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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJLAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

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ALTERNATIVE DISPUTE RESOLUTION (ADR) AND JUDICIAL REFORM IN DEVELOPING COUNTRIES: A COMPARATIVE ANALYSIS

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Literature Review

The discussion revolving around Alternative Dispute Resolution (ADR) as a mechanism for judical reforms, academics has developed rapidly. Subsequent scholorship has focused on the institutional and practical dimensions of the ADR. Frank E.A. sanders influential multi doorcourthouse model advocates for the diversification of dispute resolution mechanism his model has influenced policy reforms across various jurisdictions, contributing to the mainstreaming of ADR processes such as mediation and arbitration.In the field of international commercial law, arbitration has received considerable scholarly attention due to its enforceability, neutrality, and suitability for cross-border disputes. The development of harmonized legal frameworks and international conventions has further enhanced the credibility and global acceptance of arbitration as a preferred mode of dispute resolution. At the same time, mediation and conciliation have been recognized for their capacity to facilitate consensual settlements, particularly in disputes where the preservation of relationships is of paramount importance. Contemporary literature has also engaged with the normative and philosophical dimensions of ADR, emphasizing its participatory and party-centric nature. Scholars have highlighted that ADR processes, particularly mediation, enable disputing parties to retain control over outcomes, thereby promoting more sustainable and satisfactory resolutions. This shift reflects a broader transformation in legal thought, from adversarial adjudication toward collaborative problem-solving. Empirical studies conducted by international organizations have reinforced the practical significance of ADR in improving judicial efficiency. In developing countries, ADR has been particularly effective in bridging the gap between formal legal systems and underserved populations, often through community-based and

court-annexed mechanisms. Recent scholarship has also focused on the emergence of Online Dispute Resolution (ODR), which represents the technological evolution of ADR. ODR has expanded the reach of dispute resolution mechanisms by enabling remote access, streamlining procedures, and accommodating the needs of a digital economy. This development is especially relevant in the context of cross-border transactions and high-volume, low-value disputes. Despite the widespread recognition of ADR's benefits, the literature also identifies certain limitations and challenges. Concerns relating to power imbalances between parties, lack of uniform standards, and questions regarding enforceability and accountability continue to be debated..In sum, the existing body of literature establishes ADR as a dynamic and evolving component of contemporary legal systems. It highlights both its transformative potential in enhancing access to justice and the necessity of continued institutional and normative development to address emerging challenges.

Research Questions

1. Whether Alternative Dispute Resolution (ADR) mechanisms can effectively address structural inefficiencies in judicial systems of developing countries, particularly in terms of delay, cost, and case backlog? .
2. How do variations in ADR settlement rates across jurisdictions reflect the relationship between institutional frameworks and the effectiveness of dispute resolution systems?

Research Methodology

This study looks at how Alternative Dispute Resolution, or ADR, can help reform the justice system in developing countries. To do this, it uses a combination of methods, including a detailed analysis of laws and legal frameworks, as well as comparisons with other countries. The goal is to understand how ADR works in different places, like India, Brazil, and China, and to identify what works best. The study also uses data and graphs to show how well ADR is working in these countries. This data comes from reports and studies done by international organizations and governments. By looking at this information, the study can show trends and differences in how ADR is used, and support its conclusions about how effective it is. The approach used in this study is mostly qualitative, meaning it focuses on understanding and interpreting information, but it also uses some quantitative data to help make its points. Since the study is looking at many different

countries, it relies on existing data rather than trying to collect new information. This allows it to provide a comprehensive and practical look at how ADR can be used to improve the justice system. Overall, the study aims to provide a complete and detailed understanding of ADR and its role in judicial reform, by combining legal analysis with comparisons and data from different countries. This will help to show how ADR can be used to make the justice system more efficient and effective, and to identify areas where it can be improved. By examining the use of ADR in different countries and contexts, the study can help to identify best practices and challenges, and provide insights into how ADR can be used to support judicial reform. The use of data and graphs helps to illustrate the findings and make them more accessible, and the study's focus on practical relevance ensures that its conclusions are useful and applicable in real-world contexts. In short, this study is an in-depth look at how ADR can be used to improve the justice system, and it uses a range of methods to provide a comprehensive and detailed understanding of this important topic.

Abstract:

In many developing countries courts are confronted with a number of problems including slow proceedings, a large backlog of cases, inflexible procedures and high costs. Access to justice for poor people is often severely restricted, particularly in regions outside majorcities. However, in an increasing number of countries steps are being taken to reorganise the justice system in order to be able to deliver justice in time. Alternative Dispute Resolution (ADR) methods have caught the attention of many.[1] In ADR cases are not resolved through judicial proceedings. For example, parties to a contract may agree to have their differences resolved by an arbitrator who hears their evidence and decides on the matter in dispute. Alternatively, the parties may choose to engage in mediation, in which a neutral third person facilitates a process of negotiation between the parties with a view to the parties reaching an agreement. The neutral third person may use a combination of negotiation and disclosure of information in order to facilitate agreement. In other cases, parties and a neutral third person may work together to seek an agreement. More commonly, parties engage in unassisted negotiation. ADR procedures are usually faster, less expensive, and more flexible than those of the traditional court system. ADR methods are most often used in conjunction with the formal system, but are also used as a substitute for it. This report examines the rapidly expanding use of ADR procedures in both developed and developing countries. The experiences

of India, Pakistan, Sri Lanka, Mexico, Bangladesh, Nigeria, South Africa, and Brazil are compared and contrasted with what is happening in China, Kenya, and the UK, including what works, what doesn't, and what lessons can be drawn. This report offers the first comprehensive analysis of ADR systems based on original legal research, combined with the latest available data drawn from quantitative and qualitative sources. It describes and assesses growth of ADR; speed of case resolution; extent of savings in costs and time; and fairness and accessibility for ordinary citizens. The report goes on to examine the impact of relevant laws, the role of the courts and government institutions, as well as mediator and arbitrator training. Legitimacy of ADR processes, mechanisms and neutrals is a key issue. Many people, including litigants, have little or no knowledge of mediation. Its legitimacy is undermined in some cultures. In other cases the processes, mechanisms and neutrals need training and better rules are required to implement ADR. These are but a few of the many challenges facing ADR in its bid to become a powerful tool for increasing access to justice.

