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# Alternate Dispute Resolution (Adr) A Global Imperative

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## Abstract

***Background:***

*The implementation of India's Goods and Services Tax (GST) framework—comprising CGST, SGST, and IGST—frequently leads to complex disputes between taxpayers and authorities. These disagreements primarily stem from statutory interpretations regarding tax assessments, Harmonised System of Nomenclature (HSN) classifications, Input Tax Credit (ITC) eligibility, and penalty levies.*

***Problem:***

*Traditional courtroom litigation locks up sizable corporate revenues, inflicts severe financial strain, creates protracted delays, and damages vital business relationships. Furthermore, the operational distraction of preparing for trial directly threatens a company's long-term commercial viability and profitability.*

***Methodology / Approach:***

*To mitigate these vulnerabilities, the Alternative Dispute Resolution (ADR) framework offers an informal, flexible, and structured pathway. Originating as a commercial dispute movement in the United States during the 1970s, ADR utilizes specific methodologies—such as Arbitration, Mediation, Negotiation, and Conciliation—to settle tax conflicts outside the traditional judiciary.*

***Results / Conclusion:***

*This paper highlights that ADR mechanisms efficiently bypass the systemic bottlenecks of litigation. By prioritizing party autonomy, delivering expeditious justice, reducing legal*

*expenditures, and maintaining confidential proceedings, ADR aligns with the universal human right to affordable, rapid justice while ensuring minimal operational disruption for businesses.*

***Keywords:*** *Goods and Services Tax (GST), Alternative Dispute Resolution (ADR), Litigation, Tax Disputes, Arbitration, Mediation, Conciliation, Negotiation, Tax Assessment, Party Autonomy, Expeditious Justice, Cost-Effective, Revenue Lock-up*

## 1. Introduction

Goods and Service Tax (GST) is a destination-based consumption tax levied on the supply of goods and services at each stage of the supply chain. GST structure in India comprises three main components Central Goods and Services Tax (CGST) State Goods and Services Tax (SGST) and Integrated Goods and Service Tax (IGST). CGST and SGST is levied by the Central Government and State Government on intra state supplies while IGST is applicable on interstate transactions.

A dispute arises when two or more people do not agree on the same thing. There is a situation where parties are pointing fingers at each other and blaming the other for a wrong or loss that might have occurred. A GST dispute is a disagreement between a taxpayer and tax authorities over the interpretation or application of Goods and Services Tax laws. GST disputes generally ascend from the application and interpretation of the GST Act and related rules. Disputes that arise during the ordinary course of business relates to Assessment issues (disagreement with tax authorities regarding the valuation of goods or services, the applicable tax rate, or the eligibility for ITC), Classification of goods or services under the Harmonised System of Nomenclature, Challenges against penalties or interest levied by tax authorities for non-compliance with GST provisions

Under the present tax regime, sizable revenue gets locked up in various legal fora and the tax payer suffers from lack of clarity on tax matters for many years.

Litigation in the course of business, resolving commercial disputes through the court system causes high cost and financial strain, time consuming and delays, public exposure of sensitive information, destruction of business relationships, unpredictability and loss of control over

the business, operational distraction making the management and staff away from day-to-day operations to prepare for hearings, gather evidence and testify and reputational damage to the company

These factors mean that litigation can sometimes be detrimental to a company's profitability and long-term viability, leading many to prefer alternatives like mediation or arbitration. In this situation, in response to the need to find more efficient and effective alternative to litigation was thought out and the Alternative Dispute Resolution movement was started. This movement originally started in the United States in 1970 and later on gained acceptance and adoption at the National level for commercial disputes.

While the formal mode of dispute resolution is litigation, the informal mode of dispute resolution on the other hand includes less structured and cordial methods. These include methods like Arbitration, Mediation, Negotiation, Conciliation etc., These modes are considered alternative to litigation and thus called Alternative Dispute Resolution (ADR).

ADRs are opted over courts due to the following reasons

- Party Autonomy-parties to the dispute can freely choose the type of ADR methods they wish to opt for resolving their disputes
- Expeditious Justice-Unlike court proceedings speedy delivery of the justice protect disputants from running after a case for years
- Cost -Effective-ADR mechanisms are relatively cheaper. There is minimal court interference and hence less litigation costs as that for paying lawyers, filing of documents and various other costs

ADRs are opted when the normal negotiation fails. This includes a variety of rationalised remedial procedures designed to resolve issues in controversy more resourcefully. Desire for quick and affordable justice is universal also a basic human right

**ADR in India**

Considering the positive impact of ADR on international commerce and the vision of the national leaders, India felt the necessity for setting up ADR institutions and thus set up International Centre for Alternative Dispute Resolution for the purpose of providing new forum and procedures for resolving international and domestic disputes quickly. The Code of Civil Procedure,1908 was amended to insert Section 89 which provides for parties to refer

and settle the disputes, subject to law providing it, through alternative dispute resolution methods.

