



# EXPLORING THE CLASSICAL APPROACHES TO ARBITRATION

**By: Muskaan Chugh**  
**Law Student**  
**Amity Law School, Noida**

*"Arbitration empowers individuals and entities to take control of their destinies, resolving conflicts on their own terms while upholding the principles of fairness and justice."*

- Sonia Sotomayor

## **ARBITRATION AND OTHER ADR METHODS:**

It is a proven fact that court proceedings are a very complex and costly and time taking process and litigation in a general procedural way is not the best way to resolve cases which include accidental claims or contracts, etc. Also, a key point needs to be understood that litigation doesn't always ends in a satisfactory manner and it always comes up across as win or lose situation and thus it leads to situations of appeals and increasing the litigation procedures.

There has come a recent survey which shows that more than 70% of the people who win the cases in courts were unhappy in the end and it is a no brainer that 100% of the parties on the losing side were happy. Thus, since in modern times we believe in the principle of talking things out it is understandable that we have to explore alternate methods to resolve the disputes in order to reduce the burden on courts and also reducing the shortcomings of litigation which comes up.

It is quiet understood that whatever alternate technique we use in order to resolve disputes can be termed as "Alternative Dispute Resolution technique". As per Sir Laurence Street, "ADR is not truly an *alternative* means of dispute resolution, in that it is not incompatible, or in competition with, the established judicial system. Rather, ADR, according to him, provides an additional range of dispute resolution mechanisms." Rather, ADR, in his understanding "provides an additional range of dispute resolution mechanisms. In fact, Sir Laurence Street has described ADR as a holistic concept of a consensus-oriented approach to deal with potential and actual disputes or conflict which encompasses conflict avoidance, conflict management and conflict resolution."

“As per the research of Professor Chris Field, the common ingredients of Alternate Dispute Resolution (ADR) are as under:

- ADR includes a range of dispute resolution processes;
- ADR does not include litigation;
- ADR is a structured informal procedure;
- ADR normally involves the intervention of a neutral third party; and
- ADR processes can be non-adjudicatory.”

There are several advantages of using Alternate Dispute Resolution (ADR) methods over the traditional litigation methods. The ADR methods are time effective, cost effective, a win-win situation for both the parties, parties have freedom to choose arbitrators/mediators/conciliators/mediators, etc.

The methods of Alternate Dispute Resolution (ADR) are very progressive in nature since they allow every party a free hand since there are no complex procedures parties act freely and thus the negotiation is done in a much better way which gives parties an option to opt for an option which is a much better way of resolving a dispute wherein they can decide the arbitrator mutually, process is not complex and thus resolving the disputes mutually and in a way where everyone is a winner.

## **INTRODUCTION**

India has a long tradition of solving disputes through ways of consensus and unity, which was known to be *Panchayats*. The panchayats were established to decentralise power and empower local communities to make decisions regarding the villages. Such disputes were resolved generally under the supervision of elderly people. However, colonisation in India uprooted the many traditions from India, one of them being that of Panchayats. Such establishments of Panchayats was then replaced with courts of law, which was a much more formalised approach of resolving disputes.

Not long after it was realised that such courts cannot be the sole approach towards resolving disputes. Court proceedings posed to be a complex, costly and time consuming method of resolving disputes where the parties had limited control.

There was widespread delay in the delivery of justice, and inefficiency was clearly apparent. This led to a significant backlog of cases that persists to this day, causing ongoing challenges in our legal system.

It is evident that misunderstandings are usually caused when two people are involved in a transaction or business endeavours. Some of such misunderstandings need to be resolved through a quick and effective method. Litigation is an extensive procedure, complying to various legislations and protocols. It involves complex court processes, including pleadings, discovery, motions, hearings, and potentially a trial. Additionally, adherence to procedural rules adds layers of complexity to the litigation process, often leading to prolonged legal battles and significant expenses for the parties involved.

To address such issue, alternative dispute resolution procedures were added. Arbitration being one of them.

Arbitration is a method of dispute resolution, where the parties present their submissions to a neutral third party, known as the *Arbitrator*. Arbitration is an alternative to normal litigation procedures, by comparison, it is a flexible, cost-effective and quick method of resolving disputes.

Arbitration turns out to be a viable alternative to traditional litigation as it offers parties a less formal method of resolving disputes while having the enforceability of an order passed by the court.

