

# Social Chronology of Alternative Dispute Resolution Mechanisms: Evolution, Globalization, Digitization and Beyond

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## Abstract

This library mode descriptive research study intended to trace the evolution and transformation of alternate dispute resolution (ADR) mechanism on socio-legal horizon in the global society. History of disputes is as old as history of mankind. The future of dispute resolution mechanisms is also interconnected with the social norms and economic means adopted by the human society. The social and cultural evolution of human being is geared and supported by two socio-economic interactive outcomes including collaboration and conflict. Collaboration on one hand, resulted in the synergized efforts and combine actions to reform social norms and encultured human civilization, thus it exceeded and expanded the society with a collective and uniform conceptual psychological approach. Whereas conflicts on the other hand, forced and guided the society to standardize the practices and approaches to keep such social advancement sustainable and practicable. Conflicts also induced mankind to invent ways and means to mitigate incidences of differences among the masses and to minimize the variance over the socio-legal horizon, to support human development. Dispute resolution techniques include judicial and non-judicial forums. The history and modes of non-judicial forums are more expanded and complex as compared to the codified form of judicial forums.

## Keywords

Alternate Dispute Resolution, Primitive ADR Practices, Types of ADR, International ADR Forums, Future of ADR, Digital ADR, AI-based ADR

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## 1. Introduction

The alternative dispute resolution mechanism has served in revolutionizing the human conflict mitigation approaches in field of trade, governance, domestic life, civic rights, corporate governance, public service, health and education sector, environment protection and global peace. The current conventional modes of Alternative Dispute Resolution (ADR) include arbitration, mediation and conciliation, whereas non-conventional modes of ADR consist of regulatory inclusion, ombudsman services, public-regulator collaboration and engagements, and restorative justice initiatives.

Alternative Dispute Resolution (ADR) has been the integral part of human society, and has significantly evolved over time. This evolution procedure of ADR has been supplemented and induced by the sophistication of human race, development of social norms and practices, expansion and interconnectivity of human societies, and adoption of modern ways and means of socialization including communication and trade. Historically, “The Code of Hammurabi” (Urch, 1929), and the practices followed by Roman Empire (Czajkowski, 2019) suggests the existence and traces of mediation and arbitration in that primitive era. Church based ADR, Guilds and trade associations of middle ages (Rosenblatt, 2005), practices followed to resolve industrial and trade related disputes in early twentieth century (Lipsky & Ronald, 2003), Adoption and promotion of different modes of ADR by United Nations to facilitate global economic interaction, and inclusion of Information Technology in ADR processes speaks of its interconnectivity with human society since ages.



## **2. Primitive Dispute Resolution Methods**

### **2.1 Arbitration by Elders**

Families and clans evolved as the singular unit of the society. Social disputes arose among the members of a single clan or a family were arbitrated by the elders of the same family, on the standards of family norms, cultural practices and family precedents. This method is traced as among the pioneer ADR practices ever adopted by human-being. Social expansion, socio-cultural differences, codification of norms and rules, documentation of socio-legal regime, evolution of socio-economic practices and human rights concerns limited this mode of ADR to evolve up to a certain extent in the society (Posner, 1980).

### **2.2 Oaths and Sacred Vows**

The practice of oaths and vows to the divine authorities and faiths is as old, as the religions and faiths. Oaths and vows served as powerful deterrents against deception and breach of agreements, and were heavily relied upon in the absence of strong alternate evidence. Hence, oaths and vows filled the space of “lack of evidence” in primitive ADR systems (Silving, 1959). This practice went obsolete on account of its limitations pertaining to inherent potential for manipulation, ethical concerns, lack of rationale, non-standardization and documentation of social systems and practices (Levinson, 1986).

### **2.3 Mediation by Spiritual Religious Leaders**

With the advent of religion in the society and standardization of social practices in line with the religions, the reliance upon the religious principles for Alternatively resolving the social disputes emerged. Religious leaders and experts gained the status of mediators being the experts and authorities for interpretation of religious guidance. Potential for bias, reliance over human for non-human guidance, lack of legal expertise, lack of enforceability criteria and socio-cultural trust variation are among the reasons of obsolescence of this mode of ADR from the society (Matthews-Giba, 1999).

