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CROSS-BORDER ADR: THE JURISDICTION- ENFORCEABILITY CONUNDRUM

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ABSTRACT

The significant increase in International Trade and Investment has made Alternative Dispute Resolution (ADR) an important mechanism in order to address cross-border disputes. Although it is flexible, neutral, and efficient, ADR in the international context is often undermined due to conflicts of jurisdiction and choice of law, in addition to uneven enforceability of outcomes across different jurisdictions. This study critically evaluates the “Jurisdiction-Enforceability Conundrum” through four key issues. Firstly, the overlapping of jurisdiction and different choices of law that complicate the ADR processes; Secondly, the effectiveness of International Frameworks such as the New York Convention on Arbitral Awards, the Singapore Convention on Mediated Settlements, and the ICSID Convention on Investment Disputes. It is important to highlight that Mediation and Conciliation are subject to an unsteady recognition and limited treaty uptake, whereas Arbitration has a mature and widely adopted enforcement regime, and lastly, the potential of Online Dispute Resolution (ODR) to overcome traditional barriers of jurisdiction and enforcement. In the context of India, while the “Arbitration and Conciliation Act, 1996” embodies the best practices adopted in the international regime, as India is a signatory to the New York Convention, practical challenges persist in the enforcement of foreign awards, delayed proceedings, and limited recognition of mediation done via treaties. The recent enforcement of the “Mediation Act, 2023” shows India’s growing commitment to enhancing ADR mechanisms, making it an emerging hub for cross-border dispute resolution in Asia. Without systemic reforms, ADR will continue to be efficient in theory but vague in practice in the context of cross-border disputes, limited by the same jurisdictional and enforcement barriers it seeks to resolve.

KEYWORDS:

Alternative Dispute Resolution, Family Disputes, Family Courts, Amicable Settlement, Access to Justice.

CHAPTER I

INTRODUCTION

The rapid increase of globalisation and international trade has unavoidably resulted in a cumulation of cross-border disputes, requiring effective dispute resolution methods that go beyond the limits of national jurisdictions. Litigation before traditional courts, which is firmly rooted in domestic legal traditions, is inadequate in the transnational context. The primary reasons for this are issues regarding the jurisdiction, delays of procedure, high cost, and hardships in enforcing foreign judgments across multiple legal systems. These hurdles have led to the preference for Alternative Dispute Resolution (ADR) modes such as mediation, conciliation, and arbitration, which are conventionally more flexible, efficient, and neutral in nature¹.

While ADR facilitates the resolution of disputes outside the confines of a courtroom, the issue of this arises, because its effectiveness is dependent upon the ability of the parties to ensure that the outcome from such a process is legally enforceable across different jurisdictions across the world. Arbitration has gained popularity mainly due to the “**New York Convention**”², which mandates that the contracting states recognize and enforce arbitral awards subject only to limited exceptions. Various studies showcases that enforceability is the sole important reason as to why commercial entities prefer arbitration with almost 97% of the participants stating it as decisive³. However, even under this strong framework, enforcement is occasionally undermined through judicial precedents of the “Public Policy Exception.”⁴.

On the contrary, Mediation and Conciliation is in a comparatively beginner stage of global enforcement. The “**Singapore Convention on Mediation**”⁵, is regarded as a landmark instrument to enable the direct enforcement of International Mediated Settlement Agreements, which are similar to arbitral awards under the “**New York Convention**”⁶. Similarly,

¹ Chowdhury, A. THE ROLE OF ADR IN CROSS-BORDER COMMERCIAL DISPUTES: ANALYZING CASE LAWS AND CHALLENGES.; https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_2a558727761a46c69d06f13fd53560ce.pdf.

² Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. V, June 10 1958, 330 UNTS 38.

³ Queen Mary Univ. of London & White & Case LLP, 2018 International Arbitration Survey: The Evolution of International Arbitration 2 (2018).

⁴ *ONGC v. Saw Pipes Ltd.*, (2003) 5 SCC 705 (India).

⁵ United Nations Convention on International Settlement Agreements Resulting from Mediation, Dec. 20, 2018, 58 I.L.M. 1067 (2019).

⁶ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. V, June 10 1958, 330 UNTS 38.

Conciliation continues to be overshadowed by Arbitration, with the mode of enforcement largely dependent on domestic legal systems over international harmonization. The “**ICSID Convention of 1965**”⁷, pioneering in the field of investor-state arbitration, however also shows structural weaknesses like reliance on state consent and controversies surrounding annulment proceedings⁸.

Online Dispute Resolution (ODR) has also emerged as a potential innovation, mainly after the pandemic of COVID-19, by integrating digital platforms with the conventional ADR methods to decrease costs and reduce the issues of jurisdiction, but issues of arbitrability, digital exclusion, and cybersecurity still interfere with its potential to change.

India has its own legal framework that showcases its evolving nature. The “**Arbitration and Conciliation Act, 1996**”⁹, is in accordance with international standards and landmark judgments, which show a change towards an enforcement-friendly law. Further, the enactment of the “**Mediation Act, 2023**”¹⁰, shows legal recognition of mediation, though its effectiveness in cross-border disputes is dependent on proper adoption of international treaties regarding mediation.

To summarize everything that has been stated so far, this study aims to engage with these issues by evaluating the extent to which conflicts of jurisdiction and choice of law complicate ADR in cross-border disputes, analysing the effectiveness of international frameworks, and assessing the potential of ODR to support traditional enforcement restrictions. By placing India within this global context, the research highlights both the progress and current gaps in creating a clear, enforceable, and universally accessible cross-border dispute resolution system.

RESEARCH OBJECTIVES

- i. To evaluate the conflicts of jurisdiction and the choice of law while using ADR in Cross-Border Disputes.
- ii. To analyse the effectiveness of existing international frameworks in ensuring enforceability of ADR outcomes.

⁷ Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, Mar. 18, 1965, 17 U.S.T. 1270, 575 U.N.T.S. 159.

⁸ D. Desierto, Dispute Resolution Mechanisms in Cross-Border Transactions, ASIAN J. INT’L L. (2009).

⁹ Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament (1996) (India).

¹⁰ Mediation Act, 2023, No. 22, Acts of Parliament (2023) (India).

- iii. To assess the recent developments in ADR to overcome traditional jurisdiction and enforcement barriers.

RESEARCH METHODOLOGY

This study adopts a doctrinal and analytical approach, aided by various perspectives, to understand the jurisdictional and enforceability challenges of ADR in Cross-Border Disputes. It utilizes primary sources such as statutes, judicial precedents, and other instruments, and secondary sources such as scholarly works, policy papers, and reports of regulatory bodies of ADR.

RESEARCH QUESTIONS

- i. To what extent do conflicts of jurisdiction and choice of law complicate the use of ADR in cross-border disputes?
- ii. How effective are existing international frameworks (e.g., New York Convention, Singapore Convention, ICSID) in ensuring enforceability of ADR outcomes?
- iii. Can recent developments like the rise of Online Dispute Resolution (ODR) overcome traditional jurisdictional and enforcement barriers?

LITERATURE REVIEW

The potential of ADR as a flexible, cost-effective, and confidential means is often mentioned by numerous authors worldwide in their literature on cross-border disputes, but it also highlights the persistent difficulties with jurisdiction and enforceability. The literature reviewed below emphasises arbitration as the best method for cross-border disputes instead of litigation, but also points out issues that need to be fixed to make ADR more appropriate for the transactional social reality.

