.⁴⁴ Giving mediation a chance in a situation this significant for the whole community may increase the likelihood that all parties will understand

⁴¹ Agencies, “Babri Masjid Demolition | Key Conclusions by Liberhan Commission”, *The Hindu*, Sept. 30, 2020, available at: <https://www.thehindu.com/news/national/babri-masjid-demolition-key-conclusions-by-liberhan-commission/article32730876.ece> (last visited on October 13, 2024).

⁴² Agencies, “Ayodhya Verdict: Disputed Land to Be Divided into 3 Parts”, *The Economics Times*, Sept. 30, 2010, available at: <https://economictimes.indiatimes.com/news/politics-and-nation/ayodhya-verdict-disputed-land-to-be-divided-into-3-parts/articleshow/6658856.cms> (last visited on October 13, 2024).

⁴³ Satya Parsoon, “Timeline: Key events in the Babri Masjid – Ram Mandir Controversy” 22nd Oct, 2018, available at : <https://www.scobserver.in/journal/timeline-key-events-in-the-babri-masjid-ram-mandir-controversy/> (last visited on October 15, 2024).

⁴⁴ Ganesh Kumar, “Ayodhya Title Suit: Supreme Court Orders Mediation, Sri Sri Ravi Shankar on Panel”, *India Today*, Mar. 08, 2019, available at: <https://www.indiatoday.in/india/story/ayodhya-title-suit-supreme-court-mediation-sri-sri-ravi-shankar-1472993-2019-03-08> (last visited on October 15, 2024).

one another and reach a win-win solution where they can both put an end to conflict and leave with their heads held high. The mediation was come to end in mid-May 2019.⁴⁵ Since mediation is a process, it allows both parties to concentrate on their interests and reach the best possible outcome. A professional alternative to traditional dispute resolution methods is mediation. The Supreme Court made the right decision in allowing the mediation process to proceed because it is impractical to continue fighting over these issues no matter what the outcome, and the parties involved can come to an understanding through the process that involves a team of trained mediators who can address underlying emotions and help them put themselves in each other's shoes. By selecting an alternate conflict resolution process, the Supreme Court has brought mediation to light and made it possible for it to be taken into consideration in this important case as well.

The Supreme Court has left hearings for about 40 days to reach a final resolution after this mediation panel submits its final report. The Supreme Court's ultimate proposal was for giving *Ram Lalla Virajman* the 2.77-acre plot of land in Ayodhya where the *Babri Masjid* was constructed and giving the Sunni Waqf Board a separate 5-acre tract of property through the federal or state governments. In an attempt to appease both Hindu and Muslim sides, the Supreme Court concluded the Ayodhya issue with this final ruling.⁴⁶

Alternative Dispute Resolution Mechanism in Sutlej Yamuna Link (SYL) Issue:-

The Sutlej Yamuna Link (SYL) Canal is a crucial waterway in Northern India, conceived to facilitate the distribution of water from the Sutlej River to the arid regions of Haryana, Punjab, and Rajasthan.⁴⁷ This ambitious project, initiated during the period of the 1960s, has been mired in conflict, primarily between the States of Punjab and Haryana, over the allocation, utilization, and management of river water resources. The issue originates from a controversial water-sharing agreement made in 1981, when Haryana was formed from Punjab in 1966. The disputes surrounding the SYL Canal have led to heightened tensions, political upheaval, and even violence, directly impacting the regional socio-political landscape. In this context, the role of

⁴⁵ Satya Parsoon, "Timeline: Key events in the Babri Masjid – Ram Mandir Controversy" 22nd Oct, 2018, *available at* : <https://www.scoobserver.in/journal/timeline-key-events-in-the-babri-masjid-ram-mandir-controversy/> (last visited on October 15, 2024).

