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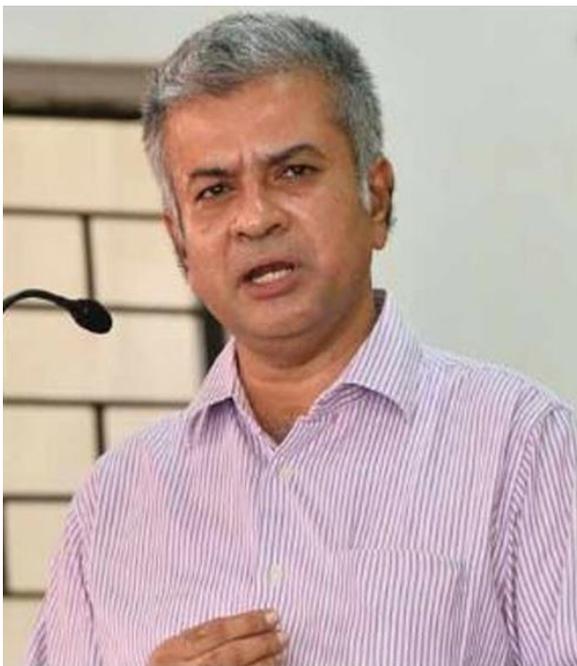
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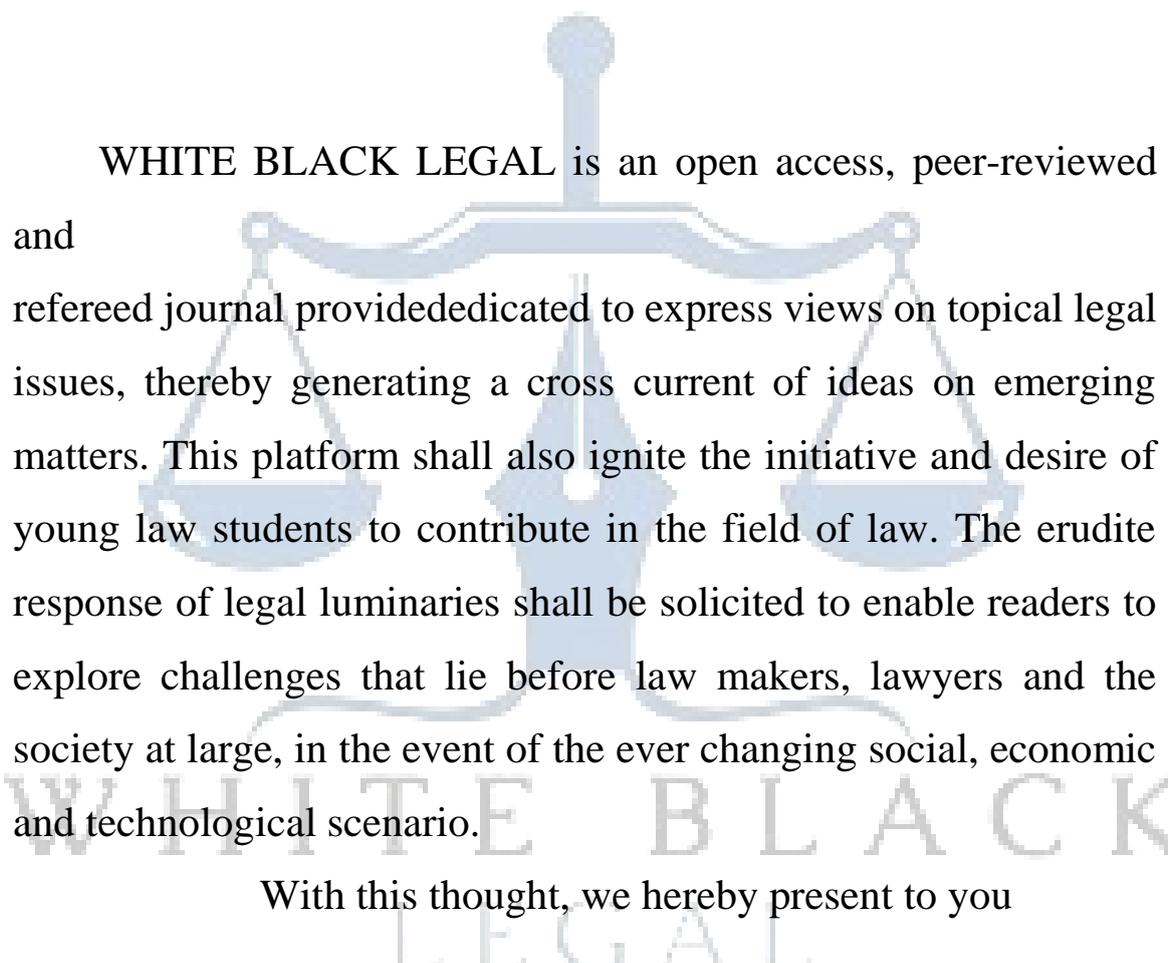