In India, arbitration had taken time to be accepted as an alternative, this was because the people of India usually trusted courts in the matter of resolving disputes. They were hesitant to the basic procedures of arbitration,

that is, disclosing of matters in front of a neutral third party. many showed their intention to go through the hustle of going through years of court proceedings to resolve the dispute in hand.

### **PROBLEMS FACED IN INDIA BEFORE ARBITRATION:**

- Earlier, in India, the disputes related to the village or other issues were resolved through Panchayats, whereas, the family issues were usually resolved in the supervision of the elderly members of the family. It was said by the elderly that a dispute should be resolved in a manner that it does not affect the relationship with others. However, in recent times, it is seen that people are not willing to resolve disputes amicably, they are more in the favour of resolving disputes through courts, where one person loses, and their reputation might be tarnished.
- Another problem other than that mentioned is that, for court proceedings, advocates are required, where they charge a substantial amount of money. This can result to greed of the advocates and further promoting litigation procedures.
- The paper also addresses the problem of lack of awareness in the people of India, This lack of awareness to utilize arbitration results in prolonged legal battles, and significant financial burdens for the general people. Thus, there is a pressing need to examine the advantages of arbitration over traditional litigation, raise awareness of its effectiveness, and explore strategies for promoting its wider adoption in resolving disputes.

### **OBJECTIVES OF AWARENESS ABOUT ARBITRATION:**

- To analyse the legal framework of arbitration in India, including the Arbitration and Conciliation Act, 1996, along with its amendments and other recent developments.
- To assess the awareness in the people of India, the reasoning behind it & to propose strategies for enhancing such alternative dispute resolution methods, as compared to the traditional litigation methods.
- To examine the role of the Indian courts in identifying arbitration as an alternative to it, analysing the delays and complexities faced by the courts. Along with this, we shall look into the take of judiciary on the same.
- To identify the challenges faced by arbitration in India, such as, limited remedies or non-compliance. The requirement of judicial intervention on the same.
- To explore the idea of emerging trends in the world including the rise of arbitration or the advancement of technological advances In the courtroom.

### **TRADITIONAL METHODS OF ADR BEFORE THE ACT OF 1996**

Before the Arbitration and Conciliation Act, 1996, the way of resolving disputes was not through any formal procedures. As mentioned earlier, it was usually resolved by Panchayats, which was essentially a gathering of all the learned people of the village, to come together for a solution. Let's take a deep dive in at some other traditional methods of Arbitration before 1996.

Firstly, *Panchayats*, could be referred as a village council where all the respected elders or other leaders would form an association to gather and resolve disputes arisen in the village.

Panchayats have been a long tradition of rural India, which played a significant role in resolving various types of disputes, including property disputes or disputes between neighbours. This was done through informal ways of resolution.

The respected members and elders acted as arbitrators or mediators between the two parties, to facilitate dialogue between them and finally reach a common consensus.

This was done through negotiations, compromise or pulling up of local traditions. These were a few informal ways of resolving disputes.

Out of this *Gram Panchayat*, was the lowest tier of the Panchayati Raj System in India. Gram Panchayat comprised of the elected members, who were known as the Panchayat members. Such members were then entrusted with the responsibility of resolving disputes, among other responsibilities. Gram Panchayat was also recognised as a traditional method and added to the constitution under the 73<sup>rd</sup> amendment under Part IX of the Indian Constitution.

Another traditional method of ADR was *Nyaya Panchayat*, also known as Gram Nyayalaya. These were the local courts established under the Gram Nyayalaya Act, 2008, to resolve disputes of civil as well as criminal nature, within their territorial jurisdiction. The aim of establishment of such courts was to provide quick, effective and affordable resolution of dispute to the general public at a grassroots level.

Such Nyaya Panchayats was composed of a Nyayadhikari, who was the judge. Such person was usually a qualified person, a judicial officer or someone with legal experience. The Nyayadhikari was then assisted by Nyaya Mitras, who were the people with legal knowledge & Nyaya Sewaks, who were the court staff. Nyaya Mitras helped the Nyayadhikari in case of any challenge legally & the Nyaya Sewaks assisted them in management and administration.

Next traditional method of ADR would be the gatherings of *Community Elders*. In many communities of India, it was common practice that the community elders would gather to resolve any disputes. This would also include any family and matrimonial issues.