### **2.4 Community Councils**

Community councils have been historically a major as well as the earliest source of ADR. The reliance of society on community system and centralization of moral-cum-social authority vested in the community-based living provided community councils with the social authority to administer dispute resolution among the members of community by upkeeping the norms of cultural sensitivity, accessibility, community ownership and restorative justice in a non-judicial manner. The modes adopted by these councils consisted of somewhat similar to a blend of present-day mediation, conciliation, and arbitration practices (Orina, 2018).

## **3. Alternative Disputes Resolution in Present Era**

The lacunas and short-comings in primitive ADR practices including non-rationality, lack of standardization, unfair discretion, lack of enforcement, inconsistency, non-impartiality and violation of human rights resulted in the socio-legal space for present day’s sophisticated and admissible ADR methods. The socio-legal practice of resolving disputes through non judicial forums is called Alternative Dispute Resolution (Ware, 2001). Instead of bringing the issue before a formal court, international commercial entities have always preferred alternative dispute resolution (ADR) methods. Due to its “all-party acceptable” nature, it is also known and called as “appropriate dispute resolution” (Nolan-Haley, 1992). Process of ADR consists of resolving a common dispute through a commonly agreed third person or a shared media source, on commonly agreed terms, within the confidential scope agreed by concerned parties. The ADR proceedings are generally non-mechanical in nature, and flexible up to the convenience of parties and nature of conflict. The confidentiality of the subject matter of disputes is maintained to a great extent. The aim of dispute resolution

through ADR is not to weigh the evidences available with the contesting parties but to create an equally acceptable situation acceptable for all concerned parties with resolution of the dispute (Goldsmith, Ingen-Housz, & Pointon, 2011). Historically, emerging disputes of civil and commercial nature have shaped a number of modes of ADR in terms of convenience, nature of dispute and materiality involved. These processes and techniques are negotiations, conciliation, mediation, arbitration, mini-trial, and summary trial.

### **Conventional Types of ADR**

With the advent of commercialization and expansion of societies, following type of ADR practices have made space on socio-legal horizons:

#### **3.1 Negotiation**

Negotiation means and includes a process of dispute resolution in which parties try to resolve the dispute by means of communication through a third person (Yarn, 1999). The process and modes of such communication includes dialogue, deliberation, discussions and engagements, formal and informal correspondence. The prime objective of mediation is to extract as much benefits as possible by mode of addressing the stances and claims inter-communicated by the concerned parties. The art of mutual engagements, establishing and coalitions and up to date technical knowledge about the key disputed issues is the pivotal skill to hold mediation. Negotiating parties tries to settle on a common stance without inclusion of a formal third person including Judges or Arbitrators etc. This is a reciprocated helpfulness often yields the resolution of the disputes in a sustainable manner.

#### **3.2 Mediation**

Mediation consists of a process wherein parties attempt to settle disputes with the involvement of a third person(s) called mediator(s) in an informal and unexpressed manner. Hence, negotiation facilitated through a third party is termed as mediation (Moore, 2014). Mediation is regarded as among the most practicable, and accessible mode of ADR. It enables the concerned parties to continue, or even initiate negotiations in some cases. Mediation is a self-opted, non-obligatory, and non-judicial dispute resolution process catalyzed through a third person (Kovach, 2005). The role of mediator is mere to facilitate communication, maintain conducive and dispute settling environment, and not to dictate the terms of settlement. The beauty of this process is that the mediator does not render any decision or order to the parties involved into mediation process. The driving force of a mediation process are the concerned parties, who share and exchange terms of agreement to reach a common point of solution, and not the mediator. Instant factor keeps the process fair, impartial, confidential, controllable, clear, accessible by all concerned parties, and based upon free will.