Introduction:

Justice is often thought of simply as the remit of the judges and the courts. But justice is a key element of any democratic state. Courts play a crucial role in protecting individual rights, in maintaining social order, in imposing proper punishment on the guilty and in fostering development and economic growth. All these are functions that the people of many developing countries can only dream of. In democracies, courts are there to resolve disputes, to interpret the law and to safeguard human rights. Delays, backlogs, costs, resources, and facilities all present problems and challenges in the administration of justice. Some would go so far as to say that these problems present a justice crisis. One of the greatest challenges in the administration of justice is the inordinate amount of time which a case takes. Cases often linger on for years – even decades – as they slowly work their way through the system. The clogged system can be as frustrating to the litigants as it is ineffectual. Why should access to justice be of concern to a Human Rights Commission? First, and most obvious, is the concern that citizens may perceive an obstacle to access to justice as an obstacle to access to human rights generally, and a Human Rights and Civil Liberties Commission in particular. Access to justice is blocked by the costs of litigation. How accessible are the courts to the poor, or to people for whom a courtroom is an unfamiliar place?

Even if formal law is compliant with human rights standards, the rules of procedure and technicalities of evidence and pleading may prevent some individuals and groups from effective participation in the process and from having their claims heard. More significantly, the inability to access justice to enforce legal rights can have broader social consequences. An underdeveloped judiciary can stifle economic growth and development, drive investors to alternative means of conflict resolution, and create further social unrest. Moreover, an inadequate judiciary may seek to maintain control through alternative, often informal, often illicit means. Thus, the need to encourage alternative forms of conflict resolution grows increasingly acute. Alternative Dispute Resolution (ADR) includes a number of procedures including arbitration, mediation and negotiation and offers parties an alternative to litigation through the traditional legal system. Alternative methods of resolving disputes are less formal, highly flexible and seek to find a mutually acceptable solution / agreement. Alternative Dispute Resolution methods are generally quicker and less expensive than litigation. Aims to provide a fair solution to the parties involved and not a win/lose situation. Many legal systems have incorporated Alternative Dispute Resolution into the justice system by enacting statutes and establishing court ADR programs. Alternative Dispute Resolution ('ADR') is no longer an optional add-on to the justice system but an integral part of how cases are routed through the system in order to make systems more efficient and effective. The focus of the report is on how justice systems can be relevant and effective for developing countries. The report sets out how a more collaborative state and society driven approach can deliver justice that is fair and effective. Improving the justice system is critical to creating a more democratic and prosperous society that is stable and fair. Strengthening justice systems can also spur economic growth and development.

Courts are established for the administration of justice to parties before them. However, the number of pending cases in many developing countries makes it impossible for judges and other officials to attend to them effectively. This has led to the recourse to Alternative Dispute Resolution, an approach for resolving disputes other than by litigation. It is faster and cheaper than litigation, and does not require people to queue up before the court for hearing dates. Not only do the parties benefit through the achievement of terms of settlement that are acceptable to them, but also the burden of the judiciary is reduced, and the people get accustomed to settling their disputes amicably. However, the method has its own problems. In concept Alternative Dispute Resolution

(ADR) is gaining traction as an alternative to civil jury trials.. However, most importantly, ADR can live up to its potential Drawing support from all sectors of society (legislation, institutional support, trained practitioners and public awareness). A study of how Alternative Dispute Resolution (ADR) could address some of the problems of justice systems in developing countries. The study will examine the relationship between ADR and efforts to access justice and judicial reform in a developing country, map out the contours of ADR practice, highlight the strengths and weaknesses of various forms of ADR, and look at some of the future possibilities with a view to creating a more efficient, inclusive and effective justice system. While ADR is not intended to be a substitute for a formal court system, it has a constructive role to play as a complementary process. Alternative Dispute Resolution (ADR) has the potential to reduce congestion in crowded courts in developing countries and promote a culture of joint problem-solving in order to move disputes out of the adversarial legal arena. While ADR has great potential to improve the functioning of the justice system in developing countries, there are also substantial challenges and limitations that need to be addressed.. The book links ADR practice to broader economic and political goals, treating the culture of dispute resolution as a significant indicator of development.[1].

2. Forms of Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is referred to as the techniques which are applied in resolving disputes outside the jurisdiction of Courts of Law. In modern times Alternative Dispute Resolution is considered to be an effective instrument in the administration of justice. It is designed to decongest Courts from pending cases and to provide meaningful access to justice. In order to comprehend the subject properly, ADR encompasses four principal methods which are, in no

[1] 1. Marc Galanter, Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law, 19 *J. Legal Pluralism & Unofficial L.* 1 (1981).
2.Mauro Cappelletti & Bryant Garth, *Access to Justice: The Worldwide Movement to Make Rights Effective* (Vol. I, Sijthoff & Noordhoff 1978).
3. World Bank, *Doing Business 2020: Comparing Business Regulation in 190 Economies* (World Bank Publ'ns 2020).
4.S.I. Strong, *Research and Practice in International Commercial Arbitration* (Oxford Univ. Press 2014).
5.The Arbitration and Conciliation Act, No. 26 of 1996, India; UNCITRAL Model Law on International Commercial Arbitration (1985), as amended in 2006.
6.Frank E.A. Sander, Varieties of Dispute Processing, in *Proceedings of the Pound Conference on the Causes of Popular Dissatisfaction with the Administration of Justice* (1976).
7.Carrie Menkel-Meadow, Whose Dispute Is It Anyway? A Philosophical and Democratic Defense of Settlement, 83 *Geo. L.J.* 2663 (1995).

particular order, arbitration, mediation, conciliation and negotiation. Each of the processes possesses certain distinctive features and uses.