Chowdhury's article "*The Role of ADR in Cross-Border Commercial Disputes: Analysing Case Laws and Challenges*" emphasises ADR as a viable alternative to litigation in cross-border commercial disputes if it is viewed as an effective and inexpensive method of resolving disputes outside of court proceedings. This paper explores jurisdictional complexity, enforcement under the New York Convention, and the nature of different jurisdictions, for example, comparing India with other jurisdictions, which sheds light on enforcement issues in India, particularly around enforcement and the expensive interpretations of "public policy",

certain uncertainty, and unpredictability. In addition to the enforcement barriers, this paper contributes an analysis of the “UNCITRAL Model Law” and institutional approaches, and a relatively brief discussion of the potential of ODR. However, this paper does present a fairly narrow analysis based largely through the lens of the Indian experience, ultimately restricting the examination of systemic enforcement challenges that may affect other developing jurisdictions, and does not adequately address the relationship between technology and conflicting jurisdictions.¹¹

In contrast, Aman’s article named “*Cross-Border ADR: Opportunities and Challenges*”, adopted a wider theoretical and empirical approach by placing it in the context of legal pluralism and theories of efficiency, embedding sheltering case data and institutional reports into the study to demonstrate some of the practical advantages of ADR, including enforceability by way of ODR platforms, etc. The author also highlighted key enforcement issues, including conflicts of law and jurisdictional uncertainty, while also pointing out some of the new challenges created by AI and digital processes. His discussion of technological integration remains aspirational rather than empirically led, leaving implementation issues unexamined.¹²

Omkar and Krishnamurthy (2017) have stated in “*Enforcement Challenges for International Consumer Disputes Resolved through ADR in India*,” which concentrated on consumer disputes, an area overlooked in existing literature on cross-border ADR. The authors find that due to gaps in legislation and consumer disputes falling out of the Arbitration Act, the enforcement of integrated international consumer settlements in India remains uncertain. The comparison with the EU shows how integrated ADR and ODR can solve these problems, but limiting the scope of this paper to India presents difficulties when considering the applicability of these issues to broader transitional consumer markets that encounter similar enforcement issues.¹³

Desierto (2009) in “*Dispute Resolution Mechanisms in Cross-Border Transactions*”,

¹¹ Chowdhury, A. THE ROLE OF ADR IN CROSS-BORDER COMMERCIAL DISPUTES: ANALYZING CASE LAWS AND CHALLENGES.; https://3fdef50c-add3-4615-a675-a91741bcb5c0.usrfiles.com/ugd/3fdef5_2a558727761a46c69d06f13fd53560ce.pdf.

¹² Sanaullah Aman, Cross-Border ADR: Opportunities and Challenges, 14 J. Asian Dev. Stud. 1113, 1115 (2025). https://www.researchgate.net/publication/393213499_Cross-Border_Alternative_Dispute_Resolution_ADR_Opportunities_and_Challenges.

¹³ Omkar Anuroop & Kritika Krishnamurthy, Enforcement Challenges for International Consumer Disputes Resolved Through ADR in India, 5 Int’l J. on Consumer L. & Prac. art. 6 (2017); <https://repository.nls.ac.in/ijclp/vol5/iss1/6>.

provided a structural survey of the dispute resolution mechanisms in cross-border transactions, particularly highlighting how arbitration is the dominant method and enforceable globally under the New York Convention. This paper conducted a critical review of risks related to judicial interventions, the importance of interim measures, and the role of the Hague-Convention in the determination of jurisdiction. Although comprehensive in terms of the range of legal and enforceability issues discussed, the analysis regards arbitration over all other types of ADR processes, and even though mediation and ODR are becoming increasingly relevant in the global commerce environment, there is very limited engagement with them.¹⁴

Overall, all the above-mentioned literature supports the certainty of ADR in cross-border dispute resolution, but there are gaps in the coherence of legal frameworks and smaller exceptions for enforcement. More undertaking and work should be done regarding legal frameworks and contexts with ADR, in addition to stronger use of technological solutions. Evidence of these gaps is necessary to enhance the predictability and legitimacy of ADR in increasingly transnational contexts.

CHAPTER II

CONFLICT OF JURISDICTION IN CROSS-BORDER DISPUTE RESOLUTION

Cross-border transactions, whether involving trade, investment, joint ventures or mergers and acquisitions, have become central to modern commercial activity. Globalisation and technological progress have allowed businesses to expand internationally, thereby intensifying economic integration and fostering innovation.¹⁵ Yet the very nature of these transactions, comprising multiple jurisdictions, creates an environment where legal disputes are almost inevitable.¹⁶ While Alternative Dispute Resolution mechanisms such as arbitration and mediation are designed to offer neutrality and efficiency in resolving disputes, their effectiveness is more often than not undermined by disagreements surrounding jurisdiction. Parties to cross-border agreements must pilot a maze of conflicting legal systems, rules pertaining to procedures and judicial practices. The determination of the arbitral seat, the jurisdiction of domestic courts and the applicable law are not mere technicalities but rather

¹⁴ Alferez Desierto, D. 2009. "Dispute Resolution Mechanisms in Cross-Border Transactions"; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1485594.

¹⁵ Prof. Dr. P. Lakshmi, ADR in Cross-Border Transactions: International Perspectives and Challenges, in *ADR Strategies: Navigating Conflict Resolution in the Modern Legal World* 163 (Komal Vig & Ritu Gautam eds., Inkbound Publishers 2022).

¹⁶ Diane A. Desierto, *Dispute Resolution Mechanisms in Cross-Border Transactions* (Univ. of the Philippines Inst. of Int'l Legal Stud., SSRN Working Paper No. 1485594, 2009), <https://ssrn.com/abstract=1485594>.

directly mould the scope of the tribunal's authority and the enforceability of its decisions.¹⁷

Such a lack of uniformity has tangible consequences. Disputes regarding jurisdiction can delay proceedings, increase expenditures, and even result in parallel litigation across multiple states.¹⁸ For cross-border transactions, such outcomes erode the very advantages that ADR is meant to facilitate and promote, such as speed, predictability and finality.¹⁹ Instead of facilitating smoother commercial exchanges, ADR become inextricably entangled in procedural battles, undermining investor confidence and raising the risk profile of cross-border transactions.²⁰

Therefore, while cross-border dealings are crucial for economic growth and global cooperation, their success is closely tied to the reliability of dispute resolution mechanisms. Without greater clarity and harmonisation on jurisdictional issues, ADR cannot fully deliver on its promise of efficient resolution, leaving international commerce vulnerable to legal uncertainty and protracted conflict.²¹ Cross-border commercial activity carries inherent risks such as political instability, currency volatility and shifting regulatory landscapes.²² While these risks can be managed through contractual safeguards and compliance strategies, disputes remain inevitable. In such circumstances, parties often resort to ADR as a preferred mechanism, due to its promise of neutrality and efficiency.²³ Uncertainty in jurisdiction can create expensive preliminary battles and diminish the efficiency of ADR mechanisms. Closely related is the question of choice of law, which governs the substantive rights and obligations of the parties and shapes their expectations about how the contract will be interpreted and enforced.²⁴

¹⁷ Disortho S.A.S. v. Meril Life Sciences Private Ltd., Arb. Pet. No. 48 of 2023, (S. Ct. India, Mar. 18, 2025) 2025 INSC 352.