#### **3.3 Conciliation**

The mediation process of dispute resolution enabling the mediator to intervene through his vested expertise to keep the process continued, absorbing and absolving anti resolution trends and attitudes, and facilitating the modalities and engagements, for assisting in exchange of communication in a diplomatic and comfortable manner (Rao & Sheffield, 1997) & (Simkin, 1971). The conciliator is intended to facilitate agreement between the disputants. The conciliator has no power of decision. Objective outlook, impartial posture, up to date command on the nature of dispute and conciliating skills are the pivotal skills to conduct a successful conciliation.

#### **3.4 Arbitration**

Arbitration is among the highly practiced, adopted, and the most utilized and prominent method amongst the alternative methods of resolving disputes. It is a non-judicial proceeding in which disputing parties submit

their conflict to an impartial person or group of persons chosen for their particular skills for a final and binding resolution instead of a judicial tribunal (Kellor, 2000). It can be invoked by the voluntary agreement of the parties. In the arbitration process, there can be one or more adjudicators or arbitrators. The decision of the arbitrator is based on the hearing and evidence gathered. After weighing the presentation of facts by disputants or their lawyers and witnesses, the arbitrator decides in favor of one party. The decision of the arbitrator is called an award. Therefore, arbitration is a winning-lose process (Nagle-Lechman, 2008). If one of the parties refuses to honor arbitration agreement or unwilling to abide by the arbitrator's award, the arbitration agreement (Aksen, 1968) and award may be enforced by court order (United States Court of Appeals Tenth Circuit, 1957). In sum, it is a consensual arrangement in business transactions (Lippman, 1972).

#### **4. International ADR Regime**

Globalization, shrinking trade routes and revolution in information technology exponentially expanded the societies, and resulted in cross-border interactions on account of trade, tourism and migration. This inter-cultural expansion again accelerated the multifold growth in commercial collaborations as well as potential for commercial conflicts, and so did the commercial conflict resolution mechanisms.

##### **4.1 Global Commercial Mediation Mechanism**

Globally, commercial mediation processes are moderated through “*The United Nations Convention on International Settlement Agreements Resulting from Mediation*” also called “*The Singapore Convention*”, (Singapore International Dispute Resolution Academy (SIDRA), 2021), the multilateral treaty formed by the United Nations Commission on International Trade Law on June 25, 2018. The convention regulates and guides an even agenda for the recognition and enforcement of mediated settlement agreements resolving international commercial disputes. The convention has covered the loopholes in cross-border acknowledgement and enforcement of mediated agreements, which remarkably promoted the cross-border commerce by boosting commercial dispute resolution and guaranteeing protection of commercial rights.

##### **4.2 International Commercial Arbitration**

Party autonomy (Engle, 2002) to choose law and court for dispute resolution, globalization of economy (Brower & Lillich, 1994) and incapability of local laws to address cross border trade issues (Volz & Haydock, 1995) and (Lowry, 1991) gave ways to International Commercial Arbitration (Carbonneau, 1994). International commercial arbitration has evolved as a preferred method for resolving commercial disputes of an international nature (Born, 2020). An arbitration is considered international commercial arbitration if the parties and the subject matter of the dispute relate to more than one state. The foundation of international commercial arbitration is based on a mutual agreement between the parties to submit their disputes or differences to an arbitration proceeding. It is a dispute settlement procedure that leads to a final and binding award determining the rights and obligations of the disputant. In the absence of an arbitration clause agreed by the parties, the arbitral tribunal would not have jurisdiction to determine the disputes. The parties determine the jurisdiction of the arbitral tribunal, its composition and the scope of its competence. They decide the procedural rules and applicable law which would be followed by the tribunal. If the arbitral tribunal does not follow the instructions of the parties, the award may become invalid and unenforceable (Blackaby, Constantine, Redfern, & Hunter, 2009). The parties to international commercial disputes may choose either of these models available as per their agreement, including Institutional based arbitration (Moss, 2003) and

(Kopelmanas, 1961), or the non-institutional and ad hoc arbitration (Kanowitz, 1987). Leading global arbitral institutions includes “*International Chamber of Commerce (ICC)*”, “*London Court of International Arbitration (LCIA)*”, “*Hong Kong International Arbitration Centre (HKIAC)*”, “*Singapore International Arbitration Centre (SIAC)*”, and “*Stockholm Chamber of Commerce (SCC)*”.