⁴⁶ Debayan Roy, "How Final Day Mediation Drama in Ayodhya Case Took Hype Away from Supreme Court", *The Print*, Oct. 19, 2019, *available at*: <https://theprint.in/opinion/newsmaker-of-the-week/mediation-drama-ayodhya-land-dispute-case-supreme-court-hearing/308118/> (last visited on October 15, 2024).

⁴⁷ Sutlej-Yamuna Link Canal, *available at*: <https://jalshakti-dowr.gov.in/sutlej-yamuna-link-canal/> (last visited on: October 18,2024).

mediation emerges as a significant mechanism through which stakeholders engage in dialogue, seek resolutions, and strive for a sustainable and equitable management of water resources.

The inception of the SYL Canal can be traced back to the Ravi and Beas Waters Agreement of 1960, which was established to address water distribution “Free and Unrestricted use” among various North Indian states.⁴⁸ As water scarcity became a pressing issue due to demographic pressures, agricultural demands, and climatic variations, the need to create inter-state water agreements became paramount. The SYL Canal was envisioned as a solution to transport surplus water from Punjab to the adjacent states suffering from scarcity, notably Haryana.⁴⁹ In 1966 Haryana was created from Original Punjab. After that the problem was the distribution of river water. To get its share of water from Sutlej and Beas, a canal named (SYL) was proposed to be constructed. In 1981, both states reached a mutual agreement to redistribute water. As a result The 214-kilometer SYL's construction got underway in Punjab's Kapoori village in 1982. However, the construction of the SYL Canal ignited deep-seated apprehensions among the residents of Punjab. The fear of losing control over water resources, compounded by cultural and political sensitivities, led to significant opposition in Punjab. An agreement to establish a new tribunal to evaluate the water was signed by PM Rajiv Gandhi and Sant, the leader of the Akali Dal at the time. The Eradi Tribunal, presided over by Supreme Court Justice V Balakrishna Eradi, was established to reevaluate water distribution and availability. The panel suggested raising Punjab's and Haryana's shares to 5 MAF and 3.83 MAF, respectively, in 1987.⁵⁰ In 1996, Haryana petitioned the Supreme Court (SC) to order Punjab to finish the SYL project. As result Supreme Court ordered Punjab to make SYL in its territory. The Indian legal framework surrounding water distribution is primarily governed by several key legislations, including the Inter-State River Water Disputes Act of 1956. This act provides for the establishment of tribunals to adjudicate disputes between states, aiming to ensure equitable distribution and utilization of river waters.⁵¹ The building of SYL in Punjab is now in jeopardy because the Punjab Assembly approved the Punjab Termination of agreement Act of 2004

⁴⁸ Sutlej-Yamuna Link Canal, available at: <https://www.ensureias.com/blog/current-affairs/sutlej-yamuna-link-canal-dispute> (last visited on: October 18, 2024).

⁴⁹ Navneet Sharma, “HT Explainer | Why SYL is a Canal of Controversy Between Punjab and Haryana”, *Hindustan Times*, Nov. 11, 2016, available at: <https://www.hindustantimes.com/india-news/why-satluj-yamuna-link-canal-is-a-bone-of-contention-between-punjab-and-haryana/story-1p703sMa93r2ogqr0ni3I.html> (last visited on October 25, 2024).

⁵⁰ Kanchan Vasdev, “Explained: The Punjab-Haryana Dispute Over Rivers Waters and SYL Canal”, *Indian Express*, Apr. 06, 2022, available at: <http://indianexpress.com/article/explained/the-punjab-haryana-dispute-over-rivers-waters-and-syl-canal-7854049/> (last visited on oct. 25, 2024).

⁵¹ Saman Devgan, “A Study on Sutlej Yamuna Link Canal: Field of Dreams”, 11 *International Journal of Research in Social Sciences* (2021).

ending its water-sharing arrangements. This act was challenged through Presidential reference under Article 143 in the Supreme Court. Supreme Court held Punjab Termination Agreement as Invalid. It was said by Supreme Court that Punjab try to withdraw from its earlier promise to share water with Haryana by using this Act that why this act held as constitutional invalid.

