



Alternative dispute resolution in India and the crisis of justice delivery: Institutional design, power asymmetry, and the limits of consensual justice

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Abstract

Alternative Dispute Resolution (ADR) has been widely promoted in India as a solution to judicial backlog, delay, and procedural inefficiency. Arbitration, mediation, conciliation, and Lok Adalats are increasingly positioned as instruments of speedy, cost-effective, and participatory justice. However, the growing institutionalization of ADR raises critical questions regarding its capacity to deliver substantive justice, particularly in contexts marked by unequal bargaining power, lack of procedural safeguards, and weak regulatory oversight. This article undertakes a critical and systemic examination of ADR in India, moving beyond efficiency-based narratives to interrogate its impact on fairness, accountability, and access to justice. Using doctrinal and analytical legal methodology, the study evaluates the structural design of ADR institutions, judicial approaches to consensual justice, enforceability of outcomes, and the implications of privatized dispute resolution. The article argues that while ADR has alleviated certain administrative burdens of courts, it has simultaneously produced new forms of injustice by normalizing settlement over adjudication, efficiency over equity, and consent over rights. The study concludes by proposing institutional and normative reforms aimed at rebalancing ADR within India's constitutional justice framework.

Keywords: Alternative dispute resolution, access to justice, power asymmetry, institutional design, arbitration, mediation, indian legal system

Introduction

The crisis of justice delivery in India is neither new nor accidental. It is the cumulative result of structural under-capacity, procedural formalism, exponential growth in litigation, and limited judicial infrastructure. Courts across the country remain burdened with millions of pending cases, often taking years if not decades to reach final adjudication. This chronic delay has transformed access to justice from a constitutional promise into a lived uncertainty for large sections of the population.

In response, the Indian legal system has progressively shifted focus from adjudication to resolution. Alternative Dispute Resolution (ADR) has emerged as the centerpiece of this shift. Arbitration, mediation, conciliation, and Lok Adalats are no longer peripheral mechanisms but are increasingly positioned as essential components of the justice delivery architecture. Legislative enactments, judicial pronouncements, and executive policies consistently promote ADR as a solution to systemic inefficiency.

However, this transformation raises a deeper and more troubling question: Is ADR merely supplementing adjudication, or is it gradually substituting it? If ADR functions as a substitute rather than a complement, what happens to constitutional guarantees of equality, due process, and judicial accountability?

The dominant narrative surrounding ADR in India is overwhelmingly efficiency-driven. ADR is praised for reducing pendency, saving costs, and expediting dispute resolution. While these objectives are undeniably important, they do not exhaust the meaning of justice. Justice is not merely about speed or disposal; it is about fairness, reasoned decision-making, transparency, and the protection of rights especially for weaker parties.

This article argues that the institutionalization of ADR in India has proceeded without adequate engagement with these normative concerns. The shift from public adjudication to private or semi-private dispute resolution forums fundamentally alters the nature of justice delivery. While courts operate within a constitutional framework of accountability, precedent, and public reasoning, ADR mechanisms often function through confidentiality, limited review, and negotiated compromise.

The danger lies not in ADR itself, but in the manner of its deployment. When ADR is promoted primarily to clear court dockets, it risks becoming a tool of administrative convenience rather than justice. When settlement is emphasized over adjudication, rights may be bargained away rather than vindicated. When consent is presumed in contexts of power imbalance, voluntariness becomes illusory.

This article therefore undertakes a critical re-examination of ADR in India not as an unqualified good, but as a complex institutional phenomenon that reshapes the relationship between the State, courts, and disputing parties.

Material and Methods

This study adopts a doctrinal and critical legal research methodology. Primary sources include constitutional provisions, statutory frameworks governing ADR, judicial decisions, and policy documents relating to dispute resolution reform. Secondary sources consist of academic scholarship on ADR, access to justice theory, critical legal studies, and comparative analyses of dispute resolution systems. Rather than treating ADR mechanisms in isolation, the research examines ADR as a system operating within a broader constitutional and socio-legal context. The analysis focuses on structural design, institutional incentives, and

power relations embedded within ADR processes. Emphasis is placed on evaluating ADR against constitutional values of equality, fairness, and access to justice rather than purely administrative efficiency.

ADR and the Structural Reconfiguration of Justice Delivery

The promotion of ADR in India reflects a broader reconfiguration of justice delivery. Traditionally, courts served not only as dispute-resolving bodies but as institutions that articulated public norms, developed legal doctrine, and enforced constitutional limits on power. Adjudication involved reasoned judgments, open hearings, and appellate scrutiny.

ADR, by contrast, emphasizes closure over articulation. Settlements resolve disputes without necessarily clarifying rights or establishing precedent. Arbitration awards, mediation settlements, and Lok Adalat compromises typically do not contribute to the development of law. This shift has profound implications. First, it transforms justice from a public good into a private outcome. Second, it limits the law's capacity to evolve through judicial reasoning. Third, it relocates dispute resolution into forums that are often less transparent and less accountable. While this may be acceptable in purely private disputes between equal parties, it becomes deeply problematic when ADR mechanisms are applied across employment disputes, consumer claims, family conflicts, and disputes involving the State. In such cases, the absence of adjudicatory safeguards can entrench inequality rather than resolve conflict.