2.1 Arbitration

Arbitration is the most formalised form of Alternative Dispute Resolution ("ADR") and is closely modelled on the judicial adjudication process. It is a process whereby the parties to a contract refer their differences to one or more Arbitrators who decide the issue in dispute by delivering an Award on such issue. The Award is binding and enforceable in the courts of the seat of arbitration or wherever it is taken to for enforcement. Arbitration is the most widely used and accepted form of ADR in commercial disputes including cross-border transactions where foreign parties are involved. The Arbitration and Conciliation Act, 1996 (the "Act") governs both domestic and international commercial arbitration in India. Most of the provisions of the Act are based on the United Nations Commission on International Trade Law ("UNCITRAL") Model Law on International Commercial Arbitration (the "Model Law").

The recognition and enforcement of the award worldwide is guaranteed by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (the "New York Convention"). Article V of the New York Convention details the grounds on which a foreign award is likely to be refused enforcement. In Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd., (2011) 3 SCC 9, the Supreme Court of India laid down the parameters of what can be referred to arbitration. Arbitration is unique as it provides a final determination of the dispute in a completely confidential environment, with the added advantage that the parties are able to fashion the process of arbitration as per their agreement. However, arbitration can be expensive, particularly in relation to the cost of holding hearings.

2.2 Mediation

What is Mediation? Mediation is a process facilitated by a third party called the ‘Mediator’ or ‘Neutrals’ where the parties to a dispute help each other to reach an agreement so that the dispute is resolved amicably without any animosity or bitterness. The mediation is voluntarily opted by the parties and any agreement arrived at during the mediation are purely voluntary and non-binding unless the parties wish to make it binding. Over the years, mediation has grown to be a preferred

Alternate Dispute Resolution ('ADR') mechanism. In India, while Section 89 of the Code of Civil Procedure, 1908 empowered the Courts to refer the disputes to mediation and counseling, the Mediation Act, 2023 is a recent legislation which aims at consolidating the said provisions and provides a regulatory framework for the growth of both domestic and international mediation. The Indian judiciary has been consistently advocating Alternate Dispute Resolution ('ADR') mechanisms and it was further emphasized in Salem Advocate Bar Association v. Union of India (2005). The mechanism of mediation is preferred in family disputes, commercial disputes and community disputes where relationship is a critical component.

2.3 Conciliation

Conciliation is often treated as identical to mediation; the principal distinction between the two being the more proactive role the conciliator plays in securing a settlement, not merely identifying the respective positions of the parties, but also actively canvassing some terms for a settlement. Conciliation is dealt with in Part III of the Arbitration and Conciliation Act, 1996. This part of the statute deals with the conciliation process and the validity and effect of settlement reached thereunder. It is significant to note that such settlement has the same status and has the same enforcement machinery as is applicable to an award on agreed terms. Conciliation is a widely accepted technique, popular in commercial and industrial disputes, and parties resort to it when they want a structured dispute resolution process, leaping over the trappings of litigation. This process is extremely flexible and informal.

2.4 Negotiation

Negotiation is the most informal and the most commonly used process of ADR and indeed of Dispute Resolution generally. It is the most common of all methods of alternative dispute resolution and indeed the most common method of Dispute Resolution generally. It is the process of discussion between the parties to a dispute with the objective of reaching an agreement on the terms for the resolution or settlement of the issues in dispute. It is purely consensual. It is entirely within the control of the parties and it is generally conducted on an entirely informal basis. While the process of negotiation itself is not governed by any particular rules or legislation, the process of negotiation is an important aspect of all forms of dispute resolution and it is used in both domestic and international contexts. Negotiation is a standard part of the process of all commercial

transactions and it is a normal process of international relations. It is a normal process of life. Its greatest advantages are those of cost-effectiveness, immediacy and informality. However, it is not always the most satisfactory process. There are certain problems that can make for an unsatisfactory process of negotiation. The biggest problem is that of unequal bargaining power.

2.5 Emerging and Hybrid Forms

While Alternative Dispute Resolution ('ADR') methods are well known to lawyers in general, these methods are not confined to their traditional guises of Negotiation, Mediation and Arbitration. In modern legal systems we see ADR taking many forms of hybrids, and one such recent hybrid is that of Med-Arb or Mediation cum Arbitration. While mediation and arbitration are established forms of ADR, the increasing tendency on the part of the legal community to combine the two processes and arrive at a hybrid form of ADR is novel. ADR innovations like Court-annexed ADR mechanisms, Lok Adalats, and Online Dispute Resolution ('ODR'), to name a few, are fast evolving and are equally being followed by other innovations in ADR. The Legal Services Authorities Act, 1987 enabled theformation of Lok Adalats where disputes are sought to be settled amicably particularly those of the marginalized sections of the society[2].