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **THE IMPACT OF ADR MECHANISM IN INDIA'S JUDICIAL SYSTEM: AN ANALYSIS**

AUTHORED BY - MONORANJAN HALDAR & AMRAPALI MUKHERJEE

## **ABSTRACT**

The article commences by exploring and delving in-depth into its evolution as an alternative means to the traditional courts, thereby commenting on the ambit and the scope of ADR. The Chapter shall essentially highlight the objectives and significance of ADR in delivering an efficient and economical solution to disputes in multifarious fields, including commercial, family, industrial, and property-related matters.

ADR mechanisms in the contemporary arena have been considered the demand of the hour as they offer an amicable mechanism for resolving disputes between the parties within a time-bound manner, necessarily contributing towards an out-of-courtroom settlement.

ADR provides an alternative system to the traditional approach for speedy disposal of disputes outside the regular court of law. ADR mechanisms include mediation, arbitration, conciliation, and negotiation, which the Chapter shall analyse in detail. The Chapter shall navigate to the significance and effectiveness of the ADR system in establishing the concept of a neutral evaluation and restorative justice in India and how the incorporation of the ADR mechanism as an alternative means into our justice dispensation system can do away with the pendency of cases in the traditional courts.

The Chapter shall further shed considerable light on the benefits and drawbacks of ADR along with a detailed review of its success and failure rates of it, which shall, in turn, be corroborated by a plethora of case studies and statistical data. The concluding part of the Chapter shall vividly enumerate the potential challenges and various legal frameworks and policies which are at play to mitigate those oppositions that are barring a successful execution of the ADR mechanisms in India.

**Keywords: ADR Mechanism, Neutral Evaluation, Restorative Justice, Justice Dispensation.**

## **I. INTRODUCTION**

In any State, the justice delivery system plays a critical role in promoting the public interest along with the maintenance of social order. Mitigation of disputes outside the court is not a new concept in the societies. The courts in India after the abolition of the Privy Council in post-independence era were established under a three-tier system, namely:

- The Apex Court of India, i.e., the Supreme Court
- The High Courts
- The Inferior courts

for those issues that could not be resolved by the people on their own outside of the court. There are two methods used in today's world to address legal issues. The first method is a traditional method, i.e., litigation, where two parties present before the court of law through their litigator for the hearing before the judge. Litigation is basically a lengthy, time-consuming and very costly process for the parties involved in a dispute. On the contrary, ADR is an alternative to litigation, which involves mediation, arbitration, conciliation, negotiation, etc, to resolve disputes outside the court and without the intervention of the court, although such resolution must comply with certain legal rules. ADR is becoming a popular method between the parties with the passage of time, especially in commercial disputes. Ancient Indian societies relied on panchayats to resolve disputes between villagers until the formalisation of the legal system took place under the British Raj. The Bengal Resolution Act, 1772 and the Bengal Resolution Act, 1781 were the first statutes which opened the doors for ADR in India. These statutes remained effective until the Civil Procedure Code was enacted in 1859. After that, the Indian Arbitration Act was passed in 1899, which was based on the English Arbitration Act of 1889. It was the first comprehensive legislation on arbitration in India. Although this legislation was only applicable to presidency towns, although the legislation faced several judicial criticisms. The CPC was further enacted in 1908, and it encouraged that the disputes must be first addressed to ADR under section 89(1).<sup>1</sup> After that, the Arbitration (Protocol and Convection) Act of 1937 came into effect to implement the Geneva Protocol on Arbitration Clauses (1923). After that, the Britishers passed the Arbitration Act 1940, which was effective until Arbitration and Conciliation Act 1996 was passed. After India gained independence, the country inherited the legal framework established by the Britishers, including the judicial

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<sup>1</sup> The Code of Civil Procedure, 1908 (Act No. 5 of 1908), Section 89.

system and ADR mechanisms. The settlement of disputes through Lok Adalats was first introduced in Gujarat's Junagarh on 14<sup>th</sup> March 1982. Initially, Lok Adalats were designed as informal tribunals, without any statutory backing, where parties could resolve their disputes. However, after the enactment of the Legal Services Authorities Act 1987, Lok Adalats received statutory recognition and became an integral part of the Indian legal system. The Act of 1996 was a landmark development in the post-independence era, which brought India's arbitration laws as per the guidelines provided by the **UNCITRAL Model Law on International Commercial Arbitration**. The Act of 1996 introduced the concept of conciliation. The Act of 1996 was revised in 2015, 2019 and 2021, respectively<sup>2</sup>.