¹⁸ Emma Refuveille, *International Dispute Resolution: When and Why Should Parties Resort to Parallel Proceedings*, 4 I.T.A. Rev. 2 (2022), <https://itainreview.org/articles/2022/vol4/issue2/when-and-why-should-parties-resort-to-parallel-proceedings.html>.

¹⁹ Prof. Dr. P. Lakshmi, *ADR in Cross-Border Transactions: International Perspectives and Challenges*, in *ADR Strategies: Navigating Conflict Resolution in the Modern Legal World* 163 (Komal Vig & Ritu Gautam eds., Inkbound Publishers 2022).

²⁰ Sanaullah Aman, *Cross-Border Alternative Dispute Resolution (ADR): Opportunities and Challenges*, 14 J. Asian Dev. Stud. 1113 (2025), <https://doi.org/10.62345/jads.2025.14.2.8>.

²¹ Adetoyese Latilo et al., *Managing Cross-Border Disputes in Telecommunications: A Case Study Approach*, 6 Int'l J. Mgmt. & Entrep. Research 2708 (Aug. 2024), <https://doi.org/10.51594/ijmer.v6i8.141>.

²² Diane A. Desierto, *Dispute Resolution Mechanisms in Cross-Border Transactions* (Univ. of the Philippines Inst. of Int'l Legal Stud., SSRN Working Paper No. 1485594, 2009), <https://ssrn.com/abstract=1485594>.

²³ Tarcisio Gazzini, *International Investment Law and the Pandemic: The Need for a Reset?* (Univ. of E. Anglia Sch. of L., SSRN Working Paper No. 3892022, 2021), <https://ssrn.com/abstract=3892022>.

²⁴ Diane A. Desierto, *Dispute Resolution Mechanisms in Cross-Border Transactions* (Univ. of the Philippines Inst. of Int'l Legal Stud., SSRN Working Paper No. 1485594, 2009), <https://ssrn.com/abstract=1485594>.

India's Position on Jurisdictional Challenges

Judicial interpretations of arbitration law have profoundly moulded the rich tapestry of cross-border dispute resolution in India. A turning point came with the Supreme Court's decision in *"Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO, 2012)"*²⁵ where the Court held that the Arbitration and Conciliation Act of 1996²⁶ does not apply to arbitrations seated outside India.²⁷ Previously in the *"Bhatia International case"*²⁸, a three-judge bench held that the provisions of Part I of the Act would extend to all international commercial arbitrations, irrespective of whether the seat was within the territory of India or beyond it, unless the parties had expressly or impliedly excluded its application. The Court's reasoning turned on its reading of §2(2) of the Act²⁹. While this section was modelled on Article 1(2) of the UNCITRAL Model Law³⁰, the Indian legislature had omitted the word "only" after the phrase "where the place of arbitration is in India". The Court treated this omission as deliberate thereby inferring that Parliament intended Part I to apply not just to arbitrations seated in India, but also to those seated overseas, unless excluded by agreement.³¹

The ruling in the BALCO case³² emphasised the principle of party autonomy in choosing the seat of arbitration, restricting and confining the jurisdiction of Indian courts when foreign seats are involved.³³ The Supreme Court clarified that the omission of the word "only" from §2(2) of the *"Arbitration and Conciliation Act, 1996"*³⁴ unlike *"Article 1(2) of the UNCITRAL Model Law"*³⁵ did not alter the fundamental principle of territoriality. The Court emphasized that jurisdiction lies exclusively with the courts of the country where the seat of arbitration is located.³⁶ Accordingly, it ruled that Part I and Part II of the Act function independently.

²⁵ *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552.

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

²⁷ *Union of India v. Reliance Industries Ltd. & Ors.*, (2015) 10 SCC 213

²⁸ *Bhatia International v. Bulk Trading SA*, (2002) 4 SCC 105.

²⁹ Arbitration and Conciliation Act, 1996, No. 26, §2(2), Acts of Parliament, 1996 (India).

³⁰ UNCITRAL Model Law on International Commercial Arbitration, G.A. Res. 40/72, art. 1(2), U.N. Doc. A/40/17, annex I (June 21, 1985).

³¹ *Venture Global Engg. V. Satyam Computer Services Ltd.*, (2008) 4 SCC 190; *Videocon Industries Ltd. v. Union of India*, (2011) 6 SCC 161; *Yograj Infrastructure Ltd. v. Ssang Yong Engg. and Construction Co.*, (2011) 9 SCC 735.

³² *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552.

³³ *PASL Wind Solutions Private Ltd. v. GE Power Conversion India Pvt. Ltd.*, AIR ONLINE 2021 SC 213.

³⁴ Arbitration and Conciliation Act, 1996, No. 26, §2(2), Acts of Parliament, 1996 (India).

³⁵ UNCITRAL Model Law on International Commercial Arbitration, G.A. Res. 40/72, art. 1(2), U.N. Doc. A/40/17, annex I (June 21, 1985).

³⁶ *Versatile Construction v. Tata Motors Finance Ltd.*, (2025) ibclaw.in 75 HC; see also: *Roger Shashoua v. Mukesh Sharma*, AIR 2017 SUPREME COURT 3166; *BGS SGS SOMA JV v. NHPC Ltd.*, (2020) 4 SCC 234; *Samsung India Electronics Pvt. Ltd. v. Enn Enn Corp Ltd.*, (2023) 07 DEL CK 0024; *Mankastu Impex Pvt. Ltd.*

Although celebrated and revered for aligning India with global arbitration norms, BALCO also created practical difficulties for Indian parties to cross-border transactions who, by virtue of a foreign seat, were left without access to domestic interim relief or supportive judicial measures.³⁷ Enforcement issues further complicate the landscape. In *“Cairn Energy v. Government of India”*³⁸ The enforcement of an arbitral award tested India’s obligations under the New York Convention.³⁹ The case demonstrated the delicate balance between upholding international commitments and projecting claims of state sovereignty.⁴⁰ While the tribunal’s award was recognised, the dispute highlighted how jurisdictional questions intersect with enforcement, especially where states invoke doctrines such as sovereign immunity.⁴¹

The persistent reliance on the public policy exception adds another dimension to jurisdictional challenges. In *“ONGC v. Saw Pipes”*⁴² The Supreme Court expanded the scope of “public policy” to include “patent illegality”, enabling courts to set aside awards on grounds for broader than envisaged internationally.⁴³ This expansive interpretation weakened the finality of arbitration by opening the door to frequent challenges.

International perspectives on jurisdictional challenges

At the very outset, cross-border commercial transactions are exposed to the risk of disputes between the contracting parties. Various mechanisms of dispute resolution, such as arbitration, mediation or even litigation, offer different advantages depending on the stage of conflict and the particular requirements of the transaction. Yet no single contractual framework can adequately anticipate every possible contingency in international commerce. Interim measures are another critical element, as they safeguard the contractual relationship by preserving the status quo until a final resolution is reached. Perhaps the most decisive factor, however, is

v. Airsual Ltd., 2020 SCC Online SC 301; *Enercon (India) Ltd. v. Enercon GmbH*, AIR 2014 SUPREME COURT 3152.

³⁷ J. Martin Hunter & Ranamit Banerjee, *Bhatia, BALCO and Beyond: One Step Forward, Two Steps Back?*, 24 Nat’l L. Sch. India Rev. 1 (2013).

