

**LAW AND PRACTISE OF ALTERNATE DISPUTE RESOLUTION IN
INDIA, BY ANIRBAN CHAKRABORTY: A BOOK REVIEW**

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The daily hike in the number of litigations filed, is filling the pockets of litigators, while looting off people's wealth as well as time. Parties can instead consider Alternate Dispute Resolution ["ADR"] options, at any point of time when a dispute arises. These alternate resolution techniques or out of the court settlement methods, refer to a wide range of dispute resolution processes and techniques used by the parties to settle disputes with the help of a third party, without the involvement of traditional courtroom litigation. Guided mutual dispute resolution has a historical backing, even if the Indian picture alone is taken into purview. For instance, the early panchayat system, family courts and monarchical court settings fall under this bracket. Despite that, it's formal introduction into the legal domain is quite contemporary. It is hence continuously progressing and coming up with new resolution techniques and other inclusions and modifications.

Owing to its dynamic nature, the domain of ADR is comparatively quite less elaborated, excluding the academic demands. A simple google search on the books dealing with ADR exclusively lands to the search page containing all the academic options, barring few non-academic books which are mostly unavailable or not easily accessible. The number of non-academic issues on the particular topic is as few as a finger-count. One of top picks among them is this very book, titled 'Law and Practise of Alternate Dispute Resolution in India : A Detailed Analysis' authored by Anirban Chakraborty. It is not only readily accessible as hardcopy, but also in no ways gives the traditional legal textbook feeling, containing the re-writing and analysis of bare acts. It indulges the readers into the particular topic, moving out of the cliché methodology of drawing out the same syllabuslike format, including the mention of all the recent developments in the particular area.

The author has very patiently dealt with all the nuances and intricacies of the various ADR methods whether dealing with those in practise since some time or the ones which are relatively new and

less-explored. In a very simplified language as well as writing style, the book progresses from introducing Alternate Dispute Resolution Methodology from being an umbrella term to delving deep into each cornering end, i.e. the various ADR techniques. While describing all the legal aspects involved, the particular laws or treaties or conventions governing it, the various sections of importance in the particular topic and situation, all the steps and methodologies to opt in or out of the very method; it doesn't leave out the historical emergence as well as the subjective facets like the objectives, comparisons, advantages and disadvantages. To bolster every statement and analysis, it is usually followed by quotes from renowned jurists and litigators, involving their persuasive opinions or remarks on the matter at hand. The author along with producing arguments in favour of all the dispute resolution methods, has disagreed on some points, to neutrally balance the stand. This lets the reader frame unbiased, independent opinions while understanding and comparing the different techniques, weighting and cross checking each one equally. Standing true to its title, although it has taken a wider angle view by including the international history, emergence and development of ADR, while mentioning the international mechanism and methodology, the laws and conventions in place; it zooms in to the Indian viewpoint making it the focal point of the discussions. The work thoroughly discusses the working mechanism of ADR and its various branches in the Indian legal and judicial forum, discussing all the Indian laws which are governing them. At the same time, it proposes the introduction of state-of-the-art methodologies. It exposes all the pits in the path of the perpetually progressive legal domain. It's usage, as a result of that, is restricted much below the rate of the traditional litigation till date and the possible panacea.

The longest running case in the history of civil litigation was the Myra Clark Gaines case which ran for 50 years. After such huge passage of time although the judgement was administered favouring the plaintiff, she couldn't live up to hear the words of the final judgement.¹ Delivery of justice within the right time is a fundamental right in India and also the very basis of a fair trial. But the saddening state of the Indian judicial system paints a contradictory picture. It is under the severe strain and pressure of the backlogs of pending cases. Former Chief Justice of India Y.V.Chandrachud's words regarding the issue were "*the legal system of India in its present form will collapse under its own weight within the next ten years. I believe people will loose confidence in the system of administration of justice.*"

By pointing out such issues, the book diligently discusses on the problems existing within the present judicial system leading to its inefficiency. It goes on to explain that it is under the clutches of rising pendency of cases, lack of sufficient resource, minuscule multiplication of laws and

¹ Gaines v. Hennen, 65 US 553 (1860)

creation of new rights, in addition to large vacancies of judicial institutions. The escalating number of rise in cases is increasing the burden of the court dockets by leaps and bounds. The reach too

gets costly and inaccessible to a majority of people. To avoid giving it a prejudiced look, the said analysis was supported with figurative charts and tables. Relying on one such section of data mentioned, there are more than 3 crore cases which are still pending before the courts, of which 11 lakh cases are pending since more than 5 years, while 5.8 lakh are in line for 10 or more years. Presently, it takes on an average, more than 10 years, sometimes even 20 to 30 years before a matter is finally adjudicated. The simple equation is that the existing pendency along with daily increase of cases is leading to an unwieldy number of backlogs. The data further adds that the Indian Supreme court recently mentioned that 90% of the court's time is devoted in adjudicating matters which are uncalled for litigation and solving cases involving petty issues. Interestingly, though the increase in Supreme court and High court cases can't be ignored, but the largest percentage of share is still in lower courts, with a marginal rate of reduction. To the utmost surprise, 1.7 crore out of the earlier mentioned 3 crore pending cases are civil in nature. So, as an evaluation, there is a dire need of a strong and approachable ADR system, working in coordination with the civil courts. They could assist the civil judges in transferring cases suited to be resolved out of the court, by ADR mechanism.

