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INDIA AND THE STATE OF ADR IN COMMERCIAL DISPUTES***V. Vedika Rao, Advocate******&******Aditi Dhabe*****ABSTRACT**

Alternative Dispute Resolution or ADR, a quasi-judicial process, branched out of a formal court-based conflict resolution mechanism. It offers an alternate mode of dispute settlement anchored on flexibility and autonomy of the parties and is aimed at bypassing the usual challenges faced in the litigatory process. Since the 1990s, many communities, governments and organizations have successfully adopted ADR techniques to assist in amicable conflict resolution. The modern commercial international arbitration landscape is founded on Lex Mercatoria, the customs and practices developed by merchants in the medieval period. In contemporary times, a multifaceted approach to conflict resolution has become increasingly necessary and relevant given the rapid expansion and growing interdependence of economies via trade, investments, and financial transactions. Enforcement of contracts, and quick, easy dispute redressal have come to stand at the forefront of commercial interest. In India, too, more commercial players are moving towards ADR practices, although the current regime poses certain obstacles. There is still a lack of trust in ADR mechanisms, prevailing due to the deep hold of courts in the process, as well as the severe lack of resources. These factors undermine the well-founded advantages that a robust legal framework for ADR can present, which is characterized by the convenience, ease, accessibility, and autonomy offered to disputants. While the Indian judiciary system has shown an eagerness to support the development of ADR, there is still room for reformation and building trust within the commercial sector. India stands a solid chance in the global race towards Alternative Dispute

Resolution by focusing on capacity building, talent acquisition, professional training, legal reforms and the establishment of Centers of Excellence. Building world-class centers for Alternative Dispute Resolution will further bolster India's bid to become a global hub for ADR.

TRADER WOES

Globalization has brought about profound changes in the world economy, in terms of diversifying trade and commerce, enhancing cooperation, and fostering friendly ties between nations. Over the years, countries have become increasingly dependent on each other for various goods, services and essential resources, and have worked together to build reliable manufacturing and supply chains to fulfill consumer needs. As per recent estimates, global trade has expanded by an estimated \$300 billion in the first half of 2025, growing at an estimated 1.5% in the first quarter and projections showing 2% growth in the second.¹ India has greatly benefited from its policy shift to Laissez-fair in the 1990s, opening its markets for international players enabling economic growth, financial and investment reformations, increased Foreign Direct Investment, creation of jobs, and overall optimization of resource management and allocation. As of 2025, India has emerged as one of the fastest growing economies in the world, overtaking Japan to take the 4th position as per IMF estimates, with its GDP surpassing \$4.186 trillion.²

The increased interconnectedness and interdependence amongst nations demands a greater effort by the international community towards establishing an open market economy, with greater emphasis on the fundamental principles of non-discrimination, free and fair competition, transparency, predictability and sustainable development. Given the current geopolitical situation, escalating tensions and the looming threat of higher tariffs, the IMF has forecasted a decline in global GDP growth from 2.8 percent in 2025 and 3 percent in 2026.³ Despite the challenges, India is fast emerging as a key player in the international commercial landscape, with IMF projecting India's GDP growth of 6.5% in this Fiscal Year.⁴ India has also streamlined its Foreign Trade

¹United Nations Trade and Development (UNCTAD), Available at: <https://unctad.org/news/global-trade-grew-300-billion-first-half-2025-led-us-imports-and-eu-exports> (last visited on July 16, 2025).

² Press Information Bureau, GOI, Available at: <https://www.pib.gov.in/PressNoteDetails.aspx?NoteId=154660> (last visited on July 12, 2025).

³ International Monetary Fund, "World Economic Outlook" 18 (2025).

⁴ Ibid.

Policy, 2023⁵ focusing on boosting export, becoming self-reliant and improving its Ease of Doing Business ratings.

Deepening trade imbalances has, however, forced countries to adopt more drastic measures to remedy the problem and secure economic stability and ensure development. In the backdrop of current economic uncertainties, various international trade bodies and organizations have called for cooperative efforts of the global community to mitigate the threat of recession and economic decline. The IMF issued an advisory prompting constructive work towards building a stable and predictable trade environment to facilitate international cooperation, while addressing policy gaps and structural imbalances at home.⁶ Similarly, the UNCTAD has stressed upon the need for dialogue and negotiation as a tool to ease global tensions and navigate the current geopolitical situation.⁷