3. Need for Judicial Reform in Developing Countries

Most judicial systems in developing countries are affected by serious inefficiencies, stemming from institutional, economic and socio-legal factors. These are not easy to solve, for they require more than a simple cure. Year after year the number of disputes is increasing while the judicial system is unable to deal with them in an efficient manner. The procedural law is outdated and the procedures are cumbersome. As a result there is a serious gap between the demand for justice and actual justice delivery. Judicial reform in developing countries is not only important for making

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1. [222]*Frank E.A. Sander, Varieties of Dispute Processing, in Proceedings of the Pound Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (1976).*
2. *The Arbitration and Conciliation Act, No. 26 of 1996, India; UNCITRAL Model Law on International Commercial Arbitration (1985), as amended in 2006.*
3. *Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 330 U.N.T.S. 3.*
4. *Code of Civil Procedure, 1908, § 89 (India).*
5. *The Mediation Act, No. 32 of 2023, India.*
6. *The Arbitration and Conciliation Act, No. 26 of 1996, pt. III (India).*
7. *Roger Fisher & William Ury, Getting to Yes: Negotiating Agreement Without Giving In (1981).*
8. *The Legal Services Authorities Act, No. 39 of 1987, India.*

an effective institution even more efficient. It is crucial for upholding the rule of law, for social stability and for economic development. Efforts have been made to improve the efficiency and effectiveness of procedures..

3.1 Judicial Backlog and Delay

One of the most serious problems that face the judicial systems in the developing countries is the backlogs of cases and inordinate delays in their disposal. Millions of cases are pending determination in Courts all over the developing world including India, Pakistan, Bangladesh and Nigeria to name a few. Such delays are against the very principles of justice and are harmful to the image of the judiciary. In the case of Hussainara Khatoon v. State of Bihar[3] (1979) the Supreme Court of India held that right to speedy trial is a fundamental right and is part of right to life and personal liberty guaranteed under Article 21 of the Constitution of India. However, a serious problem exists. The established methods of litigation are not able to handle disputes on a timely basis. Anecdotal evidence suggests that in many countries levels of settlement and disposal remain very low. For example in India levels are as low as 12.4% and in Brazil 18.7%. In such jurisdictions the formal judicial system is overwhelmed and is unable to process cases in a timely manner so that they can be heard and disposed of justly. process deprives litigants

3.2 High Cost of Litigation

The costs of litigation are a powerful barrier to access to justice in developing countries. In addition to the cost of lawyers' fees, court fees, costs of process, photocopying, travel, and other incidental expenses, often substantial, can quickly escalate the total cost of litigation to economically prohibitive levels, particularly for the economically weaker sections of society. The famous words of the Supreme Court of India in Manubhai Pragaji Vashi v. State of Maharashtra (1995) were: "access to justice must remain more than a mere illusion and has to be real". For many, however, litigation is simply too expensive, while alternative methods of dispute resolution ('ADR') offer a more cost effective alternative to litigation.

3.3 Procedural Complexity

Besides the physical requirements of appearances before the judicial officer, the layers of complexities of civil procedure and practices often cause further problems in the processing of

cases and access to justice in developing economies. Thus, Alternative Dispute Resolution (ADR) becomes a practical approach to simplify the processes of dispute resolution and increase access to remedies for the citizeny.There is considerable evidence that the use of mediation in court, shortens the number of hearings and the length of time cases take to reach a conclusion. Indeed, generally speaking, the parties report higher levels of satisfaction with the process than they do with traditional “adversary” models of dispute resolution.

Mechanisms such as rules of evidence, vigorous cross-examination, and the availability and effectiveness of appeals are necessary to ensure that justice is delivered honestly and fairly.. The absence of legal literacy and resources in rural villages and marginalised communities further hampers access to justice. Such procedures deter rather than encourage litigation. Simplifying existing procedures and encouraging the use of Alternative Dispute Resolution (‘ADR’) mechanisms can reduce the complexity of procedures and expedite dispute resolution. Observations of judges (as seen in Salem Advocate Bar Association v. Union of India[4]) have applauded the flexibility of ADR processes, and the ease with which disputes can be resolved within these frameworks.

3.4 Lack of Access to Justice

Despite efforts made to set up legal institutions, access to justice remains a huge challenge in most developing countries. Several barriers stand in the way of the marginalized mass to access legal recourse. These include distance, cost, lack of awareness, and deep rooted inequalities of social and economic character. The term access to justice has evolved, and in a recent judgment the Supreme Court of India in Anita Kushwaha v. Pushap Sudan (2016) elaborately interpreted the term. “Access to Justice” is no more confined to access to legal institutions, in fact it means access to effective adjudicatory processes. There is a long way to go to make this dream a reality. The international community too has recognized the significance of access to justice and incorporated it in the Sustainable Development Goals (SDGs), particularly SDG 16 which reads, “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build trust, including by ensuring affordable, reliable, universal and equal access to information and communications technology and improving regulatory frameworks, including by reinstituting

science-based policies." These mechanisms are decentralised, community based, user friendly systems of dispute resolution.[3]

4. Alternative Dispute Resolution in Emerging Markets: A Study of their Practices and Frameworks

The adoption and implementation of Alternative Dispute Resolution ('ADR') in developing jurisdictions around the world is part of a global trend towards the creation of more efficient, accessible and participative systems of dispute resolution. While the extent to which ADR has been successfully adopted and implemented differs from jurisdiction to jurisdiction, there is evidence that a range of ADR mechanisms and processes are being increasingly used in a number of developing jurisdictions including India, China and Africa in order to reduce congestion in courts, improve settlement rates and provide access to dispute resolution processes..

4.1 Mexico

Alternative Dispute Resolution in Mexico provides an interesting example for the integration of ADR in the civil law system of Mexico which recently has undergone considerable constitutional and legislative changes. In particular, the mandatory pre-trial mediation in some kinds of disputes has been implemented and the framework of arbitration has been broadened. Arbitration proceedings in Mexico are efficient and successful. More than 75% of all arbitration proceedings can be settled successfully. mediation centres – be it court-annexed or private – are available to resolve disputes. Experience has shown that disputes are resolved promptly through ADR procedures that would otherwise drag on in the courts. In Mexico ADR is particularly successful in commercial and civil disputes. Compared to traditional proceedings in Mexico ADR is faster, more efficient and more reliable and therefore offers the necessary certainty for investors, facilitating the conduct of economic transactions.