In September 2022, The Supreme Court asked central government to negotiate between Haryana and Punjab and said “Water Is A Natural Wealth To Be Shared”.⁵² The central government of India plays a crucial role as a mediator and overseer of inter-state water disputes, providing legislative frameworks and arbitration mechanisms. Furthermore, various civil society organizations, environmental activists, and stakeholders, including farmers from both states, have raised their voices in favour of their respective positions, further complicating the mediation landscape. Again on Oct 05, 2024 Justice Sanjay Kishan Kaul led a bench that request the government to Facilitate another mediation process to find a peaceful resolution of the water dispute between the Haryana and Punjab.⁵³ Various mediation efforts surrounding the SYL Canal have taken place, involving negotiation processes facilitated by governmental agencies, outside experts, and civil society mediators. These initiatives aim to foster dialogue and emphasize collaborative problem-solving as a means to balance competing interests. As water resources become increasingly scarce, the lessons learned from the SYL Canal dispute can serve as a blueprint for future inter-state water negotiations in India and beyond. By adopting innovative strategies, emphasizing stakeholder engagement, and ensuring an equitable and transparent process, mediation can herald a new era of conflict resolution in water governance, paving the way for sustainable resource management and fostering peace among states in the ever-evolving landscape of inter-state relations.

Mediation in Resolving Border Disputes between Nagaland and Assam:-

During British colonial rule, the administration of borders between Assam and Nagaland failed to consider cultural or ethnic unities within the regions. The independent India obtained these established borders when it emerged in 1947 as new states were formed, although the border agreement remained unsettled.

⁵² Deepankar Malviva, ““Water is a Natural Wealth to Be Shared” : Supreme Court Asks Union to Negotiate Between Punjab & Haryana Over Sutlej-Yamuna Link Canal Dispute”, *Live Law.In*, Sept. 06, 2022, available at: <https://www.livelaw.in/top-stories/sutlej-yamuna-link-canal-dispute-punjab-haryana-supreme-court-water-river-dispute-208571> (last visited on Oct. 25, 2024).

⁵³ Deepankar Malviva, “SC Directs Centre to Look into SYL Canal Dispute Mediation Process”, *Hindustan Times*, Oct. 05, 2023, available at: <https://www.hindustantimes.com/india-news/sc-directs-centre-to-look-into-syl-canal-dispute-mediation-process-101696446255504.html> (last visited on Oct. 25, 2024).

After Nagaland gained statehood in 1963 through separation from Assam it received contested territory limits. The dispute between Assam and the Naga-dominant areas centers on the bordering districts alongside the Naga hills while competing for control over regions located in Assam. Multiple territorial conflicts exist between these two states because each one asserts jurisdictional authority over distinct areas that contain economic and political interests and ethnic identities.

Various efforts to resolve the dispute between these areas have not generated a permanent solution during that time. Notwithstanding court-based litigation and government-level political talks both efforts have proven unable to satisfy native community concerns or create an agreed political border. According to the situation ADR procedures offer an approach to break the impasse.

In recent years, the Government of India has recognised the significance of dialogue in addressing the border disputes. In 2021, the Chief Ministers of Nagaland and Assam engaged in discussions aimed at finding an amicable resolution to their long-standing disagreements over borders. Recently they both had a meet up with Home minister Amit shah over border dispute.⁵⁴ Such top-level interventions are crucial; however, the integration of mediation at the grassroots level is equally essential. Community involvement in the mediation process can help demystify the intricacies of the border issues, ensuring that the perspectives of local residents are adequately represented.