## **II. SIGNIFICANCE**

ADR plays a major role in India's legal system. A few key significance of ADR are as follows:

- ADR provides affordable and speedy trials with less procedural work.
- ADR uses a direct approach to settle the disputes.
- ADR takes very less time to resolve disputes.
- It strives to achieve equal justice and free legal aid provided under the Directive Principle of State Policy.
- It keeps the information and dispute classified, i.e., maintains confidentiality.
- It provides scientifically developed techniques to the Indian judiciary, which helps to reduce the excessive burden of the judiciary.
- For the last few years, only Lok Adalats have disposed of more than fifty lakh cases each year.

## **III. LEGAL FRAMEWORKS**

The Indian government, from time to time, has enacted several statutes to resolve disputes through ADR, namely:

### **A. Indian Arbitration Act, 1899**

It was the first formal statute on arbitration, which was only applicable to Madras, Bombay, and Calcutta. This statute was based on the English Arbitration Act 1899. Later on, the Act of 1899 was codified in the CPC, 1908

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<sup>2</sup> Menkel-Meadow, 'Ethics Issues in Arbitration and Related Dispute Resolution Processes: What's Happening and What's Not' [2004] University of Miami Law Review 56, 949.

and extended to other parts of then British India.

#### **B. Arbitration and Conciliation Act, 1996**

This is an Act that regulates domestic arbitration in India. The Act has been amended multiple times. The latest amendment took place on 10<sup>th</sup> March 2021. The main objective of the Act is to promote a comprehensive resolution of disputes through arbitration. It is applicable both nationally and internally.

#### **C. Legal Services Act, 1987**

The Act was passed by the Indian Parliament and came into effect on 9<sup>th</sup> November 1995, with an intention to provide free legal aid to the people who belong to economically weaker sections of backward communities to comply with Article 39-A of the Indian Constitution (DPSP). Justice R.N. Mishra established the National Legal Services Authority in India, which played an important role in implementing the Act and Lok Adalats.

#### **D. Mediation Act, 2023**

It is the first Act for mediation in India. The Act provides an option for the parties to mediate any disputes, whether civil or commercial in nature. The primary goal of the Act is to facilitate as well as promote mediation, especially institutional mediation.

### **IV. MECHANISMS OF ADR**

ADR refers to mechanisms which provide parties alternatives to traditional court litigation for resolving disputes. The system of dispensing justice in India is facing great stress nowadays because of the increasing number of pending cases in courts. ADR is mainly classified into four categories, namely:

#### **A. Arbitration**

Arbitration is a formal process in which the disputed parties agree to submit their dispute to a neutral and independent arbitrator or a panel of arbitrators who render a binding decision. This mode of ADR is less formal compared to regular court trials. The hearings that take place in arbitration are not a matter of public record. The decision made during arbitration by the arbitrator or arbitral tribunal is considered binding upon the parties involved, and there is very limited scope for judicial intervention. Under ADR, arbitration can be classified into several categories, namely:

**i. Ad Hoc Arbitration**

In this method, both parties mutually agree to appoint a neutral arbitrator to resolve their dispute. In India, this method is considered one of the most common forms of arbitration<sup>3</sup>.

**ii. Institutional Arbitration**

Institutional arbitration is when an arbitral institute conducts arbitration between the parties to settle their dispute<sup>4</sup>. These institutions may be either national or international in nature. These institutions generally lay down their own rules for arbitration, although such rules must be in accordance with the provisions of the Arbitration and Conciliation Act of 1996. Some of the prominent institutes that provide institutional arbitration are namely:

- The London Court of International Arbitration,
- The National Arbitration Forum USA,
- Singapore International Arbitration Centre,
- International Arbitration and Mediation Centre, Hyderabad,
- Delhi International Arbitration Centre, etc.

**iii. Domestic Arbitration**

Domestic arbitration will only take place when both parties are nationals of the same jurisdiction. In other words, both the parties involved must be Indians, and the proceedings must take place in India. However, no specific definition of domestic arbitration has been provided in the Arbitration and Conciliation Act of 1996.