NEGOTIATION IN TRADE AGREEMENTS

Negotiation is the art of discussion or deliberation upon certain aspects of a proposed agreement with the aim of finalizing a mutually beneficial deal or settling a dispute in a way that balances the rights and obligations. Trade agreements may be entered into by countries as means of developing peaceful cooperation among nations and to ensure conformity of national legislations with principles of justice and international law. Common developmental goals can be achieved by nations through formal agreements between two or more nations by way of bilateral or multilateral trade agreements and are further classified into Free Trade Agreements (FTAs), Regional Trade Agreements, Preferential trade agreements, etc. Often mimicking the nature of a contract, meaning the terms and conditions agreed upon by nations are binding, these agreements are reached through multiple rounds of negotiation which may be carried out under the guidance of a neutral party, most likely the World Trade Organization (WTO).

The principal objective of any trade deal is to establish conditions favorable for business and investment to thrive, requiring minimal trade barriers, like tariffs, customs duties, and restrictive legislation. etc., to reduce the cost of doing business among nations. The World Trade Organization

⁵Directorate General of Foreign Trade, *Available at:* <https://www.dgft.gov.in/CP/?opt=ft-policy> (last visited on July 15, 2025).

⁶ International Monetary Fund, "World Economic Outlook" 18 (2025).

⁷ United Nations Trade and Development, *Available at:* <https://unctad.org/publication/global-trade-update-july-2025-global-trade-endures-policy-changes-and-geoeconomic-risks> (last visited on July 15, 2025).

(WTO) is the only international body dealing with trade rules and acts as a forum for negotiating trade agreements and settling disputes among trading nations.⁸ The Trade Negotiations Committee (TNC) is responsible for supervising the conduct of negotiations. In the context of India – US Trade Deal, a final agreement is at abeyance because of the deadlock regarding the US demand to have greater access to India's agriculture and dairy sectors. Apart from the ongoing one-on-one negotiation, currently underway in Washington D.C., there is scope for convening a Special Session of the Committee on Agriculture (CoA SS).⁹

Trade negotiations are means of commencing fruitful discussions upon the needs and interests of the contracting parties. Negotiation serves as a potential dispute settlement mechanism, offering various benefits like privacy, flexibility, cost efficiency, and reasonable autonomy in terms of finalizing a mutually beneficial deal.

ALTERNATIVE TRADE DISPUTE RESOLUTION

Disputes are an unavoidable consequence of ever-increasing complexity of international relations, interconnectedness of economies and volatility of the global supply chain. Recent geopolitical tensions and evolving policy dynamics have led to substantial increase in international trade disputes arising out of disagreements between states regarding international rules and violation of established trade principles. As of 31 December 2024, WTO members referred 631 disputes to the Dispute Settlement Body, which is the first stage for resolution within the framework of WTO agreements, without recourse to further litigation.¹⁰ Given the international nature of disputes, involving parties from various countries and differing legislations have rendered the traditional court system obsolete and ineffective. Alternative dispute mechanisms like arbitrations, mediation, conciliation, negotiation, etc., have emerged as a more efficient and flexible mode of dispute resolution. International law and various international bodies have advocated for the adoption of Alternative Dispute resolution techniques for peaceful and amicable resolution of conflict.

International Commercial Arbitration remains the most preferred mode of Alternative Dispute Resolution mechanism, due to the flexibility, neutrality, and confidentiality. The United Nations

⁸ World Trade Organization, Available at: https://www.wto.org/english/res_e/publications_e/trade_outlook25_e.htm (last visited on July 15, 2025).

⁹ Ibid.

¹⁰ Ibid.

Commission on International Trade Law (UNCITRAL) plays a crucial role in developing and maintaining a legal framework, encompassing conventions, model Laws and legal rules and regulations for facilitation of international trade and investment. the UNCITRAL Model Law on International Commercial Arbitration is the most comprehensive legal document enabling countries to adopt a uniform set of guidelines ensuring consistency in legal resolution of international disputes. Moreover, in terms of enforceability, arbitral awards have received similar treatment as court judgments. The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 facilitates the enforcement of Arbitral Awards. This principle has been incorporated in Part II, Chapter I of the Arbitration and Conciliation Act, 1996.¹¹ As per recent survey¹², direct enforceability and confidentiality emerged as the most important factors in countries preference for International Commercial Arbitration for dispute resolution. However, recent experience point towards a convergence between arbitration and traditional court system in terms of time and speed of proceedings, marked by decreased level of satisfaction.¹³ This assumes significance given the importance accorded to those factors in dispute resolution, especially disputes involving international components and higher stakes. This aspect of increasing similarities between the two modes of dispute resolution has come to be known as ‘judicialization’ of international commercial arbitration.¹⁴

CRITICAL LOOK INTO RECENT DEVELOPMENTS AND EXISTING FRAMEWORK

Over the recent years, India has witnessed a systemic promotion of ADR methods with the objective to alleviate its overburdened courts of law.

