

## **The impact of recent amendments to the Indian Arbitration and Conciliation Act on the efficiency and effectiveness of alternative dispute resolution in India**

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**Abstract:** Alternative dispute resolution (ADR) has become a crucial tool for resolving disputes in India. It was believed that the Indian Arbitration and Conciliation Act of 1996 (the Act) had flaws and inefficiencies that hindered the growth and effectiveness of ADR in the country. In order to streamline and expedite ADR procedures, enhance the effectiveness of arbitration hearings, and promote India as a hub for international arbitration, the Indian government extensively modified the Act in 2015 and 2019. This study investigates the impact of these recent modifications on the effectiveness and efficiency of ADR in India. Following a discussion of the value of ADR in the Indian legal system and the challenges the Act faced before to the modifications, the paper provides an outline of the Act and its significance for ADR in India. The paper then highlights the latest Act changes' objectives.

The study also looks at whether the reforms have resolved the problems the Act had before they were made and how they would affect the application and efficiency of ADR. The research piece contributes to the ongoing conversation on the efficacy of ADR in India by offering insights into the effects of legal reforms on ADR practices. Legal experts, decision-makers, and academics who are interested in the development of ADR in India might find the study's findings useful. The paper lists the benefits and drawbacks of the amended Act and makes recommendations for improving ADR in India.

### **INTRODUCTION**

Given the numerous cases waiting in the courts and the protracted delays involved with traditional litigation, alternative dispute resolution (ADR) has become a crucial technique for settling conflicts in India. A legislative foundation for arbitration, mediation, and other ADR processes in India is provided by the Indian Arbitration and Conciliation Act of 1996 (the Act). However, the Act has come under fire for what are considered to be shortcomings and inefficiencies, which have impeded the development and efficacy of ADR in the nation.

The Act, which went into effect in 2015 and 2019, has lately undergone considerable revisions by the Indian government in an effort to solve some of these problems. The changes are intended

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to speed up and simplify ADR processes, improve the effectiveness of arbitration hearings, and advertise India as a center for international arbitration.<sup>1</sup>

This study intends to examine how these recent changes have affected the efficacy and efficiency of ADR in India. The study will specifically look at how the reforms have affected the use and effectiveness of ADR and whether they have solved the problems the Act had before the revisions.

The article will first give a summary of the Indian Arbitration and Conciliation Act and explain how it affects alternative dispute resolution in India. The significance of ADR in the Indian judicial system and the difficulties the Act has had in promoting its usage will next be covered. The article will conclude with a brief review of the Act's most recent changes and its goals.

The goal of this analysis is to add to the existing discussion about the effectiveness of ADR in India and to shed light on how legal reforms may affect ADR procedures. In doing so, it is believed that the research's findings will be helpful for lawyers, politicians, and academics who are interested in the growth of ADR in India.<sup>2</sup>

## **Literature Review**

Alternative Dispute Resolution (ADR) in India has a major legal framework according to the Indian Arbitration and Conciliation Act of 1996. Numerous studies have looked into the shortcomings and difficulties of the Act as well as the effectiveness and efficiency of ADR in India.

Given the numerous cases that are outstanding in the courts and the lengthy process of traditional litigation, a study by Saurabh Bhattacharjee and Praveen Kumar underlined the significance of ADR in India. They acknowledged that ADR processes like arbitration and mediation can lead to quicker and more affordable resolutions, but they also pointed out that the Indian Arbitration and Conciliation Act's implementation had encountered a number of difficulties, including a lack of infrastructure and ADR expertise as well as inconsistent interpretation and application of the Act.

In a different study, Vinayak Narayan and Ruchika Darbari emphasised the need for Act amendments to support improved ADR efficiency and effectiveness in India. They observed that although ADR has become more popular in India, the Act had a number of restrictions that limited its usefulness, including a lack of explicit instructions for arbitrators, delays in the selection of arbitrators, and difficulties enforcing arbitral rulings.

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<sup>1</sup> Krishna, Agrawal. "Justice Dispensation through the alternative dispute resolution system in India." *Russian Law Journal* 2.2 (2014): 63-74.

<sup>2</sup> Narang, Shilpa. "Arbitration and conciliation (Amendment) act 2019: significant alterations and its impact on Indian arbitration mechanism." *The Management Accountant Journal* 55.2 (2020): 46-49.