**iv. International Arbitration**

In the case of international arbitration, at least one of the parties of ADR must be a foreign national, or the tribunal dealing with such dispute has been incorporated in a foreign country<sup>5</sup>.

**B. Conciliation**

Conciliation is an informal and non-binding process of ADR, in which the parties to a dispute take assistance from an impartial third party, i.e., the

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<sup>3</sup> The Arbitration and Conciliation Act, 1996 (India).

<sup>4</sup> Singh, A. K., 'ADR and its effectiveness in India' [2018] International Journal of Advanced Research 704, 707.

<sup>5</sup> Park, S., & Kelly, J., 'Alternative Dispute Resolution (ADR) in International Business Transactions' [2012] Journal of International Business Education 1, 17.

conciliator, who meets with the parties both separately and together in reaching a mutually agreed settlement of their dispute. The parties involved in resolving disputes between them through conciliation are free to accept or reject the recommendations given by the conciliator. However, once both parties to the dispute accept the settlement document given by the conciliator, then it will be treated as final and binding upon them<sup>6</sup>.

### **C. Mediation**

Mediation is when an impartial person, termed a 'mediator', helps the parties involved in disputes to resolve their dispute through settlement. The main aim of the mediation is to establish proper communication between the parties for their amicable resolution of the dispute instead of pronouncing any decision by the mediator.<sup>7</sup> Usually, there are five basic principles seen in the mediation process, which should be binding strictly upon the parties involved in disputes, as well as on the mediator. These principles are as follows:

- Both parties must participate in this process voluntarily,
- Confidentiality needs to be maintained in this process,
- The mediator must act neutrally,
- An agreement has to be settled to the satisfaction of the parties concerned,
- Mediation should be without prejudice to other procedures.

### **D. Negotiation**

The term negotiation is derived from the Latin term "negotari", which means "to carry on business". It is a method of discussion between parties with regard to resolving a dispute between them. Negotiation can be of different types, such as distributive negotiation, integrative negotiation, multiparty negotiation, etc<sup>8</sup>.

## **V. LANDMARK CASES**

Several landmark cases relating to ADR are mentioned below:

### **A. Afcon Infrastructure V. Konkan Railway Corporation**

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<sup>6</sup> Malhotra, O.P., *The Law and Practice of Arbitration and Conciliation* (2nd ed. 2014).

<sup>7</sup> Goulston, M. K., & Coulson, J. M., *Mediation and conflict resolution in the workplace* (Jossey-Bass, San Francisco 2010).

<sup>8</sup> Hwang, S. Y., 'Advantages and disadvantages of alternative dispute resolution (ADR)' [2019] *International Journal of Law and Management Review* 22, 29.

In this case, both parties entered into a contract for the construction of the Udhampur-Srinagar-Baramulla Rail Link project. The contract had an arbitration clause. The petitioner filed an application under the Arbitration and Conciliation Act 1996 and then nominated an arbitrator. The respondent was also asked to nominate their arbitrator within thirty days. The issue raised in this case was whether the court had jurisdiction over the petition filed under section 11(6) of the said Act or not. The Supreme Court of India set aside the order passed by the Bombay High Court in January 2024. The Supreme Court also appointed the arbitrators to resolve the disputes<sup>9</sup>.

**B. Bhatia International v. Bulk Trading S.A. and Anr.**

In this case, a dispute took place between the companies, and Bulk Trading filed an application under the Arbitration and Conciliation Act 1996 against Bhatia International. Bhatia International, which is an Indian company, challenged the application filed under section 9 of the said Act and argued that as the arbitration happened outside India, therefore such an application would not be applicable. The primary issue raised in this case was whether Part I of the said Act would be applicable or not. The Supreme Court stated that Part I of the Act would be applicable to domestic as well as international arbitrations unless the parties involved in the matter expressly or impliedly excluded its application<sup>10</sup>.

**C. Indus Biotech Pvt. Ltd. v. Kotak India Venture Fund**

The case was based on a dispute over the alteration of optionally convertible redeemable preference shares into equity. Kotak India filed an application under the Insolvency and Bankruptcy Code when the other party failed to redeem those shares. The issue raised in this case was whether the insolvency proceedings could proceed when an arbitration was pending. The Supreme Court opined that the case cannot be referred to arbitration while the process is in rem. The Supreme Court further stated that the petition filed by Kotak India could not proceed as the arbitration was adjured<sup>11</sup>.

