

## THE ROLE OF CIVIL LAW IN SHAPING ALTERNATIVE DISPUTE RESOLUTION MECHANISMS: A DOCTRINAL AND PRACTICAL ANALYSIS

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### ABSTRACT

This paper looks closely at the relationship between civil law and various Alternative Dispute Resolution (ADR) methods used in India. As tons of cases accumulate and cases are handled slowly, ADR plays an important part in addition to the usual civil court process. The paper examines the history and inclusion of ADR in Indian civil law by analyzing the “Code of Civil Procedure (CPC)”, the “Arbitration and Conciliation Act (A&C), 1996” and the “Legal Services Authorities Act (LSA), 1987”. The study looks at how “mediation”, “conciliation”, “arbitration” and “Lok Adalats” can be used in the civil process in India. Even though progress is evident, research outlines that inconsistencies in procedures, challenges from stakeholders and not enough infrastructure are major problems.

**Keywords:** Civil Law, ADR, Mediation, Indian Legal System

### INTRODUCTION

Evolution of settlement of disputes in India is a case study of the complex cross-play between traditional justice forms and modern legal mechanisms. India has centuries of experience of dispute resolution through community-based mechanisms in the form of the Panchayat system and religious arbitration, which predated modern ADR mechanisms. However, with the institution of colonial legal mechanisms and the eventual expansion of a codified system under the Indian Constitution, formal civil law processes prevailed in the resolution of civil and commercial disputes. Civil law in India, mainly procedural in nature and grounded in the CPC, 1908, has a foundational role in ensuring orderly administration of justice, the protection of rights, and the definition of remedies in private legal matters.

Over the past decades, the development of ADR in India has not been as a replacement but as a complementary system to the formal civil justice system. ADR processes—arbitration, mediation, conciliation, and Lok Adalats—are viewed more and more as an effective, cost-saving, and participative alternative that is harmonious with the constitutional mandate of access to justice<sup>1</sup>. The judiciary, legislatures, and legal reform committees have worked hard to popularize ADR as a device to avoid judicial backlog and to encourage amicable settlements outside the formal court mechanism<sup>2</sup>. “Section 89 of the CPC”, which directs the referring of disputes to ADR processes where appropriate, is a shining example of the integration of civil law with ADR objectives.

This study attempts to locate the dual contribution of civil law towards shaping and substantiating the ADR mechanism in India, through a doctrinal and practical analysis. The study takes into account statutory provision, case law development, and institutional practice as a foundation in an effort to establish how civil law principles guide and structure ADR procedures. It critically assesses how well the mechanisms have been used and the challenges of reconciling formal and informal systems of justice.

Methodologically, the current paper adopts a doctrinal legal research approach, analyzing primary sources such as statutes, constitutional provisions, and leading judgments, and secondary sources

<sup>1</sup> “Law Commission of India, *129th Report on Urban Litigation and Mediation as an Alternative to Adjudication*, 1988”.

<sup>2</sup> “Supreme Court of India, *Salem Advocate Bar Association v. Union of India*, AIR 2003 SC 189; See also Justice M. Jagannadha Rao Committee Report, 2002”.

such as legal commentaries, journal articles, and policy reports. The paper also has practical insights through an analysis of the practice of ADR in the Indian civil justice system, thereby providing a complete picture of the subject.

## OBJECTIVES

The primary motives of this research are to analyze the doctrinal foundations of ADR within Indian civil law, assess the practical application of ADR mechanisms in the **Civil litigation system** identify challenges limiting its effectiveness, and propose actionable recommendations for enhancing ADR integration.

## Conceptual Framework of Civil Statute and ADR

This law in the context of India is essentially the codification of law pertaining to private rights and obligations among individuals, organizations, and institutions. It deals with subjects like contracts, property, torts, family law, and succession, and is essentially procedural in character when followed in courts of law. The major legislation that prescribes the procedure of civil proceedings in India is the CPC, 1908, which enunciates provisions for filing, adjudication, and enforcement of civil claims. Civil law not just resolves conflict but also imposes norms of fairness, natural justice, and legal certainty. Its ambit has been widened over time to include mechanisms that cater to the needs of a diverse and dynamic society, especially through the incorporation of ADR within its ambit<sup>3</sup>.