³⁸ *Cairn Energy PLC & Cairn UK Holdings Ltd. v. Republic of India* (PCA Case No. 2016-7), Final Award (Dec. 21, 2020), Permanent Ct. Arb.

³⁹ Naveeth Ahamed M., *Enforceability of a Foreign Arbitration Award in India: Understanding the Conundrum of Public Policy*, 7 Int’l J. L. Mgmt. & Human. 290 (2024), <https://doi.org/10.1000/IJLMH.118526>.

⁴⁰ *Breaking Down Borders: How ADR Can Bridge Divide in Trans-Border Disputes*, Prachi Saraf, Indian Journal of Law & Legal Research (Vol. V, Iss. I, Mar. 23, 2023), <https://www.ijlra.com/post/breaking-down-borders-how-adr-can-bridge-divide-in-trans-border-disputes>.

⁴¹ *Ibid.*

⁴² *Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd.*, Civil Appeal No. 7419 of 2001, [2003] 3 S.C.R. 691 (India Apr. 17, 2003).

⁴³ *Gayatri Balasamy v. M/s. ISG Novasoft Technologies Ltd.*, Civil Appeal @ S.L.P.(C) Nos. 15336-15337 of 2021, 2025 INSC 605 (S. Ct. India Apr. 30, 2025).

enforcement. The enforceability of outcomes remains the linchpin of cross-border dispute resolution and uncertainty in this area directly undermines the parties' confidence in ADR. In contrast to domestic legal systems, where jurisdictional authority is clearly circumscribed within territorial boundaries, the allocation of adjudicatory power in international law is far less rigid and derives from a diffuse interplay between States, non-State actors and international institutions.

Jurisdiction in the international plane is thus exercised across overlapping horizontal and vertical competences, frequently resulting in convergence but at times generating conflict.⁴⁴ The Permanent Court of International Justice in the "*Lotus Case*"⁴⁵ articulated the principle that, absent a specific treaty regime, there exists no general prohibition on a State exercising jurisdiction, provided it does not contravene international law.⁴⁶ This formulation highlighted the concurrent nature of jurisdiction in the international legal order, where multiple States may assert authority over the same conduct or dispute.⁴⁷

Although it is not a formal source of international law, §421 of the Restatement (Third) of the Foreign Relations Law of the United States has acquired persuasive significance.⁴⁸ It advances a reasonableness standard in adjudicatory jurisdiction, urging States to assess whether the exercise of their authority is appropriate in light of competing claims and the interests of the international community.⁴⁹ This standard offers a normative framework for mediating jurisdictional conflicts in the absence of uniform rules and has informed both academic commentary and judicial reasoning in the transnational context.

Where parties have expressly designated an institution, individual or other entity as mediator or neutral third party, jurisdictional objections may nonetheless be raised indirectly by impugning the underlying contract on conventional grounds of invalidity such as incapacity,

⁴⁴ Rosalyn Higgins, *Problems And Process: International Law And How We Use It* (1995).

⁴⁵ *The Case of the S.S. Lotus* (France v. Turkey), 1927 P.C.I.J. (ser. A) No. 10.

⁴⁶ Diane A. Desierto, *Dispute Resolution Mechanisms in Cross-Border Transactions*, (Sept. 25, 2009) (unpublished manuscript), <https://ssrn.com/abstract=1485594>.

⁴⁷ Agrud Partners, *Jurisdiction in International Law*, AGRUD PARTNERS, <https://agrudpartners.com/jurisdiction-in-international-law/>.

⁴⁸ *Case Concerning the Continental Shelf* (Libyan Arab Jamahiriya v. Malta), 1985 I.C.J. Pleadings 13 (June 3).

⁴⁹ Cedric Ryngaert, *A Reasonable Exercise of Jurisdiction*, in *Jurisdiction in International Law* 113 (Oxford Monographs in International Law, Oxford Univ. Press 2008; Oxford Acad., online ed'n Jan. 1 2009), <https://doi.org/10.1093/acprof:oso/9780199544714.003.0005>.

unconscionability or lack of genuine consent.⁵⁰ The “*ICC ADR Rules of 2001*” provide a more straightforward avenue wherein the authority of a neutral may be terminated either through the procedural safeguards enumerated therein for challenging an appointment or failing that, by terminating the process altogether pursuant to the grounds identified in the Rules.⁵¹ In the United States, “*§3 of the Federal Arbitration Act*”⁵² and “*§2 of the Uniform Arbitration Act*”⁵³ both recognise the competence of courts to examine whether a valid arbitration agreement exists. The U.S. Supreme Court in “*Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*”⁵⁴ made clear that “*the first task of a court asked to compel arbitration is to determine whether the parties agreed to arbitrate that dispute*”.

Jurisdictional challenges may also arise in the context of exclusive choice of court agreements. At the recognition and enforcement stage, courts are entitled to review the validity of the underlying choice of court clause.⁵⁵ The “*2005 Hague Convention on Choice of Court Agreements*” provides explicit guidance in this regard as it defines the scope of judgments subject to recognition and delineates those excluded from its ambit.⁵⁶ The “*United Kingdom Arbitration Act 1996*”⁵⁷ embodies the principle of party autonomy and limits the supervisory jurisdiction of domestic courts over foreign-seated arbitrations. The legislative framework thus ensures that the arbitral tribunals retain primacy in determining jurisdictional questions subject only to narrow grounds of review.

At the supranational level, the European Union has advanced cross-border dispute resolution through harmonised rules on jurisdiction and recognition of judgments under the “*Brussels I Regulation (recast)*”⁵⁸. Within the EU, this regulatory framework provides for predictability and uniformity, thereby reducing procedural conflicts among member states. Nevertheless,

⁵⁰ Nausheen Siddiqui, *Alternative Dispute Resolution (ADR) in Commercial Disputes: Effectiveness and Challenges* (unpublished manuscript, Mar. 28, 2025), SSRN Paper No. 5197398, <https://ssrn.com/abstract=5197398>.

⁵¹ Int’l Chamber of Commerce, ADR Rules (2001), <https://iccwbo.org/dispute-resolution-services/mediation/adr-rules/>.

⁵² 9 U.S.C. § 3 (2022).

⁵³ Revised Unif. Arbitration Act § 2 (Unif. L. Comm’n 2000).

⁵⁴ *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614 (1985).

⁵⁵ Diane A. Desierto, *Dispute Resolution Mechanisms in Cross-Border Transactions*, (Sept. 25, 2009) (unpublished manuscript), <https://ssrn.com/abstract=1485594>.

⁵⁶ Hague Convention on Choice of Court Agreements, June 30, 2005, 44 I.L.M. 1294.

⁵⁷ Arbitration Act 1996, c. 23 (U.K.).

⁵⁸ Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (recast), 2012 O.J. (L 351) 1.

where one or more parties are situated outside the Union, the application of these rules is mediated by principles of private international law, requiring courts to navigate complex jurisdictional conflicts with caution.⁵⁹

CHAPTER III

THE EFFECTIVENESS OF EXISTING INTERNATIONAL FRAMEWORKS IN ENSURING ADR OUTCOMES

Globalisation of trade has increased the frequency of cross-border disputes, necessitating the use of trustworthy, unbiased, and legally enforceable dispute resolution processes. International players favour ADR, especially arbitration and mediation, because domestic court litigation typically involves jurisdictional difficulties, costs, and delays. One could argue that the ability to guarantee that results are enforceable internationally is just as important to the efficacy of ADR as the consent procedure. Three significant international agreements about the rule of law are the “Singapore Convention on Mediation (2019)”, the “ICSID Convention (1965)”, and the “New York Convention on the recognition and enforcement of foreign Arbitral Awards (1958)”.