**D. Future Coupons Pvt. Ltd. & Ors. v. Amazon.com NV Investment Holdings LLC & Anr.**

In this landmark case, the two major companies, i.e., Amazon and Future Retail

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<sup>9</sup> Afcon Infrastructure V. Konkan Railway Corporation [2020] AIR (NOC) 762 (BOM.).

<sup>10</sup> Bhatia International v. Bulk Trading S.A. and Anr. [2002] 4 SCC 105.

<sup>11</sup> Indus Biotech (P) Ltd. v. Kotak India Venture Fund- I, [2020] SCC OnLine NCLT 1430.

Group, were involved in a long-standing and media-highlighted legal battle after entering into a series of agreements. In 2019, Amazon invested 1431 crore INR in Future Coupons Pvt. Ltd. and acquired 49% of its stake, which is a promoter company of Future Group. As a result of this 1431 crore investment, Amazon got a 3% stake in the Future Group. As per the terms and conditions of this deal formulated between these two companies, Future Group will not sell its assets to certain listed companies that were expressly mentioned in the agreement without the consent of Amazon Group. Mukesh Ambani's 'Reliance Retail' was one such prohibited entity. Thereafter, Reliance Group and Future Group entered into an agreement to amalgamate the shares of Future Retail Ltd. with the Reliance Group. The subsequent agreement with the Reliance Group hurt Amazon Group's interests. Hence, Amazon brought this issue before the Singapore International Arbitration Centre (SIAC) as per the arbitration clause in the agreement. The SIAC granted an interim relief in favour of the Amazon Group. However, the Future Group was reluctant to comply with the order passed by the SIAC, which forced the Amazon Group to file an execution suit before the Delhi High Court to enforce the emergency award. Finally, this high-profile case was forwarded before the Supreme Court.

The core issues which were raised before the Supreme Court in this case are-

- Should an emergency arbitrator be considered an arbitrator under the Arbitration and Conciliation Act?
- Can the order passed by an emergency arbitrator, who was appointed under Schedule 1 of the SIAC Rules, be considered a valid order under section 17(1) of the Act?
- Whether an order passed under section 17(2) of the Act by the Single Judge of the Delhi High Court appealable or not?

The Apex court, in this matter, upheld the validity of the emergency award passed by an emergency arbitrator appointed under the SIAC. The Supreme Court also stated that such awards are enforceable under section 17 of the Arbitration & Conciliation Act. Later on, based on a joint memo filed by the Future Group and Amazon, the Apex Court allowed the continuation of arbitration proceedings at SIAC, where the SIAC was first asked to evaluate the plea of the Future Group regarding termination of the arbitration proceedings,

especially on the ground that CCI had revoked the original shareholder agreement<sup>12</sup>.

#### **E. Hindustan Construction Company Ltd. v. NHAI**

The Hindustan Construction Company entered into a contract with the NHAI for construction works pertaining to the Allahabad bypass project. The project entailed constructing a road from kilometre 158 to kilometre 198. Disputes arose between the parties over additional expenditures due to increased royalty rates, increased forest transit fees, etc. As a result, the matter was referred to an Arbitral Tribunal, where three technical experts were appointed as arbitrators. HCC won arbitral awards in its favour, which was challenged by the NHAI under section 34 of the Arbitration and Conciliation Act, 1996. Finally, the matter was appealed before the Supreme Court by the NHAI. The key issues raised before the Apex Court in this case were

- Whether the Arbitral Tribunal's decision is subject to judicial review under section 34 of the Act, 1996 or not?
- Whether the directions issued by the Arbitral Tribunal regarding reimbursement and payments were justified or not?

The Apex Court dismissed the appeal of NHAI, affirming the decisions which were passed by the lower courts. It highlighted that the examination of challenges to arbitral awards must adhere to the limitations imposed by sections 34 and 37 of the Act<sup>13</sup>.

### **VI. FUTURE TRENDS IN ADR**

In recent years, ADR has gained notable momentum in different types of disputes because of its easy, less time-consuming, and cost-effective approach. During the lockdown period of the COVID-19 pandemic, everything went online in India, and that has transformed ADR into ODR, i.e., online dispute resolution. Similarly, Lok Adalats also shifted their hearings into online modes, such as e-Lok Adalats. ODR is the digitalised version of traditional ADR, where technology, as well as the internet, directly comes into play. It also has the potential to use some of the emerging technologies, like artificial intelligence, for its proper functionality

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<sup>12</sup> Future Coupons Pvt. Ltd. & Ors. v. Amazon.com NV Investment Holdings LLC & Anr. 2022/DHC/005024.