ADR stands for a series of mechanisms intended for the resolution of disputes outside the formal judicial system, such as “**arbitration, mediation, conciliation, negotiation**”, and Lok Adalats. Arbitration is a quasi-judicial procedure regulated by the A & C Act, 1996, wherein the dispute is settled by impartial arbitrators appointed by the parties.<sup>3</sup> Mediation and conciliation are processes in which a third party neutral intervenes to help disputing parties arrive at a voluntary settlement, the former being more facilitative and the latter more evaluative in approach. Lok Adalats, under the LSA Act, 1987, are institutions where disputes pending in court or awaiting litigation are settled amicably, usually in consultation with retired judges or legal experts<sup>4</sup>. These mechanisms promise confidentiality, flexibility, speed, and lower legal expenses, making them particularly precious in a system weighed down by enormous pendency of cases.

The relationship between civil law and ADR is created by the incorporation of these mechanisms within the formal civil justice system. This is embodied in provisions like “Section 89 of the CPC”, wherein courts can refer parties to ADR processes where there is a likelihood of settlement.<sup>5</sup> Civil law therefore serves as a door and a guide to opening up ADR up to the extent that these mechanisms come within the orbit of procedural fairness and judicial supervision. The incorporation of ADR within civil law also embodies the constitutional ideals of access to justice and the right to a fair trial under “Article 21 of the Indian Constitution”<sup>5</sup>.

The foundation for ADR in civil disputes is also aided by judicial interpretation and policy advocacy. In “*Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*”, the apex Court enlightened the judicial referral mechanism to ADR and identified the nature of disputes best suited to be resolved by such a mechanism<sup>6</sup>. Such developments are reflective of an increasing institutional and doctrinal leaning towards bringing ADR into mainstream civil law and shifting the system of dispute resolution from an adversarial mechanism to a consensus-based and effective one.

## Research Approach

This study employs a doctrinal research methodology, analyzing primary legal sources such as statutes, case laws, and judicial pronouncements. It also uses a qualitative analytical approach to evaluate secondary literature, reports, and comparative legal frameworks from other civil law

<sup>3</sup> “Singh, Avtar. *Introduction to the Law of Civil Procedure*. Eastern Book Company, 2020”.

<sup>4</sup> “Legal Services Authorities Act, 1987, Section 19–22, provides statutory status to Lok Adalats”.

<sup>5</sup> “*Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369; the right to a speedy trial as part of Article 21”.

<sup>6</sup> “*Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24”.

jurisdictions. The methodology focuses on interpreting legal texts and synthesizing practical insights to offer a comprehensive analysis.

### **Doctrinal Underpinnings of ADR in Indian Civil Statute**

In India, the idea of ADR is not new but one embedded in the nation's socio-legal culture. There have been ad hoc mechanisms of justice like Panchayats and village councils operating in an informal manner as dispute resolution<sup>7</sup> forums in a peaceful way. Yet, the formal incorporation of ADR into Indian civil law jurisprudence began in good earnest from the later part of the 20th century, particularly as the judiciary struggled with the rising burdens of burgeoning case arrears and delay in proceedings. The legal process increasingly came to acknowledge ADR as a vehicle for the dispensation of speedy and cost-effective justice in harmony with constitutional goals of access to justice embedded in Article 39A<sup>8</sup>.

Three path-breaking legislative provisions are cornerstones of the ADR framework of Indian civil law. First, Section 89 of the CPC 1908, incorporated by the CPC Amendment Act, 1999, which came into operation in 2002, authorizes civil courts to refer cases for settlement by way of “arbitration”, “conciliation”, “mediation”, or “judicial settlement”, including Lok Adalats, if the court deems appropriate. This specific provision was an official incorporation of ADR within traditional civil adjudication. Second, the A & C Act, 1996, enacting the UNCITRAL Model, harmonized Indian law on arbitration and incorporated statutory recognition of conciliation and established a comprehensive legal environment for ADR outside the court room. Third, the LSA Act, 1987, legalized the functioning of Lok Adalats, thus providing statutory backing to a traditional collective mediation process, especially relevant to public utility and family disputes.