### **4.3 International Conciliation Regime**

Model law on international commercial conciliation is constituted by “*United Nations Commission On International Trade Law*” (UNCITRAL, n.d.) in 2002 for the promotion of practice of settlement of international commercial disputes through conciliation. The model law provided uniform rules in respect of the conciliation process to encourage the use of conciliation and ensure greater predictability and certainty in its use. The statutory support addressed the issues regarding standardization of conciliation process and enables benchmarking regarding appointing conciliators, commencing and conducting conciliation, concluding and enforcing conciliation outcomes, conduct of the conciliation procedure, modes of communication, confidentiality and proceedings. The related model law was later on replaced by “*United Nations Convention on International Settlement Agreements Resulting from Mediation, 2019*” (United Nations (UN), 2019).

## **5. Future modes of ADR**

The accessibility and non-inclusion of intermediary barriers, cost-effectiveness, inclusion of hi-tech digital machines and gadgetry for data processing in an efficient manner, digitalization of archives and adaptive use of information technology (IT) in modern society is encouraging the society to shift towards digital methods of Alternative dispute resolution:

### **5.1 Online Dispute Resolution**

Technology is leading the globe into digital and artificial intelligence (AI) based society. Online dispute resolution (ODR) refers to the usage of digital and technological medium to facilitate the resolution of disputes, through online negotiation, mediation and arbitration. Cost-effectiveness, efficiency to address complex nature of disputes, flexibility of operations and procedures, across-the-board accessibility are the key driving forces for replacing conventional ADR procedures with ODR. ODR facilitate parties with the comfort of accessibility, efficient processing in the least possible time and access to dispute resolution forum from remote location (Schmitz, 2010).

### **5.2 Hybrid AI-Human Dispute Resolution**

The Artificial Intelligence (AI)–cum-human based hybrid ADR system is the next phase of future ODR mechanism. The integration of AI based algorithms with human intervened and led ADR processes is called hybrid ADR. Hybrid ADR is latest mutating form of ADR and making its sustainable progress in socio-legal horizon of dispute resolution modes due to its improved efficiency and productivity, its enhanced capability to analyze the disputes in an expertly improved, strategized and highly collaborated manner (Thompson, 2015).

### **5.3 AI-Mediated Negotiation**

Artificial Intelligence based negotiation processes the data pertaining to facts and dispute and relies upon the machine learning algorithms to analyze and carry forward the negotiation proceedings. AI Negotiator processes the inputs and insights from the parties, compares it with the precedential patterns and suggestive

algorithms, and proposes the outcome as negotiator. This helps parties to identify potential areas of agreement and reach a mutually acceptable solution in a systematic and precise manner (Cao, Cheung, & Keyao, 2023).

#### **5.4 AI-Assisted Arbitration**

Artificial intelligence assisted arbitration of disputes carries out the combined processes of natural language processing (NLP) and machine learning algorithms based upon the pre-fed and learnt data by the AI based processor; to analyze evidence, facts and circumstances of the dispute. Hence, resolving the dispute by to identifying the relevant and applicable laws, and by providing arbitrating recommendations (Liu, 2024).

#### **5.5 Predictive Analytics for Dispute Resolution**

Predictive analytics applies machine learning algorithms to collect, process and analyze the historical data pertaining to similar type of cases, and compare it with the machine learnt pattern and applicable legal framework, and predict the outcome of disputes. This helps parties make informed decisions about whether to settle or litigate (Raymond, 2015). Predictive analytics is gaining importance in modern ADR practices as it is assisting in formulation of ADR strategy by suggesting the parties about the allocation of financial and non-financial resources, selection of ADR experts and suitable modes of ADR. In this manner, predictive analytics is guiding parties with respect to resolution principles, cautioning about potential bottlenecks, and possibilities for favorable outcomes.