One of the primary benefits of mediation in this context is its ability to humanise the dispute. Formal legal channels can often exacerbate adversarial relationships, whereas mediation provides an opportunity for empathy and understanding to flourish. By encouraging parties to engage in dialogue, mediation helps to bridge cultural and emotional divides. Furthermore, a mediation-based approach can pave the way for collaborative problem-solving, where both Nagaland and Assam can explore potential win-win solutions that take into account the interests of both states.⁵⁵

⁵⁴ Assam, Nagaland CMs discuss border disputes resolution with Shah, *available at: <https://www.borderlens.com/2023/12/19/assam-nagaland-cms-discuss-border-dispute-resolution-with-shah/>* (last visited on October 26,2024)

⁵⁵ “Nagaland taking measures for resolution of border dispute with Assam: DCM”, *The Arunachal Times*, March 2, 2024, available at : <https://arunachaltimes.in/index.php/2024/03/02/nagaland-taking-measures-for-resolution-of-border-dispute-with-assam-dcm/> (Last Visited on November 26, 2024).

The role of mediation in the resolution of border disputes between Nagaland and Assam is fundamental in cultivating an environment of dialogue and understanding. As these two states continue to grapple with historical grievances, embracing mediation can facilitate a path toward equitable solutions that acknowledge the complexities of territorial claims while promoting regional stability. Going forward, a concerted effort by state and central governments to institutionalise mediation practices, coupled with community engagement, will be pivotal in transforming the landscape of border disputes into one characterised by cooperation and mutual respect.

Mediation and Negotiation in Indian Pakistan: Water Conflict:-

The water conflict between India and Pakistan represents a complex interplay of geopolitical tensions, historical grievances, and resource management challenges in the South Asian region. Since water is necessary for human living, it is a fundamental human right⁵⁶. Given the significance of water as a vital resource for agriculture, industry, and human consumption, the implications of such conflicts extend beyond environmental concerns to encompass broader issues of national security and regional stability. Mediation plays a critical role in addressing these challenges, particularly under the framework of international law and bilateral agreements.

At the heart of the water conflict lies the Indus Waters Treaty (IWT), signed in 1960 under the auspices of the World Bank. The treaty allocates the waters of the Indus River system, comprising six rivers, between India and Pakistan, granting India control over the eastern rivers while assigning the western rivers predominantly to Pakistan. Despite this framework, tensions have resurfaced due to perceived violations and the growing demands for water in both countries, often exacerbated by broader political hostilities and regional disputes. Given the critical nature of water resources in both nations, mediation emerges as an essential mechanism for facilitating dialogue, managing disputes, and ensuring compliance with the international legal frameworks.⁵⁷ Both sides have been making contradictory discussions about water Consumption since mid- 2000s. India's Bharatiya Janta Party (BJP) has been taking on the tougher public boundaries with Pakistan since its assumption in 2014. Indian Prime Minister

⁵⁶ Amanda Cahil Ripley, *The Human Right to Water and its Application in the Occupied Palestinian Territories*, 14 (TAYLOR & FRANCIS, 2011).

⁵⁷“Water Conflict and Cooperation Between India and Pakistan”, *Climate Diplomacy*, available at: <https://climate-diplomacy.org/case-studies/water-conflict-and-cooperation-between-india-and-pakistan> (last visited on Nov. 28, 2024).

Narendra Modi said in 2019 that India has incorporated the entire water droplet into Indian in the rivers, Sutreji and Beads, where India allocated industrial water contracts. In the meantime, Pakistan has appointed three provisions of the contract provision. Pakistan has asked the World Bank to appoint neutral experts to the World Bank to remove concerns that a planned hydroelectric project in the Chenab River in India will have greater control over the flow than acceptable contract. The neutral Expert approved The Indian Plan in 2017, Presenting his decision as the current best Practice in sediment Management. Pakistan then called on the World Bank to Convince India's Plan for the hydroelectric project at Kishanganga-Neelum a tributary of the Jhelum River. The 2013 court ruling failed to meet the outcome of Indian officials getting frustrated as they awaited a final solution. The main trigger for the current India nuisance is the objection to another Indian dam in the Ratl Project, Chenab, Pakistan. Constructions will begin soon. Pakistan first asked the World Bank to appoint another court of arbitration on these issues in 2016, but India wanted to mention neutral experts instead. Much to the range of Indian officials, World Bank began both process at the same time in 2017. Indian Officials have threatened to ignore the arbitration court's prior knowledge if they change their request to change the contract.⁵⁸