The recent changes to the Act were made with the goal of addressing some of these issues and advancing ADR's efficiency and effectiveness in India. The 2015 amendment made a number of modifications, including establishing a governing agency for ADR, reducing court interference in arbitration processes, and establishing rigorous deadlines for conflict resolution. By permitting the appointment of foreign arbitrators and the enforcement of emergency rulings, the 2019 amendment broadened the use of ADR even further.<sup>3</sup>

Although it was anticipated that these revisions would enhance how ADR operated in India, it is yet unclear how they will affect how efficient and successful ADR is. The lack of openness in the nomination of arbitrators and the narrow possibility for judicial review are two issues that some scholars have criticised the revisions for failing to adequately address. Others applauded the changes as a positive step towards making India a more desirable location for international arbitration.

This assessment of the relevant literature focuses on the importance of the Indian Arbitration and Conciliation Act for ADR in India as well as the difficulties and restrictions associated with the Act before the most recent modifications. The impact of the amendments on the effectiveness and efficiency of ADR in India will be examined in more detail in the following portion of this research study.

## **Findings**

The Indian Arbitration and Conciliation Act of 1996 was recently amended with the goal of streamlining and accelerating ADR processes, improving the effectiveness of arbitration hearings, and promoting India as a centre for international arbitration. This section examines the pre-amendment and post-amendment ADR practises and analyses how these amendments affect the effectiveness and efficiency of ADR in India.

The lessening of court involvement in arbitration processes is one important effect of the modifications. The 2015 amendment curtailed the ability of courts to interfere with the arbitration process and imposed severe deadlines for the resolution of disputes. This has reduced the time and expense associated with ADR and improved the effectiveness of the procedure for all parties. Some academics have pointed out that this has also resulted in a lack of direction and clarity for arbitrators, which may have an impact on the standard and consistency of arbitral rulings.

A notable development under the modified Act has also been the creation of a regulatory agency for ADR. The 2015 amendment established the Arbitration Council of India, which is in charge

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<sup>3</sup> Raul, Ishanee. CONTEMPARARY ISSUES WITHIN THE REALMS OF ALTERNATIVE DISPUTE RESOLUTION. Diss. School of Law, Alliance University, 2021.

of upholding ADR rules and standards, fostering training and research in the area, and approving professional ADR institutions. This has helped to foster a more standardised and expert approach to ADR by giving practitioners of ADR more clarity and direction.

The expanded scope for international arbitration has been another noteworthy change brought about by the modified Act. The 2019 change made India a more desirable location for international arbitration by allowing the nomination of foreign arbitrators and the execution of emergency rulings. This has given India more credibility as a centre for ADR and given Indian enterprises greater opportunity to settle disputes with overseas parties.

In general, the revised Act has improved the effectiveness and efficiency of ADR in India. A more organised and expert approach to ADR has resulted from the decline of judicial interference, the creation of a regulating organization, and the expansion of international arbitration. However, there are still some issues and restrictions that need to be resolved, such as the opaque process for choosing arbitrators and the constrained reach of judicial review.<sup>4</sup>

This section has analysed how the most recent revisions have affected the efficacy and efficiency of ADR in India and has highlighted some of the most significant changes made by the modified Act. In the following section, this research study will offer suggestions for enhancing ADR in India.

### **A review of the modified Indian Arbitration and Conciliation Act's effectiveness and efficiency**

The modified Indian Arbitration and Conciliation Act is evaluated in this part by pointing out its advantages and disadvantages. The implications of the revisions for the ADR procedure, the function of the Arbitration Council of India, and the laws pertaining to international arbitration will be the main topics of the examination.

The reduced amount of judicial interference, the founding of the Arbitration Council of India, and the expanded use of international arbitration are all advantages of the modified Act. These advancements have helped ADR in India become more organised and professional.

The modified Act does, however, also have significant flaws that must be fixed. The ADR process's validity and credibility may be harmed by one shortcoming, which is the lack of transparency in the appointment of arbitrators. The restricted possibility for judicial review is another flaw, which might result in inconsistent and inaccurate arbitral rulings.<sup>5</sup>

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<sup>4</sup> Thadikkaran, Manu. "Judicial Intervention in International Commercial Arbitration: Implications and Recent Developments from the Indian Perspective." *Journal of International Arbitration* 29.6 (2012).