[3]1, *Mauro Cappelletti, Alternative Dispute Resolution Processes Within the Framework of the World-Wide Access-to-Justice Movement (1993).*
2.*Hussainara Khatoon v. State of Bihar, A.I.R. 1979 S.C. 1369 (India).*
3.*OECD, Global State of Justice Report (2019).*
4.*Manubhai Pragaji Vashi v. State of Maharashtra, (1995) 5 S.C.C. 730 (India).*
5.*Salem Advocate Bar Ass'n v. Union of India, (2005) 6 S.C.C. 344 (India).*
6.*Anita Kushwaha v. Pushap Sudan, (2016) 8 S.C.C. 509 (India).*
7.*United Nations, Transforming Our World: The 2030 Agenda for Sustainable Development (2015).*

4.2 Bangladesh

Alternative Dispute Resolution (ADR) methods and processes are very common in Bangladesh, both in traditional as well as in formal legal settings. The most commonly practiced form of Alternative Dispute Resolution in rural areas is that of shalish or neighborhood meetings that operate in accordance with indigenous values and practices. Restorative Justice is also practiced in preferred ways. Formalized ADR mechanisms are also prevalent and are encouraged by statute. This article focuses on the mechanisms of Alternative Dispute Resolution and examines the growing trend of hybrid ADR approaches in a developing country. The case of ADR in Bangladesh is one of the most telling examples of the successful blending of traditional practices with formal legal structures to address the problems of inaccessibility of courts as well as the problems of inefficient institutions. It is hoped that ADR in Bangladesh can serve as a model for other jurisdictions similarly affected by overcrowding and clogged court systems.

4.3 Nigeria

One of the main ways ADR is used in the country is through the Lagos Multi-Door Courthouse, which is a special court that combines ADR with the regular justice system. This means that people have a choice in how they want to resolve their disputes, and they can pick from options like mediation, arbitration, and other methods. If needed, they can even appeal the decision. Studies have shown that about 65% of mediation cases at the Lagos Multi-Door Courthouse are successfully resolved. There's also a similar court in Port Harcourt, and the Nigeria Mediation Centre is another great place for mediation. With the support of the judiciary and laws like the Arbitration and Conciliation Act, ADR has become a powerful tool for lawyers and people involved in disputes to deal with the challenges of the regular justice system. In Nigeria, ADR is helping to make the justice system more efficient. The Lagos Multi-Door Courthouse is a good example of this, as it offers many different ways for people to resolve their disputes. Mediation is one of these options, and it's been shown to be very effective. The fact that 65% of mediation cases are successfully resolved is a great achievement. The Port Harcourt Law Court and the Nigeria Mediation Centre are also playing important roles in promoting ADR. The judiciary and legislative bodies are supporting ADR, which is helping to make it more effective. The Arbitration and Conciliation Act is a key law that's helping to enforce arbitral awards, both within and outside Nigeria. This means that ADR is becoming a more popular choice for people who want to resolve

their disputes quickly and efficiently. As a result, ADR is becoming a powerful tool for legal practitioners and litigants alike, and it's helping to address the challenges of the formal justice system. Overall, the adoption of ADR in Nigeria is a positive development. It's providing people with more choices in how they want to resolve their disputes, and it's helping to make the justice system more efficient. With the support of the judiciary and legislative bodies, ADR is likely to continue to grow and become an even more important part of the justice system in Nigeria.

4.4 South Africa

Judicial reform has been a priority in South Africa since the end of apartheid, and the promotion of ADR has been one of the strategies employed to improve access to justice. South Africa has established a comprehensive ADR regime with both court-annexed and private alternatives to adversarial litigation. Both mediation and arbitration are utilized in this regime. The success of arbitration in South Africa is evident from the fact that more than 70% of cases referred to arbitration are finalized. This obviously saves a lot of time and resources that would have been utilized in pursuing the matter through litigious means until final judgment. The success of court-annexed civil mediation programs has also contributed greatly to the efficient management of the judicial system by resolving civil matters at an early stage before the matters degenerate into intractable disputes.

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4.5 Brazil

This article examines the growth and constraints of Alternative Dispute Resolution (‘ADR’) in Brazil. While the judiciary is seen and used as the principal arena and authority for dispute resolution, there is an increasing awareness within the legal system of the potential for pre-judicial ADR. This awareness has been consolidated in recent years, particularly as a means of alleviating the clogged dockets which plague the judiciary. The Brazilian Mediation Law (‘Lei 13.140 of 2015’) and various amendments to the Civil Procedure Code have promoted the use of ADR, including processes of mediation and conciliation, in civil and commercial disputes. While ADR is not yet widely utilized in Brazil and statistical evidence remains modest, preliminary studies have found that approximately 30–40% of ADR processes achieve settlement, thus preventing a

large number of cases from reaching the courts[4]. However, there are numerous cultural and institutional obstacles that currently impede the growth of ADR in Brazil.

5: Statistical Insights into ADR Efficiency Across Selected Jurisdictions

Alternative Dispute Resolution (ADR)

This processes have long been in existence in many developing countries but there is some uncertainty as to how effective they actually are compared to traditional litigation. Countries that incorporate processes of ADR into their legal system are generally able to resolve disputes more efficiently than those that do not.[1] See table below to view the settlement rates of select developing countries and how ADR operates within these countries.

