



## Mains Practice Question

**Q.** Despite having numerous advantages, the potential of Alternative Dispute Resolution (ADR) mechanism remains underutilized in India. Analyze. (250 words)

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### Approach

- Briefly explain Alternative Dispute Resolution (ADR) mechanism.
- Discuss its advantages in dispute resolution.
- Discuss the factors for underutilisation of Alternative Dispute Resolution (ADR) mechanism in India.
- Suggest some measures as way forward.

### Introduction

Alternative Dispute Resolution (ADR) is the procedure of settling disputes without litigation, such as arbitration, mediation, or negotiation. They are increasingly being utilized in disputes that would otherwise result in litigation, including high-profile labor disputes, divorce actions, and personal injury claims.

### Body

#### Various ADR mechanisms in India are:

- Arbitration
- Mediation
- Conciliation
- Lok Adalat
- Nyaya Panchayats

#### Advantages of ADR

- ADR facilitate parties to deal with the underlying issues in dispute in a more cost-effective manner and with increased efficacy.
- ADR has the advantage of providing parties with the opportunity to reduce hostility, regain a sense of control, gain acceptance of the outcome, resolve conflict in a peaceful manner, and achieve a greater sense of justice in each individual case.
- It provides procedural flexibility, save valuable time and money, and avoid the stress of a conventional trial.

It reduces the burden on judicial system.

Despite having numerous advantages, the potential of Alternative Dispute Resolution (ADR) mechanism remains underutilized in India due to various reasons:

- **Lack of trained mediators:** The essence of mediation lies in the role of the mediator as a facilitator. However, it has been experienced in India overall that there is a shortage of trained mediators in the country.

- **Lack of referrals:** Section 89 of the Code of Civil Procedure provides for reference of cases by the judges to one of the modes of alternative dispute resolution. However, experience shows that the Judges are not referring cases to the techniques of alternative dispute resolution.
- **Appeals to regular courts:** The parties almost invariably appeal against arbitration awards, resulting in long drawn-out disputes that can last up to 10 years.
- **Lack of awareness:** Lack of awareness about ADR mechanism amongst the people, especially in rural areas is also one of the obstacles in realization of full potential of ADR mechanism. There is also lack of awareness amongst judges, advocates and litigants regarding the effectiveness and usefulness of the process of mediation.

## Way Forward

- The 129<sup>th</sup> Law Commission report and Malimath Committee have recommended making it mandatory for the courts to refer disputes for resolution through ADR rather than litigation.
- Extensive training should be imparted to those who intend to act as a facilitator, mediator, and conciliator in ADR process. Also, judicial officers must be trained to identify cases which would be suitable for taking recourse to a particular form of ADR.
- Setting up of Mediation Centres in all districts of each state with a view to mediate all disputes will bring about a profound change in the Indian Legal system.
- The award of the ADR should be made binding on the parties and no appeal to the court should be allowed unless it is arrived at fraudulently or if it against public policy.
- ADR literacy program has to be done for mass awareness and awareness camp should be held to change the mindset of all concerned disputants, the lawyers and judges.

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