<sup>5</sup> Ashu, Ashutosh Ranjan Srivastava. "Analyzing the Reality of Alternate Dispute Resolution Mechanism and Its Effectiveness: The Case Study of Uttar Pradesh." Available at SSRN 4190062 (2022).

### **Suggestions to further enhance India's use of alternative dispute settlement**

The section below offers suggestions for enhancing alternative dispute resolution in India. The recommendations are based on the evaluation section's strengths and flaws.

One suggestion is to introduce explicit standards and processes for the selection process to promote transparency in the appointment of arbitrators. This would make it more likely that arbitrators would be chosen based on their qualifications and experience rather by secretive procedures.

Another suggestion is to broaden the purview of judicial review by enabling appeals from arbitral verdicts on legal issues. This would make it easier to check that arbitral awards adhere to accepted standards and are consistent with legal doctrines.<sup>6</sup>

Finally, it is advised to encourage more ADR training and awareness, especially among small and medium-sized firms. This would encourage an alternative dispute resolution culture in India and boost the use of ADR while lightening the load on the courts.

The impact of recent changes to the Indian Arbitration and Conciliation Act on the effectiveness and efficiency of alternative dispute resolution in India has been examined overall in this research study. The results indicate that the revised Act has improved ADR in India, however there are still certain issues and restrictions that need to be resolved. The suggestions made in this article can aid in advancing India's ADR procedure and encouraging a culture of alternative dispute settlement.

### **These are some of the study's main conclusions:**

The efficiency and efficacy of alternative conflict resolution in India have improved as a result of the most recent revisions to the Indian Arbitration and Conciliation Act.

The institutional foundation for ADR in India has strengthened with the creation of the Arbitration Council of India.

India has been promoted as a venue for international dispute resolution thanks to the expanded potential of international arbitration.

However, there are still some issues and restrictions that need to be resolved, such as the opaque process for choosing arbitrators and the constrained reach of judicial review.<sup>7</sup>

### **Recommendations from the study for scholars, practitioners, and policymakers**

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<sup>6</sup> Raju, Prof. "Alternate dispute resolution system: A prudent mechanism of speedy redress in India." *Alternate Dispute Resolution System: A Prudent Mechanism of Speedy Redress in India* (December 15, 2007) (2007).

<sup>7</sup> Shah, Ninad. "A Study to Analyze Provision of Arbitration and Conciliation in Labour Legislations in India." Available at SSRN 3789881 (2021).

The ramifications of the study for researchers, policymakers, and legal practitioners are covered in this section. It highlights the potential effects of the study on the legal industry and the policy environment and offers useful recommendations based on the research findings.

According to the study, there are new potential and challenges for ADR in India as a result of the recent revisions. The legal landscape has changed, and practitioners need to be aware of this and how it may affect their clients. They might also need to acquire fresh knowledge and abilities to adjust to the shifting environment.

The study offers policymakers information into the success of the most recent changes and suggested areas for further development. The findings can be used by policymakers to improve the legal system and advocate for ADR as a good substitute for courtroom litigation.

For academics, the study adds to the body of knowledge already available on ADR in India and offers fresh perspectives on the effects of the most recent changes. It also draws attention to the need for more study in topics like how technology affects ADR and how successful various ADR techniques are.

### **Research limitations and future directions**

The study's shortcomings are discussed in this part, along with ideas for future research directions. It recognises the potential flaws in the research design and the demand for more study to address open-ended issues.

The study's emphasis on the Indian Arbitration and Conciliation Act's most recent revisions is one of its limitations. ADR's interaction with other legal systems and cultural norms in India might be further investigated in future studies.

The reliance on secondary sources and already-existing data is another drawback. To give more solid proof of the impact of the modifications, further study might include primary data collecting and empirical analysis.

Overall, this research work makes a significant contribution to the understanding of ADR in India and emphasises the need for additional study and advancement in this field. The main conclusions and suggestions can support the development of a more effective and efficient ADR system in India with significant ramifications for legal professionals, policymakers, and academics.