This endeavour of reforming the ADR framework has manifested in the form of multiple amendments, new legislation enacted to regulate and set up infrastructure, as well as various court

¹¹ The Arbitration and Conciliation (Amendment) Act, 2015 (Act no. 3 of 2016), s. 30.

¹² *Nadja Alexander; Angela Ray T. Abala, Zhang Yuying, Sarah Lim Hui Feng, Mariam Gotsiridze, Wooseok Shin*, “Singapore International Dispute Resolution Academy, International Dispute Resolution Survey: 2024 Final Report”, pg. 26, (2024).

¹³ Ibid.

¹⁴ Leon Trakman & Hugh Montgomery, “The ‘Judicialization’ of International Commercial Arbitration: Pitfall or Virtue?”, 30 *Leiden J Int Law* 405 (2017).

judgements favouring party autonomy, enforcement of arbitration clauses, independence of arbitrators and the finality of arbitral awards.

Yet, there still remain challenges discouraging the adoption of arbitration and mediation in commercial contracts. India's courts suffer from a poor reputation within the global commercial sector, and new legislation has brought on new lacunae to address.

In fact, recent amendments are even being met with discontentment from industrial and legal players alike, with the Arbitration and Conciliation (Amendment Act), 2021 being seen as a retrogression in the Indian arbitral regime.¹⁵

Imposition of the judiciary throughout arbitration processes also weaken any trust put in such mechanisms. Finality of awards, qualitative scrutiny of arbitral apparatus, and enforcement of settlements are all at the mercy of the Court, and ADR in India has yet failed to establish itself as a body separate from traditional justice.

Court Intervention

The chief criticism of the Arbitration and Conciliation Act, 1996 lies in its prescribed involvement of Courts at several junctures in the arbitration process. Multiple judgements have emphasised minimisation of this involvement¹⁶ and the independence of the arbitral tribunal, as illustrated by the adoption of *kompetenz-kompetenz*. However, the deep-set distrust for the strained Indian judiciary within commerce spills over to these adjunct processes of dispute resolution due to the Courts' dipped fingers in these matters.¹⁷

While the Supreme Court has often highlighted the finality of arbitral awards, many matters are lodged in the judicial pipe awaiting finality or enforcement. This encourages mischief in the losing party, and erodes faith of parties undergoing arbitration. Investors are also wary of entering Indian

¹⁵ Ashish Dholakia, Ketan Gaur, Kaustub Narendran, "India's Arbitration And Conciliation (Amendment) Act, 2021: A Wolf In Sheep's Clothing?" available at <https://legalblogs.wolterskluwer.com/arbitration-blog/indias-arbitration-and-conciliation-amendment-act-2021-a-wolf-in-sheeps-clothing/>

¹⁶ Cheran Properties Ltd. v. Kasturi and Sons Ltd. & Ors (2018) 16 SCC 413

¹⁷ Krishna Yadav, "Systemic cultural issues undermine India's appeal as an ADR hub for investors: Experts" *Mint*, 29 March, 2025, available at <https://www.livemint.com/industry/alternative-dispute-resolution-adr-mediation-arbitration-hub-legal-bottlenecks-in-india-corporate-legal-costs-11743248527940.html> (last visited on July 15, 2025)

markets, or favouring India as a seat of arbitration, due to this prevalent block in contract enforcement.

There is also an overreliance upon the judiciary for directives for adoption of ADR mechanisms, hence undermining the independence of ADR as an organ once more.¹⁸

Lack of harmonized statutory support

There is an urgent need to decouple the Court from ADR mechanisms, and for consolidating a machination that is robust enough to stand alone. Many of the recent developments in this regime have been fairly controversial, characterized by a consensus of being uncooperative and conflicting with commercial interests.

