

UNIQUE LAW



EST. 2020

JOURNAL OF UNIQUE LAWS & STUDENTS

LLPIN: AAS-8750

WEBSITE: UNIQUELAW.IN

EMAIL: PUBLISH.JULS@GMAIL.COM

ABOUT US

“Journal of Unique Laws and Students” (JULS) which shall provide law students, young lawyers and legal professionals to deliberate and express their critical thinking on impressionistic realms of Law. The JULS aims to provide cost free, open access academic deliberations among law students and young lawyers. The ISSUE III of Volume 1 focuses on three themes i.e. (i) Arbitration Law (ii) Competition Law, and (iii) Criminal Law.

The journal strives to contribute to the community with quality papers on a vast number of legal issues and topics written by authors from various groups that have been reassessed and revised by our editorial team to reach the highest possible standard.

UNIQUE LAW is a law related Ed-tech premier start up in India that excels in imparting legal education. It is a registered entity under the name Ansh LexPraxis Legal Education LLP. The said LLP is recognized as a start-up India Initiative by Government of India’s Ministry of Commerce and Industry and DIPP63504.

DISCLAIMER

All Copyrights are reserved with the Authors. However, the Authors have granted to the Journal (Journal of Unique Laws and Students), an irrevocable, non-exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, stored, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

The Editorial Team of Journal of Unique Laws and Students holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not necessarily reflect the views of the Editorial Team of Journal of Unique Laws and Students.

[© Journal of Unique Laws and Students and Ansh LexPraxis Legal Education LLP. Any unauthorized use, circulation or reproduction shall attract suitable action under applicable law.]

This third issue of the Journal of Unique Laws and Students can be downloaded from:

<https://www.uniquelaw.in/volume-i-issue-iii>

PREFACE

On looking today scenario, there are numerous issues to know about. Our journal`s Issue III of Volume 1 has work on three crucial themes namely Criminal law, Arbitrational Law and Competition law. We have tried to cover these wide topics with the relevant research and landmark judgments. We have used standard of words for the explanation, evenly attempted to clear the concepts and presented captivating writing to the readers. The works also contains some suggestions in respective fields.

The views expressed in the articles are purely and solely of the authors and the entire team of the Journal has no association with the same. Although all attempts have been made to ensure the correctness of the information published in the articles, the Editorial team shall not be held responsible for any errors that might have been caused due to oversight or otherwise. It is up to the rest of us to help make the journal a success story in the next several years.

ADVISORY BOARD**Justice Saleem Marsoof****Honorary Member***Supreme Court of Fiji***Mr. Ujjwal Kumar Dubey****Honorary Member***Bihar Human Rights
Commission***Mr. Chandan Jha****Member***Director, Clatpath***Mr. Tariq Khan****Member***Partner at Advani & Co.***Prof. Kshitij Naikade****Member***Deputy Director
Symbiosis Law School, Pune***Mr. Max Lim****Member***Partner at Rajah & Tann
Singapore***Mr. Prathamesh Joshi****Member***LLM, Ph.D. Scholar,
Company Secretary***Mr. Nipun Bhatia****Member***President-Legal League
Consulting***Mr. Suvigya Awasthi****Member***Associate Partner at PSL
Advocates and Solicitors***Mr. Harsh Vardhan Tiwari****Member***Admissions and Outreach
O.P. Jindal Global University***Dr. Vaishali Golivadekar****Member***Former Assistant Professor at
New Law College and ILS Law
College, Pune***Mr. Vishrut Jain****Member***Director, Judex Tutorials*

EDITORIAL BOARD

Ms. Niharika Verma
Editor in Chief

*Assistant Professor at Amity University,
Lucknow*

Mrs. Divya Pathak
Deputy Editor-in-Chief

*Deputy Director, RIG Institute of Hospitality
and Management*

Mrs. Disha Nayak Sardesai
Deputy Editor-in-Chief

*Assistant Professor at V M Salgaocar
College of Law*

Mrs. Anupriya Yadav
Executive Editor

*Assistant Professor at Amity Law School
Lucknow*

Mr. Ujwal Nandekar
Executive Editor

*Research Assistant at
Symbiosis Law School, Pune*

Dr. Heather McRobie
Advisory Editor

*Assistant Professor at
Bifrost University*

Ms. Maithili Shubhangi Tripathi
Executive Editor

Legal Counsel at Rivigo Services Pvt. Ltd.