Mediation, as a conflict resolution strategy, offers a platform for both countries to engage in constructive dialogue and address grievances amicably. Third-party mediators—whether they be international organizations, neutral countries, or reputable NGOs—can help reduce mistrust and foster a more collaborative environment. By providing a neutral ground for negotiation, these mediators can facilitate trust-building measures, assist in the development of joint management strategies, and encourage the sharing of technology and expertise to optimize water usage. This collaborative approach could potentially lead to win-win solutions, wherein both India and Pakistan can achieve their water management objectives while ensuring mutual benefit.⁵⁹

The role of mediation in the India-Pakistan water conflict is critical for addressing the pressing issues arising from shared water resources. Through neutral facilitation, constructive dialogue,

⁵⁸ Daniel Haines, "India and Pakistan are Playing a Dangerous Game in the Indus Basin What's Behind the Rivals' Latest Spat Over Water Rights Along Their Shared Rivers?", *United State Institute of Peace*, Feb. 23, 2023, available at: <https://www.usip.org/publications/2023/02/india-and-pakistan-are-playing-dangerous-game-indus-basin> (last visited on Nov. 28, 2024).

⁵⁹ Naeem Abas, Nasrullah Khan, et.al., "Indus Water Treaty in the Doldrums due to Water-Power Nexus" 4 *European Journal for Security Research* 201 (2019), available at: <https://link.springer.com/article/10.1007/s41125-019-00043-y> (Last Visited on November 29, 2024).

and the establishment of collaborative frameworks, mediation can pave the way for sustainable solutions that benefit both nations. However, for mediation to be effective, it is essential to overcome the political and cultural barriers that inhibit cooperation. Only through sustained efforts and a commitment to dialogue can India and Pakistan hope to resolve their water conflict and build a more stable and prosperous South Asia.

Issues with Alternative Dispute Resolution in India

As a general rule, "nothing is perfect," therefore the Alternative Dispute Resolution Mechanism is not without flaws. It is becoming more difficult to settle conflicts outside of court since both parties must agree to use Alternative Dispute Resolution to settle their differences. It is a happily held ignorance among many people that such a process exists.⁶⁰

Even after over fifteen years of implementation, the 1996 Arbitration and Conciliation legislation has not yet effectively met its goals, and it is believed that the legislation has lost the essence and fundamental structure that its creators intended. The willingness of the parties and their lawyers to cooperate is crucial to the Alternative Dispute Resolution mechanism's successful execution. The independence and impartiality of the arbitrator, conciliator, and mediator are also always under question. Also, the entire goal of the alternative dispute resolution system will be defeated if such an opinionated person with predetermined beliefs is nominated as the arbitrator, conciliator, or mediator.⁶¹

Alternative Dispute Resolution (ADR) is not widely used or effective in India due to several obstacles. First and foremost, the main barrier is the lack of awareness and understanding of the benefits and workings of alternative dispute resolution (ADR) among the general public and even certain legal specialists. This leads to a preference for traditional litigation, which piles additional cases upon the already overworked court system. The scarcity of certified ADR practitioners is another issue. The lack of qualified arbitrators, conciliators, and mediators makes it difficult to handle the growing number of conflicts. Moreover, parties may decide to disregard or postpone implementing the decisions that have been reached, which would negate the goal of the entire process and cast doubt on the validity of ADR rulings. The societal propensity for combative litigation coupled with mistrust of the objectivity of ADR

⁶⁰ Aaryavart Chourasia, "Challenges in Implementation of the Alternative Dispute Resolution in India" 2 *Journal of Legal Research and Juridical Sciences* (2022).