Power Asymmetry and the Illusion of Consent

One of the most persistent assumptions underlying ADR is that parties voluntarily and equally participate in dispute resolution. This assumption collapses under closer scrutiny. Indian society is characterized by profound socio-economic inequalities. Disputing parties rarely possess equal bargaining power, legal literacy, or financial capacity.

In arbitration, repeat corporate players enjoy structural advantages over individual claimants. In mediation, employers negotiate against workers, landlords against tenants, corporations against consumers. In Lok Adalats, economically weaker litigants often accept settlements simply to escape prolonged litigation.

Consent in such contexts is often a product of constraint rather than choice. The fear of delay, cost, and uncertainty coerces parties into settlement. Judicial encouragement of ADR—though well-intentioned sometimes exacerbates this pressure, transforming voluntary mechanisms into quasi-mandatory processes. This raises a fundamental concern: Can a justice system rely on consent without first addressing inequality?

Judicial Endorsement and Institutional Pressure

Indian courts have played a central role in mainstreaming ADR. Judicial referrals to mediation and arbitration are increasingly routine. While courts emphasize voluntariness, the practical reality is more complex. Litigants often perceive judicial referral as an expectation rather than an option. When ADR becomes a tool to meet disposal targets, its character changes. The objective shifts from fair resolution to numerical efficiency. This instrumentalization of ADR risks undermining both adjudication and alternative

mechanisms. ADR should function as a choice, not a compulsion. Without this distinction, the right to adjudication—a core element of access to justice—becomes hollow.

Arbitration and the Privatization of Justice

Among all ADR mechanisms, arbitration represents the most pronounced shift away from public adjudication towards privatized justice. Initially conceptualized as a consensual, efficient, and expert-driven alternative to court litigation, arbitration has gradually transformed into a parallel adjudicatory system operating largely outside the constitutional architecture of courts. In India, arbitration is no longer confined to niche commercial disputes; it has become a default dispute resolution clause across contracts involving employment, infrastructure, construction, consumer transactions, and even disputes with public authorities.

This expansion raises a fundamental concern: to what extent can justice be privatized without undermining constitutional guarantees? Arbitration proceedings are typically confidential, conducted without public access, and result in awards that do not contribute to the development of precedent. While confidentiality may be commercially desirable, it also shields arbitral processes from public scrutiny and democratic accountability.

Further, arbitration suffers from the problem of repeat-player dominance. Corporate entities and state bodies that frequently engage in arbitration accumulate institutional knowledge, influence arbitrator selection, and shape procedural norms. Individual claimants, small businesses, and employees enter arbitration as one-time participants with limited bargaining power. This asymmetry undermines the assumption of equality that arbitration presupposes.

Judicial restraint in reviewing arbitral awards though intended to promote finality often exacerbates this problem. Limited scope for substantive review means that unfair or erroneous awards may go uncorrected. Finality, in such cases, becomes a liability rather than a virtue. When justice is privatized without adequate safeguards, efficiency is achieved at the cost of fairness.

Mediation and the Normative Problem of Settlement-Centric Justice

Mediation is frequently presented as the most humane and participatory form of ADR. It emphasizes dialogue, reconciliation, and mutually acceptable solutions. In theory, mediation empowers parties by allowing them to control the outcome of their dispute. In practice, however, mediation often reproduces existing inequalities rather than neutralizing them.

The central normative issue with mediation lies in its settlement-centric orientation. Settlement is treated as an inherently desirable outcome, often irrespective of its substantive fairness. Legal rights, entitlements, and remedies are subordinated to compromise. While compromise may be appropriate in relational disputes, it becomes deeply problematic when mediation is applied indiscriminately to disputes involving statutory rights, labour protections, consumer safeguards, or domestic violence concerns.

Moreover, mediation lacks a structured framework for assessing fairness. Mediators are trained to facilitate agreement, not to adjudicate rights. This creates a risk that

settlements reflect bargaining power rather than legal merit. In contexts where one party is economically or socially dominant, mediation may function as a mechanism of silent coercion.

Judicial referral to mediation further complicates this dynamic. When courts direct parties to mediation, litigants often perceive refusal as disfavoured. This judicial imprimatur transforms mediation from a voluntary process into a quasi-obligatory step, blurring the line between choice and compulsion.

Conciliation and the Problem of Institutional Ambiguity

Conciliation occupies an uneasy position within the ADR framework. It shares features of both mediation and arbitration, yet lacks the institutional clarity of either. Conciliators may propose settlement terms, but their authority remains ambiguous. Procedural standards governing conciliation are underdeveloped, and professional training remains inconsistent.