Ms. Palak Mathur
Executive Editor

Associate at UnitedLex

Ms. Tusharika Singh
Student Editor

Legal Researcher at Unique Law

Mr. Kabir Singh
Student Editor

Content Writer at Unique Law

Ms. Ishika Sarraf
Student Editor

Legal Researcher at Unique Law

Ms. Prabhjeet Kaur
Student

Legal Researcher at Unique Law

EDITOR'S NOTE

Unique Law was established in the month of April 2020 and cheerfully brings **Volume 1 Issue III** of **Journal of Unique Laws and Students (JULS)**. This journal has become a successful climb in reaching to our goal of gaining visibility in the academic front and becoming a great platform in education community.

The journal aims to present merit papers on the numerous legal issues and these topics are authored by various groups of individuals that have been reappraise and emended by our team of editors to attend the highest possible excellence.

We thanks to all our authors for their obedient submission to the third issue of the Journal by Unique Law and also for their productive cooperation with the editorial team to garnish their work with perfection. We would also like to express our gratitude to our diligent editorial board, whose restless support and commitment made this Journal's Issue III a success.

TABLE OF CONTENTS

Arbitrability of IPR Disputes	1
<i>Author: Aishani Navalkar</i>	
A Study of Juvenile Delinquency	15
<i>Author: Vidhika Panjwani</i>	
Competition Law: Precursors, Practice and Problems	33
<i>Author: Sathya G. Krishnan</i>	
Criminalization of Politics Challenge to Indian Democracy	49
<i>Author: Abhisena Singh</i>	
Critical Analysis of Reclusive Custody	60
<i>Author: Akanksha Kumari</i>	
Cybercrime multifaceted one	72
<i>Author: Mitali Aryan</i>	
Gender Crime in India- An Analysis under Indian Criminal Laws	95
<i>Author: Rounit Deep</i>	
International Competition Aviation: An Analysis	111
<i>Author: Vandana</i>	
Mob Lynching due to Mistaken Identities	123
<i>Author: Juhi Handique</i>	
Juvenile Delinquency and Crime Prevention	142
<i>Author: Simran Karamchandani</i>	
Matters Concerning Seat and Venue of Arbitration: Critical and Comparative Analysis	164
<i>Author: Prity Kumri</i>	
Prevention Mechanism of Youth Crime	182
<i>Author: Riddhi Rahi</i>	
Road Map of Evolution and Development of Competition Law: India ..	200
<i>Author: Jaishree Singh</i>	

Scientific Mechanisms in Crime Investigation: A Study	213
<i>Author: Anisha Tak</i>	
Sedition Law: A Friend or Foe?	226
<i>Authors: Aryan Data & Khushi Gupta</i>	
Understanding Sedition Law in India	239
<i>Author: Golak Bihari Mahana</i>	
Witness Protection Scheme, 2018- A step towards Witness Protection ..	248
<i>Author: Gargi Ojha</i>	
Witness Protection Schemes	259
<i>Authors: Madhavi Singh & Khushi Gupta</i>	
Short note: An overview of Indian Courts helping hand: Alternative Disputes Resolution	274
<i>Author: Tusharika Singh Gaharvar</i>	
Case Analysis: Bachan Singh V. State of Punjab AIR 1980 SC 898	283
<i>Author: Aarush Bharadwaj</i>	
Case Analysis: R V. MCNaughton (1843) 8t. R. 718	288
<i>Author: Sristi Bubna</i>	

AN OVERVIEW OF INDIAN COURTS HELPING HAND: ALTERNATIVE DISPUTE RESOLUTION

Author: *Tusharika Singh Gaharvar**

INTRODUCTION

Conflict is a critical part of life. We cannot say whether it's always appropriate or not. However, what's considerable is how capable we are of taking it under control. Negotiation strategies are frequently used for resolving warfare and are taken into consideration as a fundamental method for resolving the dispute for years.¹

