

Module 3: Arbitration, Conciliation, and ADR Systems

1. Introduction to ADR

Alternative Dispute Resolution (ADR) encompasses mechanisms to resolve disputes outside the formal court system, including **arbitration, conciliation, mediation, negotiation**, and sector-specific forums like Dispute Resolution Boards and Lok Adalats. These avenues offer flexibility, privacy, cost-effectiveness, and speed compared to conventional litigation.

2. Arbitration

Meaning and Scope

- Arbitration** is a process where disputing parties agree to submit their conflict to one or more neutral arbitrators, whose decision—the arbitral award—is binding and enforceable. ^[1] ^[2]
- Preferred for commercial disputes, technical issues, and cross-border transactions.

Types of Arbitration

Type	Description
Domestic Arbitration	Both parties and proceedings are Indian; Indian law applies.
International Arbitration	Involves a foreign party or foreign law; may be seated in India or abroad.
Ad Hoc	Parties set the rules and appoint arbitrators without involving an institution.
Institutional	Conducted under an arbitral institution (e.g., SIAC, ICC), with set procedures and administrative support. ^[2] ^[3]

Distinction: Arbitration Laws of 1940 vs. 1996

Feature	Arbitration Act, 1940	Arbitration and Conciliation Act, 1996
Scope	Domestic focus	Covers domestic and international cases; integrates UNCITRAL Model Law ^[4] ^[5]
Court Intervention	Extensive involvement in process	Judicial intervention is minimal and only as specified by law ^[4] ^[6] ^[7]
Appointment of Arbitrators	Courts played major role	Appointment by parties; courts intervene only if parties fail ^[4]
Time Limits	No time limit	12+6 months for making an award ^[4]

Feature	Arbitration Act, 1940	Arbitration and Conciliation Act, 1996
Foreign Awards	No provision	Explicit provision for enforcement

UNCITRAL Model Law, Expert Determination

- **UNCITRAL Model Law:** International framework harmonizing arbitration laws, emphasizing party autonomy, minimal court interference, recognition/enforcement of awards, and interim measures by tribunals or courts^{[8] [9] [10]}.
- **Expert Determination:** Non-binding or binding decision by an appointed expert, suitable for technical or specialized disputes, differs from arbitration mainly in enforceability and scope of challenge^{[11] [12]}.

Judicial Intervention

- Courts may only intervene as expressly permitted (e.g., appointment of arbitrator, interim measures, enforcement, or setting aside awards).
- Section 5 of the 1996 Act mirrors this restricted approach, aligned with UNCITRAL principles^{[6] [7]}.

International Commercial Arbitration

- **Definition:** Arbitration between parties from different countries, governed by the terms agreed upon (institutional or ad hoc), not bound by national procedures^{[13] [14]}.
- **Seat/Place:** Parties can select the seat; enforcement governed by international conventions like New York Convention.

3. Arbitration Agreements

Essentials, Kinds, Validity

- **Essentials:** Written form, clear intent to arbitrate, subject matter must be capable of settlement by arbitration, parties' capacity and consent^{[15] [16] [17]}.
- **Kinds:** Separate agreement or an arbitration clause in the main contract.
- **Validity:** Subject to general contract law; must not be vague, unlawful, or lacking mutual consent.

Reference and Interim Measures

- Disputes are referred to arbitration per agreement; courts can grant interim measures for preserving subject matter before, during, or after arbitral proceedings^{[18] [19]}.

4. Arbitration Tribunal

Appointment, Challenge, Jurisdiction

- **Appointment:** By party agreement; failing that, by institution/court^[8] ^[13].
- **Challenge:** Grounds include bias, incapacity, lack of qualification.
- **Jurisdiction:** Tribunal decides its own jurisdiction (kompetenz-kompetenz principle).

Powers, Procedure, Court Assistance

- **Powers:** Decides on evidence, interim relief, procedures.
- **Assistance:** Courts help in evidence collection, interim measures, and enforcement.

5. Arbitral Award

Form, Content, Setting Aside

- **Form:** In writing, signed, reasoned (unless mutually waived), dated, and stating seat^[13].
- **Grounds to Set Aside:** Party incapacity, invalid agreement, procedural irregularity, tribunal exceeding jurisdiction, fraud, or conflict with public policy.

Enforcement, Appeal, Revision

- Awards are final and binding, enforced as a court decree.
- Appeals/revision are only allowed on specified grounds (e.g., violation of natural justice, lack of jurisdiction)^[13].

6. Enforcement of Foreign Awards

- **New York Convention Awards:** Awards from signatory states are enforceable in other member countries, with limited defenses (public policy, incapacity, etc.).
- **Geneva Convention Awards:** Older regime, rarely invoked since the rise of the New York Convention.^[13]

7. Conciliation, Negotiation, Mediation, Arbitration – Distinctions

Mechanism	Neutral's Role	Outcome	Binding?	Confidentiality
Arbitration	Arbitrator decides	Award	Binding	High
Conciliation	Facilitator suggests	Settlement	If signed	High
Mediation	Facilitator assists	Agreement	If signed	High
Negotiation	Parties only	Agreement	If agreed	As agreed

- **Conciliation:** Statutory under 1996 Act, settlement recorded as agreement.
- **Mediation:** Voluntary, informal, greater party control.

- **Negotiation:** Direct party-to-party dialogue.
- **Arbitration:** Formal, final award by third party^[1].

Confidentiality, Resort to Judicial Proceedings, and Costs

- Generally, all ADR mechanisms ensure confidentiality.
- Resort to litigation is limited after the commencement of ADR unless provided by statute or agreement.
- Costs are typically lower than traditional litigation but vary by procedure and forum.

8. Dispute Resolution Boards & Lok Adalats

Dispute Resolution Boards (DRB)

- Typically set up for large infrastructure/long-term projects.
- Independent board provides recommendations or binding decisions to resolve disputes amicably and timely.

Lok Adalats

- Statutory forums in India for the expeditious settlement of disputes, including civil and compoundable criminal matters.
- Decisions are binding, non-appealable, and enforceable as civil court decrees, conducted in a simplified and informal manner.

Summary Table: Key ADR Features

Feature	Arbitration	Conciliation/Mediation	Lok Adalat/DRB
Outcome	Award	Mutual Agreement	Award/Recommendation
Legal Effect	Binding, enforceable	Binding if signed	Binding, final
Confidentiality	High	High	Variable
Court Intervention	Minimal, as per law	Very limited	Minimal
Costs	Moderate	Lower	Low

This module provides the complete landscape of arbitration and ADR in India, focusing on legislation, international influences, practical processes, and the critical distinctions between key dispute resolution mechanisms.

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