Judicial interpretation not only fortified and enriched these statutory mandates but also had a crucial role to play in enforcing them. In the landmark case of “Salem Advocate Bar Association v. Union of India”, the Apex Court reaffirmed the constitutional validity of “Section 89 CPC”, emphasizing the training of judges and the establishment of infrastructure to enable ADR mechanisms<sup>9</sup>. The judgment had a significant role to play in interpreting legislative will and bringing it to judicial reality. Subsequently, the Apex Court in “Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.” clarified the categorization of disputes amenable to ADR and enunciated operational guidelines for subordinate courts<sup>10</sup>.

High Courts and the Apex Court have continued to remain important in facilitating ADR by setting up court-annexed mediation centers and enacting rules for effective enforcement. By means of judicial activism and administrative reforms, the higher judiciary has made ADR not a vision but an operational instrument of civil justice<sup>11</sup>.

### **Practical Application of ADR in Indian Civil Judicial System**

The incorporation of ADR in the Indian civil justice system has now become a formalized and systematic mechanism, wherein judicial institutions promote and institutionalize ADR techniques consistent with legislative and judicial norms. The primary vehicle for ADR in civil litigation is offered by “Section 89 of the CPC”, which obliges the court to explore the option of settlement through ADR if there is an indication of a consent-based resolution between parties. This provision empowers the judiciary with the mandate to steer suitable cases to arbitration, conciliation, mediation, or judicial settlement, thereby incorporating ADR into the overall civil procedural context.

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<sup>7</sup>“Baxi, Upendra. *The Crisis of the Indian Legal System*. Vikas Publishing, 1982”.

<sup>8</sup>“Constitution of India, Article 39A – Equal justice and free legal aid”

<sup>9</sup>“*Salem Advocate Bar Association v. Union of India*, (2003) 1 SCC 49”.

<sup>10</sup>“*Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24”.

<sup>11</sup>“Mediation and Conciliation Project Committee (MCPC), Supreme Court of India, established in 2005”.

Court-annexed mediation has been a very effective and well-liked ADR process in Indian civil courts. Most of the High Courts, inspired by the Apex Court's MCPC, have established special mediation centres manned by trained mediators—usually consisting of retired judges, lawyers, or professionals. The centres operate alongside conventional courtrooms and dispose of cases like matrimonial cases, partition suits, tenancy disputes, and other private civil cases without adversarial hearings. The success of court-annexed mediation is seen from a few High Courts, primarily Delhi, Bangalore, and Madras, which have achieved high settlement rates through pre-litigation and post-filing mediation<sup>12</sup>.

Similarly, Lok Adalats established under the LSA Act of 1987 act as unofficial, people-friendly, and community-based forums with the objective of settling disputes, particularly those relating to motor accident claims, bank recoveries, and public utility bills<sup>13</sup>. Lok Adalats have proved effective in disposing of a large volume of civil cases in a single sitting, often without formal legal representation, and thus enhancing the efficiency of civil justice administration. Additionally, Permanent Lok Adalats (PLAs) u/s 22B of the same act settle disputes relating to public utility services and possess adjudicatory powers in the event of conciliation failure, and thus offer a quasi-judicial alternative<sup>14</sup>.

Legal aid systems improve the accessibility of ADR, thereby facilitating economically and socially marginal litigants to participate in settlement proceedings without having to pay huge sums of money. NALSA and State Legal Services Authorities (SLSAs) actively organize legal education camps and programs to create awareness about ADR<sup>15</sup>.

One of the best examples of successful ADR is the Delhi HC Mediation Centre (Samadhan), which resolved over 30,000 cases in its first decade with a success rate of over 65%<sup>16</sup>. These figures indicate the capability of ADR to transform India's civil justice system, not just to decongest courts, but to provide consensual, cost-efficient, and equitable resolution of disputes.