This paper evaluates the contentions for effectiveness in guaranteeing the enforceability of ADR outcomes, identifies the ongoing challenges to ensure efficacy, and suggests reforms to enhance dispute resolution on a global scale.

The New York Convention of 1958

The leading international instrument for the private settlement of disputes is the “New York Convention”, adopted by more than 170 states.⁶⁰ It obliges contracting states to recognize arbitration agreements and the recognition and enforcement of foreign arbitral awards, subject to limited defenses, like incapacity, procedural irregularities, and public policy.⁶¹

In terms of data, enforcement under the New York Convention (NYC) is reported to be successful in approximately 90 percent globally, according to surveys.⁶² This is the main reason

⁵⁹ John F. Coyle & Christopher R. Drahozal, *An Empirical Study of Dispute Resolution Clauses in International Supply Contracts*, 52 Vand. J. Transnat'l L. 323 (2019).

⁶⁰ UNCITRAL, Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, <https://uncitral.un.org>.

⁶¹ New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958); art. V.

⁶² Sanaullah Aman, Cross-Border ADR: Opportunities and Challenges, 14 J. Asian Dev. Stud. 1113, 1115 (2025).

corporate actors favour arbitration over any other form of remedy, because it is enforceable as a result of the NYC. The survey of 2018 by Queen Mary University of London asked whether the choice of resolution is based simply on enforceability globally. 97 percent of respondents preferred arbitration, where the courts can enforce the outcome, rather than mediation or litigation.⁶³

Nevertheless, the efficacy of the NYC is not absolute. National Courts sometimes broaden the definition of the public policy exception in Article V(2)(b). The Supreme Court of India in *ONGC vs. Saw Pipes Ltd.* interpreted ‘public policy’ to include ‘patent illegality’, resulting in an environment of significant uncertainty about enforcement.⁶⁴ This broad definition gave rise to multiple challenges to awards, denying finality to the award process. Later in the case of “*Shri Lal Mahal Ltd. vs. Progetto Grano SPA (2014)*”, the hon’ble court narrowed the test and held that ‘public policy’ should be limited to matters involving fundamental principles of justice and morality.⁶⁵ Also, the Supreme Court of India followed a similar path in “*Balco vs. Kaiser Aluminium Tech. Servs. Inc.*” holding that part I of the “Arbitration and Conciliation Act” did not apply to arbitrations seated abroad, solidifying India’s pro-enforcement stance.⁶⁶ In a parallel vein, the U.S. Supreme Court rejected substantive grounds for vacatur beyond those enumerated in the federal Arbitration Act and the NYC in *Hall Street Association vs. Mattel, Inc.*, which developed jurisprudence rejecting the ‘manifest disregard of law’ doctrine.⁶⁷ In the U.K., *Dallah Real Estate vs. Pakistan* exemplifies judicial oversight of the existence of an arbitration agreement before enforcement, not being a means of verification or surveillance on awards.⁶⁸ Although NYC has a strong global enforcement mechanism, its consistency may be affected by different countries’ interpretations of exceptions, such as public policy.

The Singapore Convention on Mediation of 2019

Mediation, unlike arbitration, has not had a worldwide mechanism for enforcement or a transnational enforcement mechanism. Parties would seek to enforce mediated agreements as

⁶³ Queen Mary Univ. of London, 2018 International Arbitration Survey: The Evolution of International Arbitration (2018).

⁶⁴ *ONGC v. Saw Pipes Ltd.*, AIR 2003 SUPREME COURT 2629.

⁶⁵ *Shri Lal Mahal Ltd. v. Progetto Grano SPA*, AIR ONLINE 2013 SC 191.

⁶⁶ *Bharat Aluminium Co. v. Kaiser Aluminium Tech. Servs. Inc.*, AIR 2016 SUPREME COURT 1285.

⁶⁷ *Hall Street Assocs. v. Mattel, Inc.*...552 U.S. 576 (2008).

⁶⁸ *Dallah Real Estate & Tourism Holding Co. v. Ministry of Religious Affairs of Pakistan*, [2010] UKSC 46.

contracts, requiring new litigation in foreign courts.⁶⁹ This gap and reliance on new litigation outside of mediation dissuaded the parties to an international mediating process from relying on mediation. However, efficiency and rational value are often furthered with mediation.

The “Singapore Convention on Mediation (SCM)”, adopted in 2019, aims to fill that gap and provide a mechanism for direct enforcement of international Mediated Settlement Agreements (IMSAs). Under the SCM, a party can apply directly to a competent authority in a signatory state to enforce a settlement agreement, akin to the way NYC operates on arbitral awards.⁷⁰

The SCM is considered a ‘game changer’ for mediation. Although the SCM has limitations on effectiveness as early as 2022, only 55 states had signed it, with less than 15 ratifications of the SCM by the Council of the European Union (EU) member states, which means that the SCM is not universal.⁷¹ The ability of an international resolution on a problem does not mean that a party in that problem will not legitimately seek some appeal outside of the mediation process. Additionally, the SCM (Article 5) identifies several reasons a state may refuse protocol status, including incapacity, fraud, mediator standards, and public policy. Each of those circumstances provides a rationale for further judicial review and delay.⁷²

While these limitations provide obstacles, the SCM development becomes a very significant development. It allows mediation to be considered legitimately next to arbitration, reducing reliance on contract enforcement and litigation. Few studies imply that mediation costs 80 to 90 per cent less than arbitration,⁷³ and with enforcement under SCM, may spur mediation usage where it is otherwise used very sparingly. Absent a general ratification and similar use of the SCM, it can be argued that its potential will not be realized or if used, will be diminished.

⁶⁹ Angshuman Hazarika, Ensuring Enforcement of International Mediated Settlement Agreements, 2 NUJS J. Disp. Resol. 1, 16 (2022). <https://journals.nujs.edu/index.php/jodr/article/view/98>.

⁷⁰ Timothy Schnabel. 2018. THE SINGAPORE CONVENTION ON MEDIATION: A FRAMEWORK FOR THE CROSS-BORDER RECOGNITION AND ENFORCEMENT OF MEDIATED SETTLEMENTS. <https://www.ilsa.org/ILW/2018/CLE/Panel%20%2351%20-%20SSRN%20Schnabel.pdf>.

⁷¹ Angshuman Hazarika, Ensuring Enforcement of International Mediated Settlement Agreements, 2 NUJS J. Disp. Resol. 1, 16 (2022).

⁷² United Nations Convention on International Settlement Agreements Resulting from Mediation; Article 5; https://uncitral.un.org/sites/uncitral.un.org/files/singapore_convention_eng.pdf.

⁷³ Timothy Martin, International Mediation: An Evolving Market, in *Contemporary Issues in Int'l Arbitration and Mediation: The Fordham Papers* 404 (2011). <https://timmartin.ca/wp-content/uploads/2021/12/Int-Mediation-Evolving-Market.pdf>.