Former Prime Minister of India, Dr. Manmohan Singh had said *"the mammoth number of pending cases cannot be allowed to disillusion or dishearten us. It has to spur us to even higher peaks of achievement and bring out the best from every stakeholder, acting in coordination to progressively get over this great challenge."* ADR methods can be the most effective tool for overcoming such a challenging situation. Surely it wouldn't let a murderer or a child molester roam free, but the cases involving compoundable circumstances can surely be reached to a peaceful conclusion. The particular book again comes up as a rescue here, with a demarcated section involving situations where ADR cannot be used at all. Disputes arising out of criminal offences, election to public offices and matters involving public interest fall under that category. Exceptions also occur in cases involving a minor or a person of unsound mind as well as offence of forgery, fraud or impersonation. It presents both sides of the picture highlighting all the possible advantages as well as disadvantages of opting alternate dispute resolution methods over lengthy courtroom trials. It even separates out the discussion over the idea of the usage of Alternate Dispute Resolution in criminal proceedings, laying emphasis over the reformative provisions of the law enforcement system and its benefit to the demand of speedy trials, by solving trifling disputes amicably.

Connecting dots, it burrows into the historical prospect, underlining ADR's emergence and its contribution to its lawful codifications and furtherances. It takes into account the mediated dispute resolution practices of the past which sowed seeds of the out-of-the-court settlement procedure. A legal mindset would surely look out for the lawful backings present. Moving on to that side, the book has a mentioning of all the legal provisions, statutes, international conventions and laws favouring and legalising the ADR practise. It presents the legal prospects while dealing with all the specific mechanisms. The Arbitration and Conciliation Act, 1996 ²; The Arbitration and Conciliation (Amendment) Ordinance, 2015 ³ and The Mediation Rules, 2003 ⁴ find specific mentions as well as elongated discussions after the end of all the chapters. International interlining provisions and conventions including the United Nations Commission on International Trade Law (UNCITRAL), Pound Conference, International Centre for Alternative Dispute Resolution and Geneva Convention on Enforcement of Foreign Awards find references. The evidentiary approach includes specific case laws which have led the gradual adoption of the ADR practice, specifically in India and the the different Indian statutory provisions supporting the different dispute redressal branches, which aren't exclusively codified.

Alternate Dispute Resolution is a blanket term covering all the resolution methods. A majority of the book's content contains information of the different techniques. It has explained the most important among them in an elaborated manner, discussing all subtleties and accounting for all its details. The concept of Arbitration covers almost 50% of the write-up. It has been argued that arbitration is an ideal dispute resolution option, holding true to the checklist of requirements which the opting individual mostly has before choosing the apt technique for resolving the matter-athand. It's rising demand in the international corporate conversations has led to the emergence of a separate specific sub-heading under it, called the International Commercial Arbitration. The other prominent ADR methods discussed include Mediation, Conciliation and Negotiation which are prevalently used for guided dispute resolution. They are comparatively informal than arbitration but quite in vogue according to the changing needs and dimensions. The book doesn't lose out on providing cursory description of the newer, less widespread dispute resolution techniques like – mini trial, MEDALOA (mediation and last offer arbitration), med-arb, arb-med, neutral evaluation, private judging, appraisal and facilitation. The work is therefore sufficiently updated and knowledge-augmenting.

² The Arbitration and Conciliation Act 1996.

³ The Arbitration and Conciliation (Amendment) Act 2015.

⁴ The Mediation Rules 2003.

The book neatly balances between the ADR inclusive contents and the outer supportive contents presented in reference, by intertwining them well. Eccentric topics like Court Annexed ADR, mentioned in Section 89 of Civil Procedure Code, 1908 has been dealt at length⁵. Also, the concept of Lok Adalat has been presented into light, which marked the initiation of dispute redressal methodology in India. They've been conferred as the ADR-courts working since 1982, regulated under the Legal Services Authorities Act, 1987 which are sharing court's pending caseload and resolving disputes alternatively⁶.

Drawing to a close it critically appraises the upshot implementation of ADR over the last few decades and proposes some steps to further strengthen its practise in India. It touches on the shortcomings hindering the pathway. With that, it has also put forth some related proposals to further widen the reach of dispute resolution mechanism in the country, including the introduction of Online Dispute Resolution ["ODR"] mechanism, initiation of pre-trial procedures and reengineering of the conventional court procedure.

The target audience of the book are lawyers, law enthusiasts, law and management students, policy makers as well as corporate persons. It's an absolute recommendation to people falling into these brackets or otherwise who would want to study about the Alternate Dispute Resolution mechanism and methods. The presentation is appropriately crisp and informative. At the same time the details are delivered very candidly and simplistically. It surely is one of the most plainly comprehensive books on ADR law. It aims at meeting the increasing demand of particulars in this emerging field by exposing each possible angle which is in connection with it. In a way it therefore also proves itself as a good source as a research material.

Moving out from the whites, the blacks also need to be underlined in order to put forth an honest review. First critical point would be the inclusion of too many quoted statements justifying the presented analysis or any emerging point. The factual tone of the book gets impacted by such repetitive verifications and the structure becomes draggy inevitably. Additionally, there are few places in the initial chapters where the points presented got repeated under different subheadings, making the part monotonous and unnecessarily lengthy. The introductory and supportive paragraphs have also got repeated in many chapters word by word, which as a result impacts the freshness of ideas which the particular other chapter aims to present.

The robust progress of ADR has undoubtedly set it on the pedestal of one of the most soughtafter and lucrative career prospect in the legal arena. Not just lawyers and law students are looking

⁵ The Code of Civil Procedure 1908, s 89.

⁶ The Legal Services Authorities Act, No. 39 of 1987.

forward to specialising in this domain, but the business associations and corporates are also processing to handle issues via these dispute resolution measures. In that scenario, the book discussed above would be an ideal material to fumble over the intricacies of ADR and to peek into its near-future possibilities.