⁶¹ Ibid.

practitioners poses a challenge to the adoption and application of ADR processes. The absence of a comprehensive legal framework governing alternative dispute resolution (ADR) methods in India leads to uneven and unclear resolutions, hence hindering the process's efficient functioning. It would be essential to put in place robust awareness campaigns, additional training opportunities, enhanced enforcement mechanisms, and a comprehensive legal framework in order to overcome these problems and encourage the growth of ADR in India.⁶²

In addition, since its establishment, Alternative Dispute Resolution has faced the following innate behavioral and operational difficulties:

Lack of Awareness -Regarding the issue of sending disputes to alternative dispute resolution (ADR), it is necessary to determine the element of the settlement purpose from the case, which is a necessary requirement found in Section 89 CPC, 1908⁶³. If not, the parties initiate legal action. Additionally, the parties must be aware of ADR and its benefits in order to include such provisions in their agreement. And because the parties are unfamiliar with this procedure, they choose lawsuit outright.⁶⁴

Lack of Trust - People are constantly skeptical of the impartiality and independence of the third party, which makes them less likely to use ADR. The enforceability of ADR rulings is another indicator of this kind of mistrust.⁶⁵

Legal Culture -People in India depend more on the legal system, and alternative dispute resolution (ADR) is not often used. For the reasons listed above, it is challenging to present such a system to the parties, which raises expenses and causes delays in the administration of justice.⁶⁶

Privacy and Confidentiality Concerns -The parties do not trust the Indian courts to protect their right to privacy under Article 21 of the Indian Constitution,⁶⁷ as stated in *Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors.*⁶⁸ Due to prior instances of privacy invasion, it also fails to win over enough confidence. Consequently, parties are reluctant to employ ADR due to this lack of confidence.

Power derived from Arbitration Agreement- The Bombay High Court shed emphasis on the

⁶²Ibid.

⁶³Ibid.

⁶⁴ Bhumika S. Kumar, "ADR System in India: Challenges" 5 *International Journal of Law, Management and Humanities* 818-821 (2022).

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ AIR2017SC4161.

significance of the arbitration agreement's presence in the case of *Prakash Cotton Mills Pvt. Ltd. vs. Vinod TejrajGowani*,⁶⁹ since the arbitration procedure is dependent on it for authority. Arbitration will not take place in the absence of an arbitration agreement. Furthermore, the goals of ADR become less fundamental and distinct as a result of this essentiality.

Archaic Legal Processes- In the case of *Garware Walls Ropes Ltd. vs. Coastal Marine Constructions & Engineering Ltd.*⁷⁰, the Supreme Court ruled that the arbitration agreement is void only due to the failure to pay Stamp duty. The choice to use ADR has grown complicated as a result of this intricate and antiquated process.

Recommendations

There is no justification for stopping the flow of cases into the courts, but it is imperative that the system's capacity be increased—both qualitatively and quantitatively—by fortifying and adding new channels. To alter the state of ADR implementation in the nation, significant actions must be made.

Notwithstanding the numerous problems noted in the preceding chapter, work must be done to ensure that alternative dispute resolution (ADR) in the Indian system has a bright future. Some of the problems may be cleanly and quickly fixed to allow for a quick integration, while others will require some time to complete. To maximize the benefits of alternative dispute resolution (ADR) in the context of justice delivery systems, astute effort should be done to pinpoint the issues and enhance current capacities.

It is advised that a regulatory framework with a light hand reinforces the existing legal system and structure while introducing methods that the parties might manage and implement. Several unbiased suggestions have to be followed, and they are as follows:

- Required mention of ADRs.
- Boost productivity to create trust with high-quality infrastructure.
- Implement tight regulations to enforce secrecy and increase privacy.
- Modernize the procedure by introducing Online Dispute Resolution.
- Increase awareness and make changes to the legal system to improve word-of-mouth.