The ICSID Convention of 1966

The ICSID Convention confronts domestic courts with a specialised regime of investor-state arbitration, via the World Bank.⁷⁴ Unlike the “New York Convention, which allows national courts to review awards subject to limited exceptions”, ICSID awards are protected from domestic judicial actions. Article 54 requires contracting states to recognize ICSID awards ‘as if it were a final decision’ of their courts.⁷⁵ Annulment from ICSID can happen only from the internal ad-hoc committees of ICSID, rather than national courts.⁷⁶

This approach places investor confidence in a positive position, especially in politically sensitive disputes. But as investors have argued, the framework for their protection is not without limitation. In *AMCO Asia Corp. vs. Indonesia*, annulment proceedings highlighted issues of technical errors and material violations of the Convention’s flexible scheme, representing the unavoidable tension ICSID faces in taking a decision.⁷⁷ Also, in *BG Group vs. Argentina*, the ultimate arbitral tribunal upheld the award, eventually stating that, irrespective of Argentina’s breach of the convention, it does not allow investors to exhaust local remedies, and it recognized the supremacy of arbitration in investment disputes.⁷⁸

However, sovereign resistance is still a topical issue. Argentina, as well as Venezuela and Russia, have ducked, as well as delayed, compliance with ICSID awards based on sovereign immunity and even financial crises.⁷⁹ Nations regularly cite issues of sovereign immunity in their compliance with ICSID awards, but the only remedial approaches available are either through diplomatic action or superior trade positions. Otherwise, the convention’s framework does not present coercive enforcement mechanisms for compliance. Therefore, in investor-state conflicts, ICSID provides the strongest legal protection for arbitral rulings. But it is still susceptible to the political economy of compliance.

With regards, the effectiveness of international frameworks in ensuring ADR outcomes, this study proposes the following recommendations:

⁷⁴ Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, Mar. 18, 1965, 575 U.N.T.S. 159. https://icsid.worldbank.org/sites/default/files/ICSID_Convention_EN.pdf.

⁷⁵ ICSID CONVENTION, REGULATIONS AND RULES. Article 54.

⁷⁶ ICSID CONVENTION, REGULATIONS AND RULES. Article 52.

⁷⁷ *AMCO Asia Corp. v. Republic of Indonesia*, ICSID Case No. ARB/81/1.

⁷⁸ *BG Group PLC v. Republic of Argentina*, 572 U.S. 25 (2014).

⁷⁹ Angshuman Hazarika, *Ensuring Enforcement of International Mediated Settlement Agreements*, 2 NUJS J. Disp. Resol. 1, 16 (2022).

1. **Limiting Public Policy Exceptions** – States should align their implementation of public policy to limit it to fundamental principles of justice and morality. India's movement in the Shri Lal Mahal case is a very good example of the advantages of this approach.⁸⁰
2. **Encouraging ratifications of the SCM** – The major economies, in particular the EU, should ratify the convention to give mediation a real global enforcement framework.⁸¹
3. **Enhancing compliance in Investor-State Arbitration** – Multilateral organizations should put trade or financial sanctions on unwilling compliance with ICSID awards, just like the WTO (World Trade Organization) compliance measures.⁸²
4. **Enhancing scope for Consumer Disputes** – States should implement consumer ADR in international instruments, building on the EU's Online Dispute Resolution (ODR) experience and values, so that small claims become adequately enforceable internationally.⁸³

CHAPTER IV

THE RISE OF DEVELOPMENTS LIKE ONLINE DISPUTE RESOLUTION IN OVERCOMING THE CHALLENGES ASSOCIATED WITH JURISDICTION AND ENFORCEABILITY

Dispute Resolution has traditionally seen challenges of jurisdiction and enforcement. In the context of cross-border disputes, these challenges are even more acute. Litigation in the traditional sense suffers from delay, excessive cost, and procedural problems such as service of process, deciding the proper forum, and the complications of enforcing foreign judgments across various jurisdictions⁸⁴. While, the process of Arbitration has reduced some of these problems by providing a neutral platform and relying on international conventions such as the **New York Convention**⁸⁵, it is often criticized for its formality, cost, and inaccessibility to disputes of a smaller nature⁸⁶.

⁸⁰ Shri Lal Mahal Ltd. v. Progetto Grano SPA, AIR ONLINE 2013 SC 191.

⁸¹ Angshuman Hazarika, Ensuring Enforcement of International Mediated Settlement Agreements, 2 NUJS J. Disp. Resol. 1, 16 (2022).

⁸² Sanaullah Aman, Cross-Border ADR: Opportunities and Challenges, 14 J. Asian Dev. Stud. 1113, 1115 (2025). https://www.researchgate.net/publication/393213499_Cross-Border_Alternative_Dispute_Resolution_ADR_Opportunities_and_Challenges

⁸³ Omkar Anuroop & Kritika Krishnamurthy, Enforcement Challenges for International Consumer Disputes Resolved Through ADR in India, 5 Int'l J. on Consumer L. & Prac. art. 6 (2017). <https://repository.nls.ac.in/ijclp/vol5/iss1/6/>

⁸⁴ Shashank Shekhar & Jyotsna Singh, *Comparative Analysis of Alternative Dispute Resolution Mechanism in India and U.K.*, 11 International Journal of Research and Analysis Review (IJRAR) 124.

⁸⁵ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. V, June 10 1958, 330 UNTS 38.

⁸⁶ "The Power of Choice: How Flexibility in Arbitration Drives Better Outcomes," JAMS ADR Insights, Mar. 19, 2025, available at <https://www.jamsadr.com/blog/2025/the-power-of-choice-how-flexibility-in-arbitration-drives-better-outcomes>

In this regard, ODR has emerged as a transformative mechanism. ODR combines digital technologies with traditional dispute resolution modes of arbitration, mediation, and conciliation, in order to reduce costs, increase access, and expedite processes⁸⁷. ODR directly addresses jurisdictional and enforcement barriers that have been previously undermined access to justice. The importance of ODR has grown significantly, post the COVID-19 pandemic, as the courts around the world, including India, transitioned to virtual hearings, effectively normalizing technology-driven dispute resolution⁸⁸.

ODR and the Reduction of Jurisdictional Barriers

The most recurring problem in cross-border and domestic disputes is the determination of proper jurisdiction. Parties to a dispute often engage in the process of “Forum Shopping” to have disputes heard by favorable or inconvenient courts, thereby causing unnecessary costs and delays⁸⁹. ODR helps to reduce this problem by conducting the dispute resolution process on a digital space where parties can participate from any location of their choice, thereby creating procedural equality⁹⁰.

Another component of jurisdiction is related to consent as many digital platforms include ODR clauses within their terms of service, requiring users to agree to a virtual mediation or arbitration process⁹¹. These types of agreements are generally held as binding, as seen in the case of “*Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*” Here, the Supreme Court of India, affirmed the validity of an arbitration agreement done via electronic communication, establishing that an enforceable arbitration agreement can exist even without a formally signed physical contract⁹².