The Indian Parliament has enacted the provisions for Alternative Dispute Resolution and introduced section 89 and Rules 1-A, 1-B and 1-C to Order X in the Code of Civil Procedure, 1908, so as to make effective use of ADR process. Order 23, Rule 3, also mandates the courts to record a full adjustment or compromise and pass a decree in terms of such compromise or adjustment.

Sec. 89, CPC refers to the following types of ADR Mechanisms:-

1) Arbitration
2) Conciliation
3) Mediation
4) Judicial Settlement, and
5) Lok Adalat

**ADR Types**

**Arbitration**

Parties to the dispute choose an arbitrator to resolve the issue. Arbitrator is a third party appointed by the parties to act as judge during the dispute hearing. There can be more than one Arbitrator constituting arbitral tribunal. The parties to the dispute can directly choose the Arbitrator or they can approach institutions who will assist them in choosing an arbitrator for dispute settlement. Arbitration process takes place outside the court. It is a semi-formal structure of dispute.

Semi formality ensures parties the right to choose the Arbitrator and the formal angle is the award at the end by the arbitrator is binding on the parties. That is the decision of Arbitrator shall be abide by the parties to the dispute. An “award” also called the arbitral award is the final decision of the arbitrator and is similar to a judgement passed by the court which is enforceable. Award issued by the Arbitrator is binding on both the parties. Arbitration proceedings mean the entire process involved commencing from the filing of the claims by the parties till the delivery of the award by the arbitrator. Arbitration proceedings are a private legally binding method of resolving disputes outside the traditional court system. In India, Arbitration proceedings are governed by the Arbitration and Conciliation Act 1996.

Everything that is required by the Act will have to be followed by the parties to the dispute. Arbitral proceedings and Arbitral awards are generally non-public and can be made confidential.

The legal framework for "appealing" arbitral awards in India remains strictly limited, as courts consistently distinguish between a full-merit "appeal" and a narrow "challenge" or "setting aside" procedure. Foreign awards cannot be "set aside" by Indian courts; they can only be refused enforcement under Section 48 on grounds similar to Section 34 (e.g., violation of public policy or lack of notice). Courts generally apply a "pro-enforcement" lens to foreign awards, viewing public policy through an international standard.

When the subject matter of the appeal is highly technical, arbitrator with an appropriate degree of expertise can be appointed as one cannot to choose to judge in litigation.

**Mediation**

Mediation is a party driven process where the mediator acts as facilitator rather than a judge in helping the parties to reach a negotiated settlement of their disputes. A party has the right to walk out of the mediation process in case if not satisfied with the process. The decision of the mediator is not final and binding on the parties. The mediator manages communication, clarifies issues, and explores solutions, but the parties themselves control the final outcome. The mediator explains the process, sets ground rules, and emphasizes confidentiality. Parties present their perspectives, often in joint sessions or private groups with the mediator. The mediator helps identify core issues, interests, and potential obstacles. The mediator facilitates discussion, tests solutions, and helps parties develop options. If successful, terms are documented, creating a mutually agreed-upon settlement.

Even in cases where mediation is court-referred or mandated by contract or statute, the decision to settle rests entirely with the parties. This right of self-determination is a fundamental aspect of mediation and ensures that the resulting settlement is mutually acceptable. The parties are free to withdraw from the mediation process at any stage without providing a reason, further emphasizing their control over the outcome. Mediation is a party centred process. Mediation is essentially an assisted negotiation process. It addresses not only the factual and legal aspects of the dispute but also the underlying personal, business, familial, or social interests that may be contributing to the conflict.

The village Panchayaths and Nyaya Panchayaths are good examples of mediation. 1

**Negotiation**

Negotiation is a different technique of dispute resolution where parties themselves control the process and the solution. Negotiation in Alternative Dispute Resolution (ADR) is the most basic, direct method where disputing parties communicate to reach a voluntary, mutually acceptable agreement, without a third-party decision-maker, focusing on compromise, shared interests, and preserving relationships, involving stages like preparation, discussion, bargaining, and closure. Negotiation neither involve a third party for facilitating the conversation between the disputants nor a third-party arbitrator to take a binding decision. Focuses on mutual understanding and win-win solutions, important in ongoing business or personal relationships.