The ADR(Alternative Dispute Resolution) mechanism relates to an exchange of ways to settle disputes or conflicts which an individual or company entity would possibly encounter. It is extra powerful whilst the everyday negotiation manner is not able to provide remedy for the dispute. Alternative Dispute Resolution (ADR) is an opportunity for the Recognized Legal System. It is an alternative to litigation. As the courts in India are overburdened with the instances of litigation pending in courts. There changes into a want for ADR because of the dissatisfaction of people in litigation which follows the conventional rule of settling of disputes which takes a long time to settle. Under ADR all varieties of disputes like - civil, commercial, commercial and family, etc., are resolved, in some instances wherein humans aren't capable of beginning any form of negotiation and are not able to reach any settlement. Generally, ADR makes use of an impartial person which enables the parties to communicate, speak the variations, and remedy the dispute. It is a technique that allows people and organizations to hold co-operation, social order and gives a possibility to lessen hostility.²

*4th year B.A. LL.B. (Hons); student of Amity University; Available at: tsinghgaharvar@gmail.com

¹ Nishita; Alternative Dispute Resolution in India, FDR INDIA, [Last visited July 19, 2021] [,https://www.fdrindia.org/old/publications/AlternativeDisputeResolution_PR.pdf](https://www.fdrindia.org/old/publications/AlternativeDisputeResolution_PR.pdf)

² By Manoj K Singh; The future of arbitration in India: Strengthening the process of alternative dispute resolution, Economic Times https://m.economictimes.com/small-biz/legal/the-future-of-arbitration-in-india-strengthening-the-process-of-alternative-dispute-resolution/amp_articles/82114707.cms; [July 19, 2021,5:48 p.m]

HISTORICAL BACKGROUD OF ALTERNATIVE DISPUTE RESOLUTION IN INDIA

The 'Alternative Dispute Resolution Timeline' withinside the pages of the book start in the early 1800 BC whilst dispute decision turned into practice with the aid of using the ideas and thoughts of Phoenicians, the Greeks, the Indians, and the Irish. The rich traditions of Chinese mediation and Muslim tahkim, exceptional as they're from cutting-edge conceptions of Alternative Dispute Resolution, always acquire shorter shrift than they deserve. Among the interesting ancient illustrations of 'Alternative Dispute Resolution' phenomena are the position of Mohammed in heading off a battle over the reconstruction of Kaaba, and using symbolic contests to clear up land disputes in West Francia withinside the center ages.³

Thus, as pointed out above, the Alternative Dispute Resolution system is not a new experience for the people of India. It has been ubiquitous in our country since time immemorial. The legal history of the country indicates that throughout the centuries a man has been trying this procedure for seeking justice by making it easy, cheap, reliable, and convenient.

❖ GUPTA EMPIRE

There was a separate and distinct legal system in the era of the Gupta empire. The bottommost level of the legal system consisting of village assembly or trade guild. These were considered to be the councils appointed for the settlement of disputes that arised between the parties that appeared before them for justice. There were other separate councils appointed to decide several other important matters that came before them. Therefore, if people were not be able to reach any harmonious settlement, it was resolved by these councils.

❖ MUGHAL DYNASTY

During the Mughal Sultanate, most villagers of the dynasty used to resolve their cases in the village courts itself and appeal to the caste courts, the arbitration of an unbiased umpire known as Salis.

❖ MARATHA EMPIRE

The Panchayats were established during the Maratha Empire; these were considered to be the primary instrument of the civil administration of justice under the Marathas to arbitrate cases

³ Historical background of ADR; <https://www.assignmentpoint.com/arts/law/historical-background-adr.html> [July 19, 2021.]

of simple and minor nature. The disputing parties were to sign an agreement wherein they must abide by the rules and regulations of the Panchayat. The Panchayat was authorized to study the case and pass its verdict impartially to the party. A “Mamlatdar”, was basically the higher officer in the succession of judicial administration who was to confirm the verdict of the panchayat. Mostly, the Maratha Government supported the Mamlatdar and the Panchayat to adjudicate the cases, during that period.