### **Challenges and Limitations**

Even though ADR has been introduced into Indian civil law, several obstacles are preventing it from reaching its full potential. Another concern is that the way the law is followed is not always the same in all places. "Section 89 of CPC" makes it mandatory for courts to suggest ADR, though choosing to do so is up to each judge and results in inconsistent outcomes.

Otherwise, stiff resistance among those involved in court cases has prevented ADR from being used more often. Many individuals and lawyers find that adjudication is considered the official way, while ADR may seem less effective or enforceable.

People are also concerned about how ADR decisions can be applied and whether they are fair to all. Although court decisions based on arbitration are effective, awards from Lok Adalats and mediations are not enforced unless made into court decrees<sup>17</sup>.

Another urgent challenge is the absence of standard training and accreditation for ADR professionals, causing differing degrees of competency and eroding public confidence in the process. Too many mediators and arbitrators are not formally trained in law or procedures, causing uneven

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<sup>12</sup>"Singh, Abhishek. "Mediation: A Case Study of Delhi High Court Mediation Centre." *Journal of Indian Law and Society*, 2018".

<sup>13</sup>"Legal Services Authorities Act, 1987, Sections 19–22".

<sup>14</sup>"Ibid., Section 22B – Establishment of Permanent Lok Adalats".

<sup>15</sup>"National Legal Services Authority (NALSA), Annual Reports, 2021–2023".

<sup>16</sup>"Delhi High Court Mediation Centre (Samadhan), Impact Report 2020".

<sup>17</sup> "Galanter, Marc. "Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law." *J. Legal Pluralism*, 1981".

quality of dispute resolution. Further, delays in court referrals to ADR mechanisms also negate the very essence of speedy justice. Judges refer cases late in the process of litigation when much time and effort have already been wasted, hence discouraging parties from settling. These delays in the system undermine the advantages of ADR and continue to fuel dependence on conventional litigation.

One of the most significant issues is a lack of knowledge and proper institutions. In many rural and semi-urban areas, litigants do not realize that ADR can provide a solution to their disputes. Not enough mediators and conciliators are available and basic facilities for ADR are lacking in most subordinate courts.

### **Suggestions and Recommendations**

It is necessary to reform laws and organizations to fully use ADR in India's civil justice system. At the outset, it is necessary to make changes to civil law statutes to strengthen ADR. Section 89 of the CPC needs improvement and specific directives to minimize arbitrary actions, for example, by including mediation as a first step in certain cases. Furthermore, judges should be well-trained and sensitized. Because not all judges are skilled in finding ADR-appropriate cases or in directing parties toward settlement, providing additional training to judges will help correct this situation. Besides focusing on the number of cases they decide, judges ought to be judged by their referrals to ADR, promoting agreement among the parties. It is also important for institutions to be updated to facilitate ADR. Having permanent and well-prepared mediation and conciliation centres at all judiciary levels will make the services available to many and maintain them all the time. The centres ought to ensure that their mediators receive proper training and follow the same code of ethics. If a regulatory body in the area of ADR were to supervise mediator training and certification, it would improve quality and hold mediators responsible across the country. Lastly, ADR can be advanced through effective public-private collaboration. All these groups should join forces to inform the public about ADR and help people gain the appropriate skills.

### **DISCUSSION**

Civil courts in India were once criticised for guarding their own turf. Section 89 of the Code of Civil Procedure marked a turning point. Since 2002 every civil judge is expected to pause, look for a possibility of settlement, and if appropriate send the file to mediation, conciliation, arbitration or a Lok Adalat. The Supreme Court has reinforced this duty in *Salem Advocate Bar Association v Union of India* (2005) 6 SCC 344, where the Court treated delay in referral as a constitutional concern because it undermines the right to speedy justice under Article 21. More recently, High Courts have issued practice directions that require judges to record reasons whenever they decline to invoke Section 89, thereby shifting ADR from an optional extra to an expected first step.

#### **Civil Law as Both Facilitator and Gatekeeper**

Civil law does more than wave litigants toward an ADR room. It lays down the outer limits within which informal processes must operate. A mediation settlement, for example, becomes enforceable only after the court converts it into a decree, ensuring procedural fairness and preventing coerced bargains. Conversely, the Arbitration and Conciliation Act, 1996, places strict limits on judicial interference once parties have agreed to arbitration. The same civil courts that nurture mediation therefore surrender significant control when parties choose arbitration. This duality—opening the door yet monitoring who walks through—illustrates how civil law balances autonomy with accountability.