**Conciliation**

It is a process in which a third party normally an expert is appointed to settle disputes between the parties. Role of the Conciliator is to bring the parties to a common consensus before the process begins for resolving the dispute. It's voluntary, confidential, and aims to preserve relationships through amicable, interest-based agreements, typically initiated by written invitation and acceptance. Unlike a mediator who stays strictly procedural, a conciliator can take a more active role, even proposing settlement terms (which remain non-binding). Experts are generally appointed as conciliator who presumes to have potential to offer settlement proposals. If a settlement is reached, it's written down and legally binding. If no agreement is reached, proceedings terminate, and parties are free to pursue other options, like litigation or arbitration.

**Judicial Settlement**

Judicial Settlement is a court-initiated process where a judge identifies “elements of settlement” and refer the case to judicial settlement under provisions like Section 89 of the India’s Civil Procedure Code. A sitting judge or authorized person actively participates in facilitating discussions, offering guidance, and encouraging compromise, rather than just adjudicating. It is like a court judgement, that settlements reached through this process are legally binding and enforceable.

**Lok Adalat**

It is the concept of people's courts established by the Government to settlement through conciliation and compromise. It is a judicial institution and a dispute settlement agency developed by the people themselves for social justice based on settlement or settlement reached through systematic negotiations. The main condition is that both parties have to be agreeable to a settlement. The decision of Lok Adalat is binding on the parties to the dispute and its order is capable of execution through legal process. It has the statutory backing by the Legal Services Societies Act 1987, making its awards final and binding. It is composed of a judicial officer, lawyer and a social worker. Lok Adalats handles cases pending in courts or those at the pre-litigation stage, offering a supplementary justice system.

**Transnational Outlook**

The ADR movement started in the United States in the 1970's in response to the need to find more efficient and effective alternative to litigation. Outside India, ADR mechanisms like arbitration, mediation and negotiation are widely used in international trade to resolve cross-border disputes outside the national court system privately, efficiently and confidentially. These mechanisms are supported by a robust international legal framework and numerous specialised institutions. These key global bodies provide standardized rules and administration for these processes. ADR mechanisms are vital for maintaining business relationships and avoiding the complexities of multi-jurisdictional relationships.

International institutions and legal frameworks

International commercial conflicts are often administered by specialised impartial institutions and governed by international law rather than independently by the national courts

**Premier organisations**

- **International Chamber of Commerce (ICC) :** headquartered in Paris administers arbitrations and offers services through International Court of Arbitration and International Centre for ADR
- **Singapore International Arbitration Centre (SIAC) :** a major global institution, particularly popular among parties in Asia-Pacific region. An independent, neutral and not-for-profit global arbitration institution which provides case management services to

the international business community. In terms of its international administered caseload, SIAC is amongst the Top 5 institutions in the world.

- **London Court of International Arbitration (LCIA) :** A prominent European institution popular for its efficiency and strong international focus . The London Court of International Arbitration is the oldest arbitral body in the world dealing with international disputes. Headquartered in London, it was founded as a British private company limited. It offers dispute resolution through arbitration and mediation. The international nature of the LCIA's services is reflected in the fact that, typically, over 80% of parties in pending LCIA cases are not of English nationality.
- **Hongkong International Arbitration Centre (HKIAC) :** This is one of the world's leading dispute resolution organisations, specialising in arbitration and other forms of alternative dispute resolution processes including, mediation, adjudication and domain name dispute resolution. HKIAC administer cases under its own rules or UNCITRAL rules.
- **World Trade Organisation (WTO) :** While not a private ADR body, the WTO provides a government-to-government dispute settlement mechanism for dispute between member nations involving trade agreements

**Legal governance frameworks**

- **The New York Convention (Convention on the Recognition and Enforcement of Arbitral Awards) :** A corner stone of international arbitration, this 1958 convention requires signatory nations (over 170 countries including India) to recognize and enforce foreign arbitral awards, similar to domestic court decrees, which greatly enhances the enforceability of international arbitration outcomes.
- **UNCITRAL Model Law and Rules** The United Nations Commission on International Trade Law (UNCITRAL) has developed model laws and arbitration rules that many countries and institutions have adopted providing a standardised and predictable framework for international commercial arbitration.
- **Bilateral and Multilateral Treaties** Numerous treaties between countries further facilitate the recognition and enforcement of ADR outcomes across boarders

**Types of ADR used in International Trade Disputes**

Alternative to the Court is of vital importance in international trade disputes primarily because ADR provides a neutral ground for parties of mixed nationalities, with different ethnic and legal systems, to resolve their controversies without fear of subjectivity by the court system of forum state. ADR has further advantage over litigation of resolving disputes with less damage to ongoing business transactions.