⁶⁹ Commercial Arbitration Petition no. 266 of 2022.

⁷⁰ Civil Appeal No. 331 of 2019.

Conclusion

In the contemporary socio-legal landscape of India, the Alternative Dispute Resolution (ADR) mechanism has emerged as a significant tool for addressing sensitive issues that pervade the nation's socio-political fabric. With its inherent principles of flexibility, confidentiality, and party autonomy, ADR has the potential to circumvent the often protracted and adversarial nature of litigation, particularly in sensitive matters such as communal conflicts, family disputes, land acquisition, and environmental concerns.

The utilization of ADR is particularly pertinent in the context of India, where entrenched societal norms and historical grievances can complicate the resolution of disputes. For instance, communal tensions rooted in historical injustices necessitate a dispute resolution approach that not only addresses the immediate conflict but also the underlying social dynamics. ADR, through mediation and negotiation, can facilitate dialogues that promote understanding and reconciliation among involved parties. Such approaches are instrumental in fostering a culture of peaceful coexistence, enabling stakeholders to find common ground and avoid escalatory conflicts that may undermine social harmony.

Moreover, the adaptability of ADR mechanisms allows for solutions that are culturally sensitive and tailored to the unique contexts of specific disputes. The use of culturally relevant mediators can help build trust among conflicting parties, thereby enhancing the process's efficacy. The incorporation of traditional dispute resolution practices within the framework of ADR can significantly improve acceptance and adherence to the solutions reached, thus further solidifying the potential of ADR in addressing sensitive issues in India.

However, the path towards effectively leveraging ADR in the resolution of sensitive disputes is fraught with challenges. One primary challenge lies in the perception of ADR as a tool for the privileged, with a substantial portion of the population remaining unaware or skeptical of its effectiveness. This skepticism is compounded by a lack of standardized procedures and trained practitioners across the nation, which can lead to inconsistency in the quality of dispute resolution. Additionally, the absence of binding legal frameworks for certain ADR processes may lead parties to opt for more formal legal recourse, negating the potential benefits of ADR altogether.

Furthermore, sensitive issues often entail power imbalances between the parties involved,

which can impede genuine dialogue and compromise. Without adequate safeguards, ADR may inadvertently perpetuate existing inequalities rather than resolve them. This necessitates the development of mechanisms that ensure representation and fairness, particularly in cases where power dynamics are skewed. Training mediators to recognize and address these discrepancies is essential in order to foster an environment conducive to genuine participation and resolution.

In terms of prospects, the future of ADR in addressing sensitive issues in India appears promising, with growing recognition of its benefits among legal practitioners, policymakers, and the public. The government's commitment to integrating ADR into the justice delivery system, as evidenced by legislative frameworks and initiatives promoting mediation, signals a shift towards more accessible and effective dispute resolution mechanisms. Furthermore, technological advancements and the burgeoning field of online dispute resolution present new avenues for expanding the reach of ADR, particularly in a country characterized by vast geographical diversity and varying levels of access to legal resources.

In conclusion, the ADR mechanism holds significant promise for "wangling the impossible" within the realm of India's sensitive issues. Its capacity for fostering dialogue, accommodating cultural sensitivities, and providing tailored solutions renders it a valuable alternative to traditional litigation processes. Nonetheless, for ADR to realize its full potential, concerted efforts must be made to address the associated challenges, including misconceptions, quality control, power dynamics, and insufficient infrastructure. By enhancing the accessibility and effectiveness of ADR, India can pave the way for a more harmonious society, adept at addressing its myriad sensitive issues through collaborative and constructive means. The journey towards this objective necessitates a collective commitment from all stakeholders involved—government, legal professionals, and civil society alike—to promote and embrace the transformative power of ADR in shaping a more equitable and peaceful future.