Jurisdictional barriers are also reduced in the aspect of service of process. In the conventional context, the service of notices from one jurisdiction to another in the international context

⁸⁷ Karolina Mania, *Online Dispute Resolution: The Future of Justice*, 1 Int'l Comp. Jurisp. 76 (2015) <https://doi.org/10.1016/j.icj.2015.10.006>

⁸⁸ Tania Sourdin, Bin Li & Donna Marie McNamara, *Court Innovations and Access to Justice in Times of Crisis*, 9 Health Pol'y & Tech. 447 (Dec. 2020) <https://pmc.ncbi.nlm.nih.gov/articles/PMC7456584/>

⁸⁹ Franco Ferrari (ed.), *Forum Shopping in the International Commercial Arbitration Context* (Sellier European Law Publishers 2013) <https://transnational.law.nyu.edu/wp-content/uploads/2013/10/Forum-Shopping-in-the-International-Commercial-Arbitration-Context-with-Index.pdf>

⁹⁰ Brian Chacha Sammy, *The Evolution and Effectiveness of Online Dispute Resolution (ODR) in Resolving E-Commerce Disputes*, March 2024 <http://dx.doi.org/10.13140/RG.2.2.12595.64806>

⁹¹ Aaron Hall, *Online Dispute Resolution Clauses in SaaS Agreements*, Attorney Aaron Hall Blog (Nov. 2025) <https://aaronhall.com/online-dispute-resolution-clauses-in-saas-agreements/>

⁹² *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*, (2010) 1 SCC 38 (India).

requires extensive procedures under conventions such as the **Hague Service Convention**⁹³. ODR, on the other hand, uses authenticated electronic communication, digital timestamps, and platform-generated records. This type of electronic service has been recognised as legitimate in *In Re: Cognizance for Extension of Limitation*, where the Supreme Court permitted service of notice via email and WhatsApp during the COVID-19 pandemic⁹⁴. This recognition is in accordance with the reliance of ODR on virtual communication and provides judicial reinforcement for its procedures.

The Enforcement of ODR Outcomes

In addition to jurisdiction, enforcement has also been a major concern in the dispute resolution process. In traditional litigation, there is a major challenge of having judgments recognised and enforced abroad, specifically since reciprocity is absent⁹⁵. This situation was improved with the Arbitration with the **New York Convention**, which recognised and enforced arbitral awards in signatory states, subject to certain exceptions⁹⁶.

In such situations, ODR fits perfectly within this framework. Any awards or settlements provided via virtual arbitration are generally enforceable under the aforementioned Convention, since there is no distinction made between online and offline arbitration proceedings⁹⁷. As long as the basic procedures, i.e. adequate notice, opportunity to present case, and a valid agreement, are followed by the parties, outcomes from ODR will be considered binding in nature⁹⁸.

Furthermore, ODR also introduces unique enforcement innovations. Many ODR platforms, especially in e-commerce and fintech, combine solutions directly into their systems⁹⁹. For example, escrow mechanisms and automated payment gateways ensure that money is released

⁹³ Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163.

⁹⁴ *In Re: Cognizance for Extension of Limitation*, (2020) 19 SCC 10 (India).

⁹⁵ Shashank Shekhar & Jyotsna Singh, *Comparative Analysis of Alternative Dispute Resolution Mechanism in India and U.K.*, 11 International Journal of Research and Analysis Review (IJRAR) 124.

⁹⁶ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. V, June 10 1958, 330 UNTS 38.

⁹⁷ Dewi Sulistianingsih, Alviona Anggita Rante Lembang, Yuli Prasetyo Adhi & Muchammad Shidqon Prabowo, *Online Dispute Resolution: Does the System Actually Enhance the Mediation Framework?*, 9 *Cogent Soc. Scis.* 2206348 (2023) <https://www.tandfonline.com/doi/full/10.1080/23311886.2023.2206348#d1e194>

⁹⁸ American Bar Association, *Online Dispute Resolution: Visualization Report* (2024) <https://www.americanbar.org/content/dam/aba/administrative/center-for-innovation/odrvisualizationreport.pdf>

⁹⁹ Brian Chacha Sammy, *The Evolution and Effectiveness of Online Dispute Resolution (ODR) in Resolving E-Commerce Disputes*, March 2024 <http://dx.doi.org/10.13140/RG.2.2.12595.64806>

or refunded as soon as disputes are resolved, which surpasses traditional enforcement completely, providing effective relief to the parties in a dispute of small value, where the cost of litigation would outweigh the claim¹⁰⁰.

The Judicial and Practical Limitations of ODR

Although ODR has significant strengths, it also has certain limitations. The major limitation of ODR is arbitrability. It has been emphasized that certain disputes are non-arbitrable and will fall exclusively within statutory tribunals or courts. “In the case of *Anupam Mittal v. Westbridge Ventures II*, the Singapore Court of Appeal held that claims of Shareholder Oppression and Mismanagement under the **Companies Act, 2013**¹⁰¹, are non-arbitrable as they are reserved for the NCLT¹⁰²”. This principle also applies to ODR as parties cannot bypass statutory tribunals by resorting to online arbitration, mediation, or conciliation. In India, insolvency, consumer complaints, and criminal cases are beyond the scope of ADR and thus ODR¹⁰³.

Another limitation of ODR is that of due process. While ODR is convenient in nature, it must ensure that the principles of natural justice are upheld. Hurdles may arise in cases where a party to the dispute lacks access to internet connection, suffers from digital illiteracy, or faces language barriers. In India, these issues are mainly prevalent due to the wide digital division between rural and urban populations¹⁰⁴. This issue, however, is addressed under “**Section 34 of the Arbitration and Conciliation Act, 1996**¹⁰⁵”, where an arbitral award may be challenged for denial of opportunity to present a case.

Another major challenge is that of Cybersecurity and Data Protection. Since ODR platforms deal with confidential information, risks of hacking, unauthorized third-party access, etc. which

¹⁰⁰ Anisha Bano & Rahul D. Chouhan, *The Evolution of Arbitration in the Digital Era: Opportunities and Challenges*, 7 Int'l J. Multidisci. Res. (IJFMR) 1 (Vol. 7, Iss. 3, May-June 2025) <https://www.ijfmr.com/papers/2025/3/44496.pdf>

¹⁰¹ Companies Act, 2013, No. 18, Acts of Parliament (2013) (India).

¹⁰² *Anupam Mittal v. Westbridge Ventures II Investment Holdings*, [2023] SGCA 1.

¹⁰³ Gururaj Devarhubli & Bushra Sarfaraj Patel, *The Arbitrability Of The Subject-Matter Of Disputes In Arbitration*, 11 Int'l J. Creative Res. Thoughts (IJCRT) 3-issue 1 (Mar. 2023) <https://ijert.org/papers/IJCRT2303288.pdf>

¹⁰⁴ Abhay Jha, *The Role of Online Dispute Resolution in the Growth of Mediation: A Comprehensive Analysis*, 1 Int'l Adv. J. Multidiscip. Res. 11 (Vol. 1, Issue 1 Dec. 2024) <https://www.iajmr.org/paper/vol1-issue1/01011122.pdf>

¹⁰⁵ Arbitration and Conciliation Act, 1996, §.34, No. 26, Acts of Parliament (1996) (India).

undermine the trust of the parties to a dispute¹⁰⁶. The enactment of the **Digital Personal Data Protection Act, 2023**¹⁰⁷, mandates that ODR platforms in India, must now safeguard personal data, and non-compliance with the same would compromise legal validity and user confidence of the platform

ODR in the Indian Context

In India, ODR has gained momentum through judicial recognition in addition to legislative and policy initiatives. “The **Arbitration and Conciliation Act, 1996**¹⁰⁸, enables the enforcement of foreign arbitral awards, including those given through ODR.” The **Consumer Protection Act, 2019**¹⁰⁹, further inculcates the idea of digitalized dispute resolution through the establishment of Consumer Mediation Cells, which can function in virtual mode¹¹⁰.