In the 2021 Amendment of the Act, application for enforcement of an award invites the requirement of a *prima facie* view that there has been no fraud or corruption in securing the contract or in the making of the award. Furthermore, upon illustration of such *prima facie* view, an unconditional stay may be procured. This not only leaves the parties at the mercy of a crawling judiciary, competing interests no longer can be balanced during the long time such matters take.¹⁹

The Apex Court, proving that the current system requires secondary caution via disclaimers, held while overturning the arbitral award, in a case where it was challenged by the State-owned DMRC, that “*exercise of the curative jurisdiction of this Court should not be adopted as a matter of ordinary course.*”²⁰ However, this proves to be, in principle, contrasting with the latest amendment discussed, and the doors of litigation have been once again opened at steps within the arbitration proceeding by this judgement and the previously discussed provision.

This case demonstrates, also, the tussle between State interests and private interests. While state policy pushes for arbitration, it also protects its own interests by challenging every award not in its favour, and exhausts all litigious and bureaucratic alternatives open to it before landing on enforcement, if at all. And while the Supreme Court stated in *International Seaport Dredging Pvt Ltd v. Kamarajar Port Limited*²¹ that the Act does not distinguish between governmental and

¹⁸ Hon’ble Thiru Justice S.B. Sinha, *ADR and Access to Justice: Issues and Perspectives*, Tamil Nadu State Judicial Academy, available at <https://www.tnsja.tn.gov.in/article/ADR-%20SBSinha.pdf>

¹⁹ *Supra* 1

²⁰ DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd., (2024) 6 SCC 357 : (2024) 3 SCC (Civ) 112

²¹ *International Seaport Dredging Pvt Ltd v. Kamarajar Port Limited* 2024 INSC 827

private entities, inequalities present themselves in resource and accessibility distribution. Such practices, though seemingly in interest of keeping public policy, discourage private players from entering in contracts with public undertakings, which form a massive part of the Indian commercial space.

The setup under the Commercial Courts Act, 2015 is another instance of glaring ineffectiveness as an examination of the roster of the Bombay High Court, for example, indicates that commercial division judges often hear matters other than that of commercial nature.²² Clearly, there is no simple pathway for commercial organisations to take for a speedy resolution, and while ADR attempts to remedy this issue, the holes of lack in its implementation impedes any step towards holistic development.

The existing context of arbitration and conciliation also keeps the reputation of being arbitration-agnostic, with provisions such as Sections 29A, 34 etc. seen as confinements rather than guidelines²³.

Latest Preference of Mediation over Arbitration

Another symptom indicative of the State being of two minds yet about arbitration is its latest push towards mediation as opposed to arbitration.²⁴ The reasons as to why mediation is often not found to be as viable an option as arbitration in trade and commerce are discussed below, however, its rather unenforceable nature is one of the vital aspects of its unpopularity.

In an Office Memorandum (OM) by the Ministry of Finance on June 3, 2024,²⁵ the inefficacies of arbitration were outlined, along with a push towards mediation as the preferred method of dispute resolution to be adopted by public undertakings. It underlined legitimate concerns with arbitration,

²² U Vinay Mehta, "Institutional Arbitration: The Emerging Need For A Robust Dispute Resolution Mechanism In India" available at <https://cdrcentre.com/institutional-arbitration-the-emerging-need-for-a-robust-dispute-resolution-mechanism-in-india/#>

²³ Ayushi Maheshwari, "Comparative Analysis of Institutional Arbitration between India and Singapore" Volume 11 Issue 5 *International Journal of Innovative Research in Technology* October 2024

²⁴ Abhijit Mukhopadhyay, "Govt Prefers Mediation Over Arbitration In Purchase Disputes," *the Secretariat*, May 22, 2025, available at <https://thesecretariat.in/article/govt-prefers-mediation-over-arbitration-in-purchase-disputes> (last visited on July 16, 2025)

²⁵ Office Memorandum, Government of India, Ministry of Finance, "Guidelines for Arbitration and Mediation in Contracts of Domestic Public Procurement", June 3, 2024, available at https://doe.gov.in/files/circulars_document/Guidelines_for_Arbitration_and_Mediation_in_Contracts_of_Domestic_Public_Procurement.pdf (last visited on July 16, 2025)

such as lack of speed, qualitatively suitable arbitrators and finality, as well as reduced formality and transparency while being still an expensive undertaking.