#### **Illustrative Case Studies**

*Afcons Infrastructure Ltd v Cherian Varkey Construction Co (P) Ltd* (2010) 8 SCC 24 remains the most influential precedent on the Section 89 gateway. The Court produced a practical checklist:



family disputes, partition suits and partnership quarrels are normally suitable for mediation; public law questions and criminal allegations are not. Lower courts now cite this matrix almost daily.

In *State of Punjab v Jalour Singh* (2008) 2 SCC 660 the Court clarified that an award issued by a Lok Adalat, once signed by the parties, has the status of a civil decree and is immune from appeal except on grounds of fraud. This ruling reassured banks and insurance companies that bulk settlements reached in National Lok Adalats would stand the test of enforcement.

Matrimonial disputes provide a vivid example of mediation's humane impact. In *K. Srinivas Rao v D. A. Deepa* (2013) 5 SCC 226, the Supreme Court dissolved a marriage on the ground of mental cruelty but first recorded that several mediation sittings had narrowed the issues and allowed the parties to reach agreement on child custody. The Court expressly praised the mediator for defusing hostility that a full trial would have inflamed.

### **Regional Success Stories**

The Delhi High Court Mediation and Conciliation Centre, widely known as Samadhan, reports an average settlement rate of about sixty-five per cent across more than forty thousand referrals. Property disputes in Old Delhi markets, once notorious for decade-long trials, now close in a single afternoon when experienced chartered accountants mediate rent calculations. Permanent Lok Adalats for public-utility services have also produced tangible results. In Bengaluru a consumer who challenged an inflated electricity bill of ₹ 7 lakh saw the claim reduced to ₹ 1.8 lakh within three hearings, a speed impossible in the ordinary civil docket.

Implementation still varies sharply between metropolitan and rural courts. Many district judges hesitate to refer matters early because they fear reversal on technical grounds, even though the Supreme Court encourages proactive referral. Lawyers sometimes resist mediation, worried that reduced billable hours will undercut income. Mediation centres in smaller towns struggle to attract trained neutrals; without a national accreditation scheme, quality is uneven and public confidence suffers.

Enforceability anxieties also linger. An arbitral award is immediately executable, yet a mediation settlement needs judicial stamping, and a Lok Adalat award cannot be challenged even when a party later alleges duress. Litigants who do not understand these distinctions may reject ADR out of caution.

Civil law in India has gradually transformed ADR from a peripheral option into an integral component of justice delivery. Statutes give the necessary authority, case law supplies interpretive clarity, and practical experiments in mediation centres and Lok Adalats demonstrate real potential for cost-effective, relationship-preserving settlements. To fulfil this promise uniformly the system must invest in mediator training, create objective referral guidelines that limit individual discretion, and launch public-awareness campaigns that explain how an out-of-court settlement can be as binding as a courtroom decree. Only when parties across every district perceive ADR as a credible first resort, rather than a consolation prize, will the civil courts achieve the constitutional vision of timely and accessible justice for all.

### **CONCLUSION**

The paper has studied the connection between civil law and ADR in India. Starting with principles set in statutes such as the CPC, the A & C Act and the LSA Act, Lok Adalats, court-annexed mediation and legal aid have allowed ADR to fit well into India's civil justice system. While decisions from courts and specific actions by authorities have supported this shift, some problems such as not having the same processes, the opposition of particular stakeholders and lacking appropriate physical resources still remain. Even faced with these issues, civil law is still an essential part of how ADR has grown, by setting important guidelines and procedures. Studies show that creating procedures, improving training and requiring ADR before litigation often result in much

higher efficiency. Above all, the goals of ADR in India should be consistent with the Indian Constitution's principles of providing justice, resolving issues promptly and involving the public. Simply put, achieving these improvements needs more political assistance, the efforts of judges and the involvement of the wider public. ADR is both an alternative choice and a way for India's legal system to improve

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