#### **5.6 Virtual Reality (VR) based Dispute Resolution**

Virtual reality-based dispute resolution is the mode of future ADR mechanism having potential to revolutionize the ADR processes. Its capability to creating a neutral, conducive and creative virtual environment can help the parties to reach at a common solution in the most convenient manner. VR is equipped with the abilities to translate the perspective in the most understandable manner admissible to second party for better understanding and communication. “*Virtual White Boards*”, “*3D models*” and other interactive sharing tools can catalyze the ADR processes pertaining to construction, environment and product designing etc., in an effective manner. Virtual reality uses immersive virtual reality technology to facilitate dispute resolution. This can help parties better understand each other's perspectives and reach a mutually acceptable agreement (Hasler, et al., 2021).

#### **5.7 Blockchain based Dispute Resolution**

Blockchain based ADR is another evolving mode of ADR which relies upon principles of transparency, cost-effectivity, data integrity, greater accessibility, and decentralized arbitration. Blockchain's undisputable and open-for-inspection nature guarantees the parties with transparent and fair process of ADR. Automation of document management and submission holds the potential to streamline the procedure in a cost-effective manner. Cryptographic security features associated with blockchain offers protection of sensitivity of the data (Kaal & Calcaterra, 2017). Localized accessibility and modern technology make blockchain “the contender” to offer innovative ADR models in future, including decentralized arbitration platforms and blockchain based ADR Courts (Kadioglu Kumtepe, 2021).

#### **5.8 AI-Powered Dispute Resolution Tools**

AI-powered conflict resolution tools and applications are replacing and substituting the conventional platforms of ADR by providing ease of accessibility, affordability and reliability. Mobile apps and digital AI solutions are integrating the modes of AI with the machine learning algorithms in order to assess the disputes, and to suggest the workable and resolving outcomes in a cost effective and transparent manner (Dahan &

Liang, 2020). These tools can help parties identify potential areas of conflict and develop strategies to prevent or resolve conflicts (Zhang, Jingwen, Wang, & Wynn, 2023).

On the basis of above, different modes of ADR methods throughout different ages of human civilization viz-a-viz future progressions of various modes of ADR are summarized as follows:

**Table 1:** Summary of ADR modes.

Chronological Period	Types of ADR Mechanisms	Salient Features	Advantages	Limitations
Primitive Period	Arbitration by Elders	Traditional and Informal Process	Cost-effective Traditional	Biased Limited expertise
	Oaths and Sacred Vows	Emphasis on Personal Honor	Inclusive	Inconsistent decisions
	Mediation by Spiritual / Religious Leaders Community Councils	Collective Decision Making Emphasis on public interest		Non-enforceability
Industrial Era / Near Past	Negotiation	Voluntary process	Preserve relationship	Non-uniform method
	Mediation	Flexible	Quick resolution	Costly
	Conciliation	Non-judicial	Flexible	Non-predictive
	Arbitration	Less formal		Biasness
Present Day	Reconstructive Justice	Non-binding or final		Limited control by the parties
	Collaboration	Evaluative		
	Public Sector Inclusion	Expertise based process		
	Regulatory/ Administrative Enforcement			
Future / Digital Age	Online Dispute Resolution	Intelligent decision support system	Accuracy Transparency 24/7 availability	Dependence on input and data quality
	Hybrid dispute resolution	Transparent	Cost effective	Technological issues
	AI-Mediated negotiations	Scalable and efficient	Efficient	Security and confidentiality concerns
	AI-Assisted Arbitration	Capable to offer data driven insights	Non-emotional and free from human bias	Public acceptance and enforcement issues
	Predictive Analytics			
	Virtual Reality (VR) based Resolution			
	Blockchain AI-Powered ADR Tools			

*Source: Summerized by Author*

## 6. Conclusion & Implications

Evolving of modes of ADR throughout various eras of human society has remarkably served the civilizations on socio-legal strata and supplemented the societal advancement through social collaboration as well as by aiding in legal conflict resolution. It is evident that ADR will continue to lead the socio-economic conflict resolution in future in a highly efficient and fair manner due to its added advantage over the codified and non-flexible alternative i.e. litigation. The evolution of ADR in human society signifies the power of collaboration to address mutual conflicts through innovation and determination. Inspiration of vast history holds ample potential to supplement future endeavors to adopt effective modes of ADR for the greater good of society and humanity.

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