❖ **BRITISH EMPIRE**

With the dawn of the British Raj in India, these traditional institutions of dispute resolution in some way started vanishing and the British Empire introduced the formal legal system for dispute resolution. At present, Alternate Dispute Resolution picked up pace in India, with its formation by the Regulations of Bengal. The Bengal Regulations were intended to boost the arbitration form of resolution. After numerous Regulations which contain provisions relating to Arbitration Act VIII of 1857 codified the procedure of Civil Courts excluding those established by the Royal Charter, which contained Sections that deal with arbitration in suits and the sections which comprise the arbitration without any intervention of the court. Subsequently, the Indian Arbitration Act, 1899 which was based on the English Act was passed. The Act became the first substantive law that dealt on the subject related to arbitration but the presidency limited its application.⁴

The year 1908, when the Code of Civil Procedure was re-enacted. There were no substantial changes made in the code in the law of arbitration. The Indian Arbitration Act of 1899 was replaced by the Arbitration Act of 1940 and certain parts of the Civil Procedure Code, 1908 was enacted. The Indian Arbitration Act of 1940 amended and consolidated the law relating to arbitration in British India.

Even today, bodies such as the Village Panchayat consist of a group of elders and most influential persons in a village who decide the disputes arising between villagers. In recent years, the Panchayat has also been involved in caste disputes. In the year 1982, dispute settlements out of courts started through Lok Adalats. The Lok Adalat was first introduced on March 14, 1982, at Junagarh in Gujarat and it worked as a voluntary and conciliatory agency without any legislative assistance for its decisions. It received statutory status after the

⁴ By Snigdha Shandilya & Pritish Kumar Pattnaik; Analysis of the Recent Development of ADR in Different Countries, Indian Legal Solution [July 19, 2021, 6:00 p.m]
<https://indianlegalsolution.com/analysis-of-the-recent-development-of-adr-in-different-countries/>

enactment of the Legal Services Authority Act, 1987. Lok Adalat has been extended throughout India

❖ **ARBITRATION ACT, 1996**

After the replacement of the Arbitration Act of 1899 by the new Arbitration and Conciliation Act, 1996. Under the amendment of the CPC, 1984 the matters concerning the family settlement are provided. The provisions which are made under the Acts i.e., Special Marriage Act, 1954 and the Hindu Marriage Act, 1955 for reconciliation. According to the Act i.e., the Family Courts Act, 1984 it is the duty of the family court to make efforts for settlement among the parties. The 1999 Amendment in the code of civil procedure, 1908 which introduced section 89 is considered to be an essential advancement made by the legislature of India in the implementation of “Court Referred Alternative Disputes Resolution”.

The Arbitration and Conciliation Act, 1996 additionally offers with the contractual subjects bobbing up out of the criminal relationship, the arbitral complaints being informal, much less expansive, and comparatively speedier, have proved to be an efficient opportunity method for the redressal of disputes and variations among the parties.⁵

DIFFERENT MODES OF ALTERNATIVE DISPUTE RESOLUTION

❖ **Arbitration**

Arbitration is somewhat similar to an informal trial and it basically avails the help of a neutral third party. The third party issues a final decision after hearing to each side and it is on the will of the disputing parties whether they agree to be binding or non-binding. When binding, the decision can be enforced by a court and is considered to be final. Although the arbiter is an active facilitator and will pronounce a decision.

❖ **Mediation**

It is very difficult to differentiate between mediation and arbitration as both the procedures are incredibly similar. One of the essential demarcations between the two is that a mediator, cannot force the disputed parties to agree and is not allowed to decide the consequence of the

⁵ Lalit Sharma; Evolution of ADR Mechanisms in India, SCC ONLINE, [July 19, 2021, 6:20 p.m], <https://www.scconline.com/blog/post/2021/02/07/evolution-of-adr-mechanisms-in-india/>

dispute. The mediator works with the parties to come to a solution that is made mutually, and the agreements through a mediator are generally non-binding.

❖ **Negotiation**

Negotiation is one of the forms of ADR which is frequently unnoticed for the reason of how apparent it is. In negotiation, there is no neutral third party to assist the parties in their negotiation, so the parties work together and conclude the dispute thru a compromise. The parties may select their attorneys who will represent them during the process of negotiations.

❖ **Med-Arb**

This form of ADR is one under which the arbiter primarily acts as a mediator, but the moment mediation fails, the arbiter will enact a binding decision. Med-arb is basically a combination of mediation and arbitration that comes from the advantage of the two.