Country	Settlement Rate (%)	Primary ADR Mechanism
India	12.4	Court-referred ADR
Brazil	18.7	Mediation & Conciliation
Mexico	75	Arbitration & Mediation
Nigeria	65	Mediation (LMDC Model)
South Africa	70+	Arbitration & Mediation

Tabel- 1

[4] *1.OECD, Justice Transformation in Mexico (2020).*
2.Michael Golub, Non-State Justice Systems in Bangladesh (World Bank 2003).Asian Dev. Bank, Judicial Reform and ADR in Bangladesh (2015).
3.La3gos Multi-Door Courthouse Law (2007) (Nigeria).
4.C.J. Adekoya, The Role of ADR in Nigeria's Justice System (2018).
5.Dep't of Justice & Constitutional Dev., S. Afr., Annual Report on Court-Annexed Mediation (2019).
6.Lei No. 13.140/2015 (Braz.) (Mediation Law); Código de Processo Civil (2015) (Braz.).
7.World Bank, Brazil: Improving Efficiency in the Judiciary (2018).

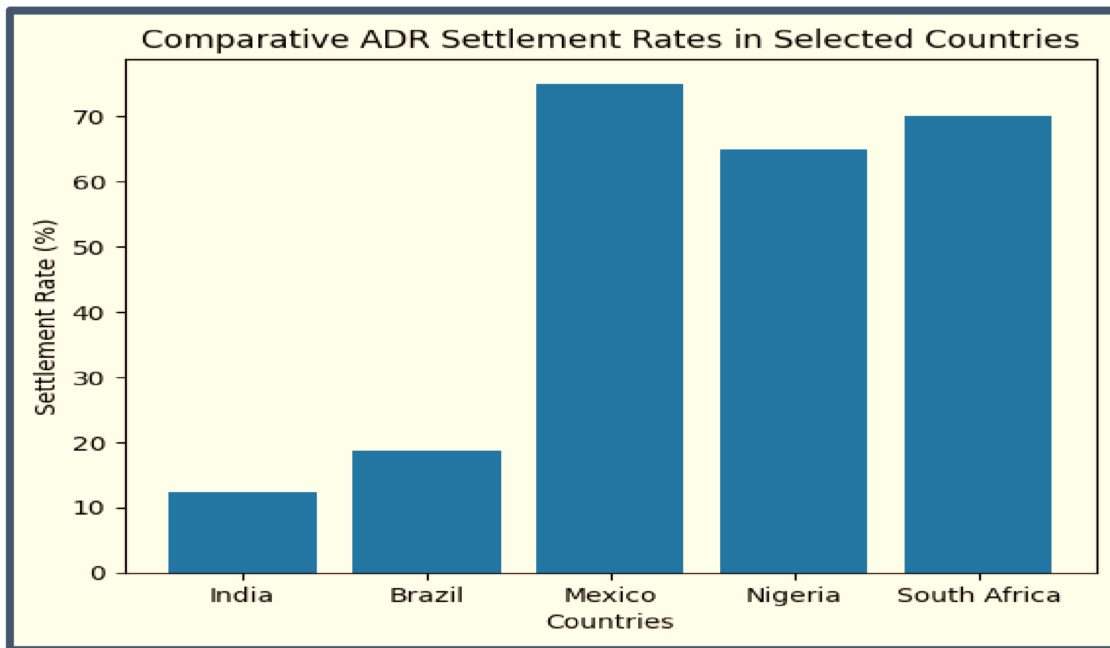

Figure-1

Country Settlement Rate (%) Primary ADR Mechanism India 12.4 Court-referred ADR Brazil 18.7 Mediation & Conciliation Mexico 75 Arbitration & Mediation Nigeria 65 Mediation (LMDC Model) South Africa 70+ Arbitration & Mediation Table- 1 Figure-1 Figure 1. Comparative trends of ADR settlement rates in selected countries. Comparative trends of ADR settlement rates in selected countries. The comparative trends graph, Figure 1, reveals a very contrasting success in the operation of ADR mechanisms for effective dispute resolution in the surveyed countries. While developed countries including the U.S. struggle to achieve settlement rates of 30% to 40%, most surveyed countries record higher settlement success rates in ADR. Specifically, countries with institutionalised ADR processes and frameworks, which operate successfully within an appropriate institutional and legislative infrastructure and are recognised and respected within the justice delivery system, obtained an average settlement rate of 65% to 75%. In particular, settlement rates in Mexico ranged approximately at 75%due to widespread use and established practices of arbitration and mediation. In order to improve conflict resolution outcomes, many countries have institutionalised alternative dispute resolution (ADR) through legislation and mandatory pre-litigation processes and institutions. Nigeria is used as a case study to illustrate how the multi-door courthouse has led to settlement rates of approximately 65%. Similarly, South

Africa achieves settlement rates of more than 70% through its court-annexed model of mediation and alternative arbitration processes that are government-supported through legislation and adequate policy frameworks. In contrast, India and Brazil achieve settlement rates of 12.4% and 18.7% respectively. The low efficiency levels are attributed to a variety of reasons including the persistence of traditional litigation models and slow institutionalisation of ADR processes. However, the main reason for the low levels of efficiency in ADR processes in these countries is the persistence of public ignorance of ADR processes; a deep-seated inclination to resort to formal adjudication; and paucity of adequate infrastructure in ADR institutions and processes.[4] This observation establishes a linkage between the levels of ADR institutionalisation and efficiency in the dispute resolution processes. Countries which support ADR through legislation, judicial encouragement of its use and the creation of institutions to promote and regulate it achieve higher settlement rates and contribute to the reduction of their growing judicial backlogs. Some statistics illustrating this trend are listed below, each derived from specific institutional reports from around the world. Thus, based on the empirical evidence cited above, it can be said that ADR is an important judicial reform instrument in developing countries. It can strengthen the legal system and serve as a catalyst to judicial reform, resulting in a more efficient legal process, lowering costs, and increasing access to justice.[5]

6: Broader Global Context: Expansion of ADR Across Jurisdictions

This work focuses on Alternative Dispute Resolution (ADR) as it occurs in the United States, but its reach is global. ADR is practiced in many countries around the world, including most every country in Europe, Africa, Asia-Pacific, and the Middle East.. ADR systems are perceived and administered differently in China as opposed to Kenya, Singapore as opposed to the UK or Hong Kong, etc. The models of ADR that are utilized in these countries reflect their unique institutional, legal, economic and social environments.