Parties transacting internationally often choose to settle disputes by means of ADR rather than approaching domestic courts or international courts such as International Court of Justice. Mode of dispute resolution is already decided by the parties, that is "ex ante ADR" or is decided upon the emergence of dispute that is "ex post ADR". Of these modes, the most widely used is Arbitration and Mediation.

Of the various ADR mechanisms available to disputants in international trade matters, Arbitration is by far the most widely used. The reason for the preference of Arbitration are many. Arbitration is a forum based on party autonomy-the parties to an agreement to arbitrate mutually shape the process to their needs and practices. Moreover, the adjudicators, or arbitrators are experts in their fields and are chosen by the parties expressly for their expertise. With the complete cooperation of the parties, arbitration is faster and less costly than litigation. This mode actually enables the parties fashioning the forum to their specific needs. Beyond considerations of flexibility and fairness, disputants often prefer arbitration because many nations subscribe to multilateral treaties and conventions which support its usage. Among the most important and well-known arbitration treaties is the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (N.Y. Convention) promulgated in 1958.

Both mediation and Conciliation have played a traditional role in international public law disputes. These are ancient techniques which are enjoying renewed interest as mechanisms for extra judicial dispute resolution. Far eastern societies such as China and Japan, for example have relied on mediation and conciliation for centuries as the preferred method of dispute settlement. In 1980, UNCITRAL issued Conciliation Rules adopted by the General Assembly for use in international trade disputes. These rules suggest a model conciliation clause, and provide guidelines for the conduct of conciliation from initiation through settlement.

The American Arbitration Association promulgated the Commercial Mediation Rules, which became effective in September 1984, for the resolution of all type's commercial disputes through mediation. UNCITRAL Conciliation Rules and the AAA Commercial Mediation Rules stress the importance of confidentiality and nondisclosure throughout the process and after settlement of the disputes. Viability of the process is still threatened if the mediator is not bound by the confidentiality in post-settlement actions or in actions brought after unsuccessful attempts at settlement.

Newer methods of ADR in International Trade disputes are Minitrial and Med-Arb. The Novel ADR method Minitrial is popularly known as "an Information Exchange" or "formally structures settlement negotiations". The goal of minitrial is to turn a legal dispute into a business problem. The process is especially well-suited to cases which do not involve a constitutional problem, novel questions of law, issues of credibility, or multiple parties. Mini trial allows disputing parties present summarized cases to a panel (including senior executives and a neutral advisor) to foster settlement, combining elements of litigation, mediation, and negotiation to quickly assess strengths and weaknesses without full court proceedings. Though the process is generally structured according to the mutual desires of the parties, general requirements such as written agreement, selection and presence of neutral advisor, rendition of an advisory award where settlement is not reached and preservation of the confidentiality of the proceedings are mandated in Minitrial as general requirements.

A combination of Mediation and Arbitration called "med-arb" is a relatively new ADR method. The Neutral calls for the mediation of the dispute first, where negotiations and efforts of settlement are explored. Issues remain after mediation are arbitrated before the same mediator who renders a final and binding award. One of the down sides of Med-Arb is that the neutral first learns the strength and weaknesses of both parties to the dispute. With this information in hand, the neutral must then adjudicate the dispute as an Arbitrator. It is critical that the parties to med-arb have utmost faith in the neutral.

Another ADR mechanism is dispute resolution by Advisory Committee. This mechanism has the advantage of settlement of the disputes immediately at the time it arises by joint committees representing the interest of all parties. Such committees have been successfully used in complex construction disputes, where immediate resolution of arising conflicts is

critical to the production schedule. Although the result is not binding, it is admissible in any subsequent action between the parties.

**Conclusion**

In international trade, where parties often reside in different countries with different legal systems, ADR is crucial for providing a neutral, fast, and binding way to resolve commercial disputes without the complexities of navigating foreign courts. It liberates the applicants from the apprehensions on parochial legal systems and applicable laws.

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