As a result, conciliation has failed to achieve the institutional legitimacy enjoyed by arbitration or mediation. Its underutilization reflects not a lack of potential, but a lack of structural support. Without clear procedural rules, standardized training, and judicial guidance, conciliation remains marginal within India's ADR ecosystem. This marginalization highlights a broader issue: ADR mechanisms cannot succeed merely through statutory recognition; they require institutional design, professional norms, and accountability frameworks. Absent these elements, ADR risks becoming fragmented and ineffective.

Lok Adalats and the Tension between Informality and Justice

Lok Adalats represent perhaps the most ambitious attempt to democratize access to justice through ADR. They are designed to provide swift, cost-free resolution of disputes, particularly for marginalized and economically weaker sections. Their informal procedures and binding outcomes have enabled the disposal of millions of cases. However, the very features that make Lok Adalats efficient also raise serious concerns. Proceedings are often conducted rapidly, with minimal deliberation. Settlements may be encouraged aggressively to meet disposal targets. Reasoned decisions are rare, limiting transparency and accountability. For vulnerable litigants, particularly those without legal representation, the pressure to settle can be overwhelming. The absence of appellate review further compounds the risk of unjust outcomes. Informality, while reducing procedural barriers, may inadvertently weaken substantive protections. Lok Adalats thus embody the central paradox of ADR: the tension between accessibility and justice. Speed and informality facilitate access, but they can also dilute fairness if not carefully regulated.

ADR, Judicial Backlog, and the Politics of Dispute Disposal

The promotion of ADR in India cannot be divorced from the politics of judicial backlog. Faced with mounting pendency and limited capacity, courts and policymakers have increasingly turned to ADR as a backlog-management strategy. Disposal statistics are frequently invoked to justify ADR expansion. This instrumentalization of ADR risks distorting its purpose. When ADR is deployed primarily to clear dockets, its justice-enhancing potential is

compromised. Settlement becomes a numerical target rather than a consensual outcome. Litigants are subtly encouraged to compromise rather than pursue adjudication.

Such an approach shifts the burden of systemic failure onto disputing parties. Instead of strengthening judicial capacity, the system externalizes delay by diverting disputes into alternative forums. This raises a critical question: Is ADR compensating for judicial reform, or replacing it?

ADR and Access to Justice: A Structural Paradox

Access to justice is frequently cited as the normative justification for ADR. Yet access must be understood substantively, not merely procedurally. True access to justice requires not only entry into a dispute resolution forum, but access to fair procedures, reasoned outcomes, and meaningful remedies. ADR expands procedural access but may restrict substantive access. Confidentiality limits public accountability. Settlement-centric processes obscure rights. Limited review mechanisms constrain corrective justice. For marginalized groups, these limitations can be particularly harmful. Women, workers, consumers, and small entrepreneurs often face disputes against more powerful actors. In such contexts, ADR may function less as an equalizing force and more as a mechanism of controlled compromise. Without safeguards, ADR risks reinforcing structural inequality under the guise of efficiency.

Finality, Enforceability, and the Cost of Closure

Finality is widely celebrated as a defining advantage of ADR. Arbitration awards and settlement agreements bring disputes to an end swiftly. However, finality without fairness is deeply problematic. The limited scope for appeal or review restricts the system's capacity to correct injustice. Judicial reluctance to intervene in ADR outcomes—though doctrinally justified—sometimes results in abdication of constitutional responsibility. Courts are guardians of fairness, not merely enforcers of procedural autonomy. When ADR outcomes violate substantive justice, judicial oversight becomes essential. A justice system must balance finality with accountability. Excessive emphasis on closure risks sacrificing justice at the altar of efficiency.

Re-Integrating ADR within a Constitutional Framework

The solution does not lie in abandoning ADR, but in re-integrating it within a constitutional framework of justice. ADR must function as a complement to adjudication, not a substitute. This requires a recalibration of institutional priorities. First, judicial capacity must be strengthened so that ADR remains a choice rather than a necessity. Second, ADR mechanisms must be regulated to address power asymmetry, ensure informed consent, and standardize professional training. Third, transparency and accountability must be enhanced through reasoned outcomes and limited but meaningful judicial review. Finally, ADR must be evaluated not solely on efficiency metrics, but on its ability to deliver substantive justice. Speed without fairness is not justice; settlement without equity is not resolution.

Conclusion

This article has argued that the contemporary promotion of Alternative Dispute Resolution in India reflects a deeper reconfiguration of justice delivery. While ADR has undoubtedly alleviated certain administrative burdens of courts, it has also introduced new risks by privatizing

justice, prioritizing settlement over rights, and obscuring power imbalances. ADR should not be viewed as a panacea for judicial delay. When deployed uncritically, it risks undermining constitutional values of equality, fairness, and accountability. Justice cannot be reduced to efficiency alone. For ADR to fulfill its promise, it must be constitutionally anchored, institutionally regulated, and normatively reoriented. Only then can it function as a genuine instrument of justice rather than a mechanism of dispute disposal.

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