[5] 1.*World Justice Project, Rule of Law Index 2022 (2022).*
2.United Nations Dev. Programme (UNDP), Access to Justice and Legal Empowerment (2020).
3.Int'l Fin. Corp. (IFC), Alternative Dispute Resolution in Emerging Markets (2013).
4.Asian Dev. Bank, Strengthening Judicial Systems and ADR in Asia (2016).
5.Int'l Bar Ass'n, Guidelines on Mediation and ADR Practices (2017)

Jurisdiction	Estimated Settlement Rate / Trend	Primary ADR Mechanism	Key Feature
China	80%+	Arbitration & Mediation	Strong state-supported arbitration institutions
Kenya	Increasing (approx. 50–60%)	Court-annexed Mediation	Judiciary-driven ADR expansion
United Kingdom	High adoption (non-quantified)	Mediation & Arbitration	Mandatory ADR consideration in civil cases
Singapore	75%+ (institutional arbitration)	International Arbitration	Global arbitration hub (SIAC)
Hong Kong	70%+	Arbitration & Mediation	Strong institutional and legislative support

Table 2: ADR Effectiveness in Additional Global Jurisdictions

Facts and Trends on ADR: The Global Institutionalization and Normalization of ADR.

Over 80% of cases are settled out of court in China, where the State supported arbitration institutions are highly effective and are at the core of the dispute resolution policies and practices at both national and local levels. A policy driven approach to dispute resolution is very effective, as evidenced by the efforts made by the Chinese courts to increase the use of mediation and its integration within their processes.

Mediation is increasingly being institutionalized and normalized in many developing jurisdictions. One of the key factors to its success is that it is carried out within the court processes and administrative systems, enabling efficient dispute handling and relieving the pressure on the overworked and under-resourced judges. In Kenya for example, the settlement rates for court-annexed mediation have been steadily improving; the average settlement rate currently ranges between 50% to 60%. In the UK, the courts encourage the use of ADR and in some circumstances require parties to consider ADR before proceeding to litigation. Indeed the case of Halsey v.v. Milton Keynes General NHS Trust (2004) firmly established the use of mediation in civil disputes

and confirmed the various factors to be taken into account when deciding whether or not to use ADR. ADR is an established feature of the legal system.

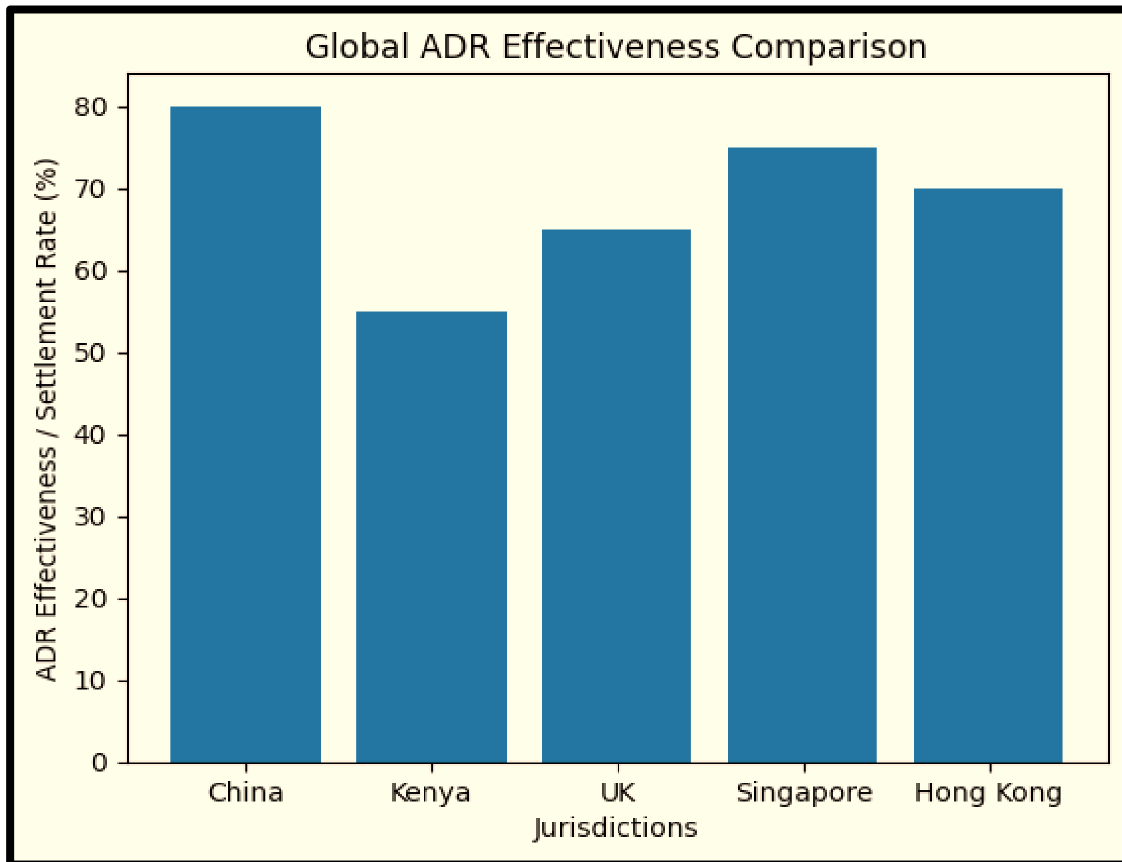

Figure 2

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Singapore and Hong Kong have become major global centres for international arbitration. The high settlement and enforcement rates at the Singapore International Arbitration Centre (SIAC) and the Hong Kong International Arbitration Centre (HKIAC), of well over 70–75%, reflect the well-developelegal infrastructure, the willingness of local judges to enforce arbitration awards, and the strong reputation of both locations as neutral, efficient dispute resolution [6]