❖ **Mini Trial**

A mini trial is a settlement process and not a trial as the name suggests. Each of the party presents their extremely summarized case. At the end of the mini trial, the representatives attempt to settle the dispute. If they failed to do so, then the impartial advisor can act as a mediator, he will be eligible to declare a non-binding opinion regarding the issue going to trial. Mini trial is considered to be the most unique method of ADR.

❖ **Summary Jury Trial (SJT)**

ASJT is analogous to a mini trial. Though, in this trial the case is presented before a mock jury. After hearing both parties, the mock jury produces an advisory judgment. Moreover, it is considered to be the order by court rather than the parties. After hearing the verdict, prior to litigation, the court generally requires the parties to at least attempt to settle the dispute.⁶

⁶ By Atharva Naukarkar; ADR Mechanism in India; [July 19, 2021,7:28 p.m]
<https://bnwjournals.com/2020/07/13/adr-mechanism-in-india/>;

IMPORTANCE OF ALTERNATIVE DISPUTE RESOLUTION IN INDIA

Under the Constitution of India, Alternative dispute resolution is mentioned under the fundamental rights in Article 14 and Article 21⁷ which respectively deals with equality before law and right to life and personal liberty. The main objective of ADR is to maintain social-integrity and socio-economic as well as political justice which is protected by the preamble of our Indian constitution. It also provides free legal aid mentioned in the Article 39-A under Directive Principle of State Policy(DPSP) of the constitution⁸. In India, there is huge number of pendency cases in the court and ADR helps the courts to deal with the pendency of cases. It provides systematically developed mechanism through various modes of settlement which includes arbitration, conciliation, negotiation, mediation and Lok Adalats to assist the Indian judiciary in reducing the burden of the courts. It is to be noted that negotiation means self-counseling which is one of the modes of settlement in ADR does not have any statutory recognition in India.⁹

WHY ADR IS NOT SUCCESSFUL IN INDIA?

In India, courts can refer disputes which are capable of being settled between parties outside of the court through alternate dispute resolution under Section 89 of the Code of Civil Procedure 1908. The Apex Court of India has been encouraging parties to go with pre-litigation mediation to settle their dispute before resorting to proceedings of the court.

In the case of **Afcons Infrastructure v. Cherian Varkey Construction (2010)**, the Apex Court highlighted the importance of mediation, especially the matters related to commerce, and pragmatic that this type of Alternative Dispute Resolution (ADR) is an ideal form of resolving any dispute of the parties who face intricate issues that they are willing to resolve through negotiations outside of the court.

Though, in India mediation has had very limited success, both in terms of the cases referred as well as the resolution rate in comparison to other countries. Furthermore, even after explaining the whole process to the litigants, many of them were doubtful of mediation. Previously many unsuccessful attempts at informal mediation is one of the main reasons which

⁷ Article 14 and Article 21 Constitution of India

⁸ Article 39-A of Constitution of India

⁹ By Sujay; Alternate Dispute Resolution Mechanism, Legal services India, [July 19, 2021,7:44 p.m], <http://www.legalservicesindia.com/article/224/ADR-Mechanism-in-India.html>

contributed to this attitude. For the small percentage of litigants who had tried formal mediation on the recommendations of the court, the outcomes were not very promising. Litigants often cross the threshold with a 'win-or-lose' mindset.

One of the main reasons behind this behavior could be the well-documented admiration towards authority in Indian culture. In the meantime, mediation is intended at smoothening of conversation, the mediator has no power to enforce an agreement without the consent of the parties involved into it. The general lack of awareness of the mediator's role, makes the whole process of mediation lose its credibility. Litigants also treat it as a mere formality rather than giving it a fair chance.