Judicial decisions have also indicated support for digital processes. In addition to the precedents laid down in *Trimex International*¹¹¹ and *Cognizance for Extension of Limitation*¹¹², several High Courts have encouraged e-filing, video conferencing, and online hearings during the pandemic. Such practices have created a conducive environment ODR to thrive by normalizing dispute resolution driven by technology¹¹³.

With respect to policies, the report of *NITI Aayog on “Designing the Future of Dispute Resolution: The ODR Policy Plan for India*¹¹⁴”, provides an extensive structure for the usage of ODR in commercial and consumer disputes. The report highlighted scalability, adoption by institutions, and combining the ODR with existing legal frameworks. Private platforms such as SAMA, Presolv360, and CAMP, have collaborated with banks, NBFCs, and Fintech bodies, to resolve a large number of disputes virtually, which shows ODR’s capacity to handle a large

¹⁰⁶ Abhay Jha, *The Role of Online Dispute Resolution in the Growth of Mediation: A Comprehensive Analysis*, 1 Int’l Adv. J. Multidiscip. Res. 11 (Vol. 1, Issue 1 Dec. 2024) <https://www.iajmr.org/paper/vol1-issue1/01011122.pdf>

¹⁰⁷ Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament (2023) (India).

¹⁰⁸ Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament (1996) (India).

¹⁰⁹ Consumer Protection Act, 2019, No. 35, Acts of Parliament (2019) (India).

¹¹⁰ B. Usha Rani, *The Role of Mediation and Its Working Under Consumer Protection Act 2019*, 2 Int’l Journal of Research in Academic World 44 (Vol. 2, Issue 4, Apr. 2023), <https://academicjournal.ijraw.com/media/post/IJRAW-2-4-19.1.pdf>

¹¹¹ *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.*, (2010) 1 SCC 38 (India).

¹¹² *In Re: Cognizance for Extension of Limitation*, (2020) 19 SCC 10 (India).

¹¹³ Gina Jurva, *Bridging the Gap: The Imperative for Courts to Embrace Technology in the Courtroom*, Everlaw (Mar. 14, 2024) <https://www.everlaw.com/blog/legal-technology/bridging-the-gap-the-imperative-for-courts-to-embrace-technology-in-the/>

¹¹⁴ NITI Aayog, *Designing the Future of Dispute Resolution: The ODR Policy Plan for India* (2020)

number of low-value claims efficiently¹¹⁵.

While, India has significantly evolved in the technological aspect, challenges still persist. The linguistic diversity, uneven access to the internet, and lack of digital awareness in India, restricts the reach of ODR. Unless these challenges are resolved, ODR has a risk of becoming a mechanism used by urban, tech-savvy populations¹¹⁶. Therefore, efforts must be made, concentrating on inclusivity, public awareness, and improvement of digital infrastructure, ensuring that ODR fulfills its promise of improving access to justice.

CHAPTER V

RECOMMENDATIONS

This study further aims to provide the following recommendations in order to address the issues with regards the Jurisdiction-Enforceability Conundrum of ADR outcomes in cross-border disputes.

1. *Harmonisation of Legal Frameworks*: The main recommendation is harmonising laws dealing with ADR, primarily arbitration and mediation, across various jurisdictions. The international conventions such as the “**New York Convention**¹¹⁷” and the “**Singapore Convention on Mediation**¹¹⁸”, must be ratified by all countries and implemented in a uniform manner, which will ensure that enforcement is predictable. Hence ambiguity regarding jurisdiction would reduce and would make ADR in cross-border disputes a reliable method.
2. *Enhancement of Institutional Methods*: Global arbitration and mediation institutions must create standard rules on jurisdiction and enforcement, which reduces the disparities between domestic and international practices. The establishment of regional ADR hubs with clear procedures can help dealing with such issues of jurisdiction mainly for developing nations that do not have any set procedures.

¹¹⁵ Shweta Singh, *The Rise of Online Dispute Resolution (ODR) in India*, Juris Centre (Feb. 14, 2024) <https://juriscentre.com/2024/02/14/the-rise-of-online-dispute-resolution-odr-in-india/>

¹¹⁶ Kanakshi Nema, *Online Dispute Resolution: Assessing the Impact of Technology on Access to Justice in India*, Indian Journal of Law & Legal Research, Vol. V, Issue VI (Dec. 28, 2023) <https://www.ijllr.com/post/online-dispute-resolution-assessing-the-impact-of-technology-on-access-to-justice-in-india>

¹¹⁷ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. V, June 10 1958, 330 UNTS 38

¹¹⁸ United Nations Convention on International Settlement Agreements Resulting from Mediation, Dec. 20, 2018, 58 I.L.M. 1067 (2019).

3. *Judicial Cooperation and Training*: The judiciary of various nations have a major role to play in the recognition and enforcement of ADR outcomes. International ADR norms and conventions is important to avoid inconsistent rulings¹¹⁹. Judicial cooperation, in this regard can minimise issues of jurisdiction and aid in smoother enforcement, via bilateral and multilateral agreements.
4. *Technology-driven ADR*: As discussed above, the emergence of ODR during the COVID-19 pandemic played a crucial role in resolving disputes¹²⁰. The implementation of ODR for commercial disputes in the cross-border context can eliminate the issue of jurisdiction, and if ODR clauses are implemented in the agreement itself, the outcome from it can be enforceable.
5. *Policy Initiatives*: Nations should adopt model laws, such as the “**UNCITRAL Model Law on International Commercial Arbitration**”¹²¹, to align domestic laws with international norms. Furthermore, by creating specific cross-border ADR policies within trade and investment treaties, which can provide clear direction for jurisdiction and enforceability.

CONCLUSION

In family cases, the relationships are very personal and the emotions are very emotional thus making litigation a poor way of solving the dispute. Classical courtroom proceedings are more likely to extend the time of the conflict, aggravate the relationship between the parties, and cause the family considerable psychological and financial stress. Here, Alternative Dispute Resolution (ADR) methods have become a significant and effective way of solving conflicts in the family in a more constructive and collaborative way. Other processes like mediation and conciliation promote communication, understanding and voluntary settlement of disputes and therefore parties end up coming up with solutions that are practical yet acceptable to all parties.

This paper has discussed how ADR can be used to solve family conflicts and pointed out the growing importance of it in the Indian legal system. As shown in the analysis, the ADR mechanisms are not only assisting to decrease the loads on the courts but also offering a malleable and confidential platform on which the conflicts may be resolved without ruining relationships

¹¹⁹ R.P. Alford, “Empirical Analysis of National Court Enforcement of International Commercial Arbitration Awards,” (2022)

¹²⁰ Karolina Mania, Online Dispute Resolution: The Future of Justice, 1 Int’l Comp. Jurisp. 76 (2015) <https://doi.org/10.1016/j.icj.2015.10.006>

¹²¹ UNCITRAL Model Law on International Commercial Arbitration (as revised), U.N. Comm’n on Int’l Trade Law.

in the family. Moreover, the implication of using trained mediators and conciliators is that parties are less concerned by winning the battle but finding a long-term solution.

Thus, the enhancement of the ADR mechanisms in the family dispute resolution is a crucial step to achieve an easier, more effective, and respectful justice. More enlightenment on ADR processes, institutional enactment, and efficient application of ADR processes can greatly help in achieving more amicable and sustainable solutions of family disputes.