[6] 1.*UNCITRAL, Dispute Resolution in International Commercial Relations (2018).*
2.*China Int'l Econ. & Trade Arb. Comm'n (CIETAC), Annual Report (2020).*
3.*Judiciary of Kenya, Court-Annexed Mediation Programme Report (2019).*
4.*Halsey v. Milton Keynes Gen. NHS Tr., [2004] EWCA (Civ) 576 (U.K.).*
5.*Singapore Int'l Arb. Ctr. (SIAC), Annual Report (2021); Hong Kong Int'l Arb. Ctr. (HKIAC), Annual Statistics (2020).*

↑It's clear that Alternative Dispute Resolution, or ADR, is really effective in several countries around the world. What's interesting is that it has an average settlement rate of over 80%, which is quite impressive. China, in particular, stands out as a place where ADR is extremely successful. Other countries like Singapore and Hong Kong, which are well-known for their strong legal systems and international arbitration centers, also do well with ADR. But what makes ADR work so well in China? Many people think it's because the government is very supportive and has strong institutions in place to help make it work. This combination of factors seems to be the key to ADR's success in these countries.According to the research, the integration of alternative dispute resolution (ADR) into the civil justice system in the United Kingdom has advanced to the point where parties must take mediation into consideration.

7: ADR and Access to Justice

Alternative Dispute Resolution (‘ADR’) is essential to ensuring access to justice where the regular Court system is overloaded and inaccessible. Alternative Dispute Resolution provides an alternative practical forum in which disputes may be resolved. It is a flexible and informal process for the effective enforcement of rights and obligations. Thus Alternative Dispute Resolution offers a practical and efficient solution to disputes in a far more practical forum than a traditional formal court system.Alternative Dispute Resolution (or ADR) makes it cheaper to resolve disputes. ADR methods simplify the process of dispute resolution to enable the parties to a dispute to reach an agreement more quickly and cost-effectively than taking the same issue to court, surrounded by lawyers. Alternative forms of ADR enable individuals and small businesses or sole traders, who cannot afford to go to court, to have a cost effective means of dispute resolution to achieve a settlement.What is Alternative Dispute Resolution (ADR)? Alternative Dispute Resolution (hereafter “ADR”) is different from regular procedures in court. ADR is faster and more accessible than traditional litigation. In many cases disputes are resolved on the same day as the mediation or other form of Alternative Dispute Resolution. ADR provides a less confrontational setting for dispute resolution. Assistance is given to the parties to reach a settlement in an informal environment. Many individuals find ADR less intimidating than litigation. ADR can be extremely helpful to individuals who require assistance in protecting their rights due to fear of the justice system.. ADR methods allow all the needs and interests of the parties to be assessed and a fair

decision to be made. Alternative Dispute Resolution enables access to justice in an equitable and efficient manner. An alternative, more people – friendly approach to justice delivery.[7]

8. ADR in the Digital Era

Online Dispute Resolution, or ODR, utilises digital technology to assist parties to a dispute to reach agreement. ODR has many benefits for users. The most notable of these is the fact that ODR is available 24/7, meaning that parties can reach a resolution of a dispute from the comfort of their own homes at a time that suits them best. ODR processes are also more efficient than standard dispute resolution processes.. ODR is particularly suited for resolving e-commerce disputes. Traditional methods of dispute resolution can be slow and expensive, ODR provides a fast and efficient method of dispute resolution in the digital era. The online nature of an increasing number of everyday activities means that in the future ODR will be needed to enable those transactions to be resolved. While ODR seeks to increase access to justice through technology, it also raises new challenges in relation to digital literacy, data protection and legislation**.**

9. Recommendations for Strengthening ADR

Alternative Dispute Resolution (ADR) can strengthen the justice system. ADR can strengthen the justice system through a legal, institutional and social perspective. From a legal perspective, clear, fair and consistent laws and court decisions regarding ADR are necessary to gain public trust and acceptance and to encourage voluntary participation in alternative processes. From an institutional perspective, the public must have knowledge of ADR processes and methods. Knowledge of ADR on the part of the public will lessen resistance to ADR and increase the chances of its voluntary utilization. Awareness and education of ADR amongst the legal fraternity, businesses, consumers and civil society at large are necessary for the growth of ADR. This can be facilitated by organizing seminars and workshops to educate and inform people of the ADR Laws. To make ADR effective, institutions dealing with ADR need to be strengthened. Special ADR centres need to be established to provide a conducive environment for ADR. Training programmes should be conducted to equip mediators, counsellors, arbitrators and managers involved in ADR. Directions, rules and standards need to be framed for effective and efficient management of ADR. ADR needs to be integrated

[7] *United Nations Dev. Programme (UNDP), Access to Justice and Legal Empowerment* (2020).

into the Judicial system and ways and means need to be explored to introduce ADR at the initial stages of litigation. For example, at the pre-trial stage, the matter can be referred to mediation or arbitration or even the Judges can refer the case to ADR. It has the practical advantage of clearing up clogged court calendars. Making these changes will make ADR a more effective method of conflict resolution and a more powerful tool to improve the justice system.[8]

[8] 1.*UNCITRAL, Technical Notes on Online Dispute Resolution (2017).*
2.European Commission, Online Dispute Resolution Platform (2020).
3.UNCITRAL Model Law on International Commercial Arbitration (1985), as amended.
4.Int'l Bar Ass'n, Guidelines on Mediation and ADR Practices (2017).