Such elders would act as mediators, their aim was to facilitate dialogue between the two parties and resolve the dispute without damaging the relations between the two.

The elders were known for their impartiality and wisdom and entrusted with the responsibility to reach a common consensus regarding the resolution, through negotiations.

Additionally, *Customary Practices* were also a traditional method as in it included various rituals, traditions or community gatherings. Most of the communities used customary practices to resolve disputes. Such practices varied according to the regional, cultural or religious factors.

Such practices aimed to resolve disputes between the parties and restore harmony in the community.

*Religious institutions* also posed to be a traditional method of resolving disputes. Religious institutions like temples, mosques or gurudwaras have historically played a common role in resolving disputes among their followers.

The role of arbitrator or mediator is played by the religious leaders or the priests, they take the responsibility to resolve disputes in accordance with the religious teachings, by applying the religious ethics or protocols.

These examples represent a few glimpses of the traditional methods of ADR. While these practices still may endure in certain pockets of India, and continue to be utilised in a few small villages of India, but these exist alongside of the Arbitration and Conciliation Act, 1996.

Despite the modernisation and codification of arbitration laws, the traditional methods of ADR, such as, Panchayats or community based arbitration continues to play a significant role in certain regions of India. Such practices are ingrained in the social culture & practices of India, drawing upon various centuries old customs. India is known for its customs and norms, such practices being a part of it.

In many rural areas of India, people still prefer such panchayats over the proper legal institutions for dispute resolution. This is due to various reasons, a few being, access to such institutions, cost-effective and familiar method.

However, it is pertinent to note that such methods are not immune to the challenges and issues. Such institutions severally lack formal legal training, equal power distribution & effective implementation of the agreed upon

resolution. Co-existence of such institutions along with the can also lead to various complexities among the system.

Nonetheless, the traditional methods are an integral part of India's culture and heritage and serve as a testament to the ingenuity of the grassroot dispute resolution mechanisms. As we progress in the recent times, the accumulation and codification of such laws make the procedures of arbitration and other dispute resolution simpler and such modernization of laws strike a balance between traditional customs and contemporary principles of law. This ensures justice for all segments of the society.

## **CONCLUSION**

In an era characterised by rapid globalisation and intricate international transactions, dispute resolution becomes an inevitable part of the society. It is evident that, whenever a transaction occurs, regardless of its nature, disputes inevitably arise. Traditional litigation with its procedural complexities, costs, delays tends to fail to address such issues. Here, arbitration emerged as a pivotal component of modern legal system, it shaped the dispute management system in a way which was not seen before.

Its significance transcends for the fact that it is an efficient way of dispute resolution with broader themes, cost-effective, procedural fairness and access to justice. The arbitral award serves in the same manner as a court order, which secures justice for people.

At its core, arbitration had started to represent the traditional methods to resolve disputes. This offers the parties a forum and the power to resolve their disputes on their own, with a neutral party present. By empowering the parties to make their own decisions and come up with solutions, arbitration aims to promote autonomy and self-independence, this encourages them towards collaborative problem solving, instead of reaching to court with the intension of winning or tarnishing the other party's reputation.

Arbitration embodies the principles of procedural fairness and due process. This ensures that parties are not hesitant to reach towards arbitration and they freely participate in the proceedings of resolution process. It aims to reduce the rigid procedural formalities of the traditional court proceedings. Such principles of arbitration promotes procedural efficiency while ensuring that the integrity and legitimacy of the dispute resolution process.

Additionally, arbitration also plays a pivotal role in promoting cross border commerce and takes part in facilitating the international transactions. The process of arbitration along with other methods of dispute resolution have been embodied in the international conventions, for instance, New York Convention mentions arbitration. The convention enhances legal certainty and predictability, it aims to provide confidence to the parties in respect to the enforceability of arbitral awards across borders.

Arbitral awards have a global recognition and arbitration is gradually gaining the credibility as a preferred method of resolving disputes in the international arena, fostering trust and confidence in the parties who are engaged in such cross border transactions.

In conclusion, arbitration is extending far beyond its practical advantages, as regards to the efficiency and cost-effectiveness. It is now becoming a forum for self-determination, an advocate for procedural fairness, a role of a facilitator for international commerce.

It promotes easy access to justice, assisting parties towards cooperation and resolving disputes in a world today which is extremely complex and interconnected.