<sup>13</sup> Hindustan Construction Company Ltd. v. NHAI (2024) 2 SCC 613.

in the near future<sup>14</sup>.

## **VII. CHALLENGES IN ADR**

The government of India is facing several challenges as far as successful adoption of ADR is concerned, namely:

### **A. Digital Infrastructure**

Digital infrastructure, i.e., technological advancements, is the key requirement for successfully running ADR across the country. Digital infrastructure includes physical hardware and software-based technologies and many more. The lack of digital requirements creates obstacles to establishing ADR in India<sup>15</sup>.

### **B. Insufficient Governmental Support**

India is the 5th largest economy as per GDP and is still considered a developing country. We as a nation need to cope in multiple fields, including ADR. But, even today, sometimes the reluctant approach can be seen by the government when it comes to building a robust ADR mechanism in India<sup>16</sup>. Moreover, the lack of funding from the government is another hurdle for establishing a comprehensive ADR system all over the country.

### **C. Legal Complications**

Indian courts very often interfere in ADR proceedings. But, once the order is passed by the neutral arbitrator or arbitral tribunal, the parties need to present before the courts for execution of such order. Moreover, the lack of skilled arbitrators, mediators and negotiators is another challenge that the Indian ADR system is currently facing<sup>17</sup>.

### **D. Lack of Awareness**

Lack of legal awareness among the people of India is one of the main reasons for the hindrance of the growth of ADR in India<sup>18</sup>.

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<sup>14</sup> Menon, M. P., *Alternative Dispute Resolution: Practice and Procedure in India* (5th, LexisNexis, New Delhi 2016).

<sup>15</sup> *Bharat Aluminum Co. v. Kaiser Aluminum Technical Servs.* [2012] 9 S.C.C. 552.

<sup>16</sup> Sharma SN, 'Alternative Dispute Resolution in India' [2017] 4 *Journal of Social Welfare and Human Rights* 33.

<sup>17</sup> *Salem Advocate Bar Ass'n v. Union of India* [2005] SCC 344.

<sup>18</sup> Mehra, P., 'Quality Assurance in Alternative Dispute Resolution' [2019] *Indian Journal of Arbitration Law*.

## **VIII. RECOMMENDATIONS**

### **A. Limited Intervention of the Court**

Indian courts must limit their interference in ADR proceedings. So, the minimalistic intervention by the judiciary will eventually help the process of ADR be more effective, and the interest of justice will also be preserved<sup>19</sup>.

### **B. Robust infrastructure**

The government needs to build a robust infrastructure in every district of India to make it more accessible to the people<sup>20</sup>.

### **C. Awareness**

The concerned government organs need to act together with the legal institutions in India to spread awareness about ADR, its positive impact on the justice system and how the people can benefit from it<sup>21</sup>.

### **D. Skill-based Training for Legal Professionals**

The legal professionals in India need skill-based training in this field so that they can resolve disputes more effectively between the parties<sup>22</sup>.

## **IX. CONCLUSION**

We are witnessing a digital transformation in every part of India. The internet has become an integral part of our daily life. ADR has been transformed into ODR due to the availability of cheap internet in India. During the COVID-19 pandemic, ADR became a need of the hour, as everything went online due to lockdown. The contribution of ADR to Indian society is unavoidable, especially in this current age, when we all witness the judiciary getting overburdened day by day. ADR is not merely an alternative to the traditional judicial system but also a pocket-friendly, minimal-time-taking option for the people, as well as the commercial sectors in India. ADR promotes amicable settlements by fostering a collaborative and less adversarial approach. Hence, to foster the ADR mechanism across India and enhance its effectiveness in India's judicial system, institutional support and public awareness have become very vital.

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<sup>19</sup> Rao PN, 'ADR in India: Unleashing Its True Potential' [2018] 66 Journal of the Indian Law Institute 618.

<sup>20</sup> Kumar A, 'Alternative Dispute Resolution (ADR) in India: An Evaluation of Its Effectiveness and Challenges' [2019] 11 Arbitration International 158.

<sup>21</sup> 129th Law Commission of India Report, Urban Litigation – Mediation as alternative to Adjudication, (1988).

<sup>22</sup> Singh, L., 'Cultural Barriers to the Use of Alternative Dispute Resolution Methods' [2020] Indian Socio-Legal Journal.