The OM, significantly, restricts arbitration clauses in contracts with public service undertakings to disputes with a value less than INR 10 crore, and instead encourages amicable settlement and mediation. The step has been highly criticised as it not only leaves a large number of disputes out of the scope of arbitration, it also turns a blind eye to already-existing systems in place to ensure amicable settlements before parties decide to go through arbitration at all. It also assumes that there is no required legal precedent, no ad interim order, and a complete willingness of parties through the mediation process and later enforcement – all of which are the prerequisites to mediation proceedings.²⁶

The OM showcases a lack of willingness in the expansion of arbitration regime by the State, and an unjustified distrust of arbitrators, which acts to disincentivise global investors to consider India as a seat of arbitration.²⁷ This stands starkly against the claim of promotion of ADR to help unclog the judiciary and make justice more accessible, and raises the need of a streamlined and efficient framework which removes conflicting stipulations.

Institutionalised Arbitration vs Ad Hoc Proceedings

In 2017, the Justice B N Srikrishna Committee's report promised consideration of robust institutionalisation of arbitration.²⁸ Further, the Arbitration and Conciliation Act 1996 and later, the Mediation Act, 2023 both stipulate to institutionalise ADR in India by creating the Arbitration Council of India and the Mediation Council of India. However, there is little evidence of practical adoption of measures of institutionalisation.²⁹

After seeing the success of arbitral centres and institutes in Singapore and Dubai, it is the natural

²⁶ Rajendra Barot, Priyanka Shetty and Ajay Raj "Arbitration Retrograde – Is Bureaucracy Derailing the 'Arbitrate in India' Initiative?" available at <https://www.azbpartners.com/bank/arbitration-retrograde-is-bureaucracy-derailing-the-arbitrate-in-india-initiative/>

²⁷ Vasanth Rajasekaran and Harshvardhan Korada, "Arbitration in Government Contracts: Party Autonomy Versus Public Policy" available at <https://www.sconline.com/blog/post/2025/01/27/arbitration-in-government-contracts-party-autonomy-versus-public-policy/>

²⁸ Justice B N Srikrishna Committee "The High Level Committee To Review The Institutionalisation Of Arbitration Mechanism In India" (July, 2017)

²⁹ P Madhava Rao, "Where are the ADR councils?" *Deccan Herald*, 22 April 2025, available at <https://www.deccanherald.com/india/where-are-the-adr-councils-3503552> (last visited on 16 July 2025)

next step in India's extension of the ADR regime. Nonetheless, the Indian dispute resolution landscape is still witnessing mostly ad hoc proceedings.

The apprehensions raised in the aforementioned OM also can be quelled by effective institutionalisation of ADR – Centres of Excellence set up to regulate and oversee quality of arbitrators.

Underdeveloped ADR mechanisms outside Arbitration

Negotiation, mediation and conciliation are the other forms of ADR that are available for commercial dispute resolution in India. The enactment of the Mediation Act, 2023 was a positive step in the direction of the validation of this form of conflict resolution.

However, these avenues remain toothless, and haven't yet been fully explored within commercial governance. In turn, there is also a lack in precedence in this landscape, and thus, there is still uncertainty regarding the general attitude and policy that may prevail once they garner traction. In India, the absence of statutory enforcement of mediated settlement agreements passed in mediations conducted outside India (as is included in the Singapore Convention) poses as a major hindrance in the opportunity of providing a modern and updated structure for mediation.³⁰

A WAY FORWARD

India, through judicial precedence and legislative action, has steadily but surely put itself on the alternative dispute resolution map at an international scale. By taking the example of leading economies such as Singapore and United Kingdom, India too can establish global recognition and favour in its ADR framework.

To address the inhibitions persisting within the commercial sector, a robust plan of institutionalisation is essential. The establishment of arbitration and mediation centres will help upkeep the quality of arbitrators, ensure speedy and cheap resolution of disputes and develop a space for legal discussion and scholarly ideation for further growth. The State, in tandem with such institutional arrangements, must also set up a regular review system with consistent legal development via new rules and orders as per the latest market trends.

³⁰ Soumya Gulati, Shweta Sahu and Sahil Kanuga, "Mediating Commercial Disputes in India" *available at* https://nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Mediating-Commercial-Disputes-in-India.pdf

Additionally, a more comprehensive system of recognition of international settlements and awards through treaties and enactments will help build worldwide confidence in Indian dispute resolution. It must also be accompanied by the disentanglement of the traditional judiciary from its alternative counterparts. As specialised centres and tribunals garner precedence and trust, finality of awards and enforcement can also be overseen without judicial intervention. The adoption of latest technology and online dispute resolution tactics will streamline these mechanisms further.

Finally, providing excellence training and building deep expertise within the legal community will build the foundation for a long-lasting system of alternative dispute resolution, ready to expand as per the contemporary requirements of the ever-growing commercial arena.