The conclusion of all these factors has contributed to an overall lack of adoption of mediation in India, leaving the courts draining under the burden of millions of cases that could perhaps have been settled outside.¹⁰

RECOMMENDATIONS

- It is high time to spread awareness about the operation of legal system of India as a whole and educate the public at large about the benefits of Alternative Dispute Resolution. This can be done by educating people about it in schools, colleges, legal and professional training, by organizing camps which create social awareness about this prominent way of solving the dispute outside of the court and its various advantages.
- The pre-action protocols and the consumer Alternative Dispute Resolution which are existing rules should be reviewed to ensure the acquiescence and the documents of the official courts should be revised to include a belief that ADR will be attempted. It is very essential to encourage ADR at the beginning of a dispute and further this encouragement should be provided when proceedings are issued, notwithstanding of the track and cash value. The Court should intervene during the case management process instead at trial/judgment level only, probably with stronger cost sanctions.
- The cases which fall in the middle ground between small claims and high value litigation the funding was identified as the main challenge in this case. It is very

¹⁰By Eshwar Agarwal, Bani Singh And M.P. Ram Mohan; We need alternative dispute resolution mechanisms in India, The Week, [July 19, 2021, 8:20 p.m], <https://www.theweek.in/news/india/2020/07/09/opinion--we-need-alternative-dispute-resolution-mechanisms-in-in.html>;

essential that the ability to recover the mediation costs must be addressed by recognizing the cost of the third party, the venue and the parties' personal lawyers as a part of secure cost regime.¹¹

IMPACT OF PANDEMIC ON THE ALTERNATIVE DISPUTE RESOLUTION

In the present situation where the pandemic has put the whole thing on clutch, it is very essential to mention about its impact on ADR.COVID-19 has caused destruction to the global economy by causing unprecedented disruptions.The pandemic will only exacerbate the case buildup in courts. The courts are expected to be flooded with pending cases post-pandemic. Of late, there have been several well-articulated views pushing for a greater role of mediation in dispute resolution. Efforts have to be taken by the judiciary, lawyers, government, and litigants to create an ecosystem conducive for mediation.Due to Covid 19, parties struggle to fulfil their contractual obligations which has given rise to a large number of commercial conflicts. Henceforth, due to this pandemic the Indian courts are overburdened by cases because of this the parties are more leaned towards ADS for a speedy resolution of the issue raised thru dispute. Due to this reason virtual hearing came into existence.¹²

¹¹The future of ADR; https://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/Litigation_Support/adr-report; [July 19, 2021]

¹² By Riya Dani; COVID-19 and Alternative Dispute Resolution, Via Mediation Centre, [July 19, 2021,8:45] <https://viamediationcentre.org/readnews/NDMz/COVID-19-and-Alternative-Dispute-Resolution>

2021 AMENDMENT

One of the most recent amendments in the Arbitration and Conciliation Act, 1996 is Arbitration and Conciliation (Amendment) Act 2021. The main intention of the law makers was to amend the Act of 1996 and make India a more arbitration-friendly nation. The recent amendment has demarcated two major changes in the Act and those are:

- ❖ The first is to allow automatic stay on awards in some cases where the court has prima facie evidence that the contract on which the award is based was tainted by “fraud” and “corruption.”
- ❖ The other most important modification in the Act of 1996 is the omission of the 8th schedule. It lay down the qualifications, experience, regulations, and norms that should be followed for accurate mediation of arbitrators.¹³ Alternative Dispute Redressal is one of the most significant legal institutions which will succeed greatly in future. Due to change in time, the forms and mechanisms of ADR have also developed as per the environment and found different ways for resolving the dispute. Different emerging provisions are responsible for the improvement in the process of ADR. The recent Amendment in Alternative Dispute Resolution has provided a wide scope and exposure to this mechanism, which helps in carrying the procedure effectively.

Alternative Dispute Redressal is one of the most significant legal institutions which will succeed greatly in future. Due to change in time, the forms and mechanisms of ADR have also developed as per the environment and found different ways for resolving the dispute. Different emerging provisions are responsible for the improvement in the process of ADR. The recent Amendment in Alternative Dispute Resolution has provided a wide scope and exposure to this mechanism, which helps in carrying the procedure effectively.

¹³ Shubham Prakash Mishra ; Impact Of The Arbitration And Conciliation (Amendment) Act, 2021 on India's Pro Arbitration Outlook, Bar and Bench, [July 19, 2021,9:00 p.m] <https://www.barandbench.com/apprentice-lawyer/impact-of-the-arbitration-and-conciliation-amendment-act-2021-on-indias-pro-arbitration-outlook>;