

UNIT – 1

Introduction to ADR Systems

Methods • Advantages • Need • CPC and ADRs • Suitability

Alternative Dispute Resolution Systems

Unit Overview

This unit introduces the different methods of dispute resolution – inquisitorial, adversarial and the spectrum of formal and informal ADR processes (arbitration, conciliation, negotiation, mediation). It examines their advantages and disadvantages, the need for ADRs at domestic and international levels, suitability of ADRs to particular types of disputes, and the recognition of ADRs in the Civil Procedure Code.

LEARNING OBJECTIVES

What You Will Learn

01 Methods

Distinguish inquisitorial, adversarial and ADR methods

02 ADR Spectrum

Identify arbitration, conciliation, negotiation, mediation

03 Advantages

Explain the benefits of ADR over traditional litigation

04 Need

Understand domestic and international drivers for ADR

05 Suitability

Match ADR processes to types of disputes

06 CPC

Explain the statutory recognition of ADR in the CPC

METHODS

Different Methods of Dispute Resolution

Dispute resolution methods range from the formal, state-controlled adjudicatory processes to informal, party-driven consensual processes.

Inquisitorial

Judge-led investigation and fact-finding (civil law tradition)

Adversarial

Party-driven presentation of evidence; judge as neutral umpire (common law)

ADR Formal

Arbitration – binding decision by private adjudicator

ADR Informal

Negotiation, mediation, conciliation – consensual outcomes

Inquisitorial and Adversarial Methods

Inquisitorial

Active judge, written procedure, emphasis on truth-finding

Adversarial

Passive judge, oral advocacy, party autonomy in presentation

Strengths

Inquisitorial – efficiency in fact-finding; Adversarial – party control and fairness perception

Limitations

Both can be costly, slow and damaging to relationships

ADR Response

ADRs seek to combine fairness with speed, economy and relationship preservation

Arbitration, Conciliation, Negotiation, Mediation

Negotiation

Direct discussion between parties; no third party

Mediation

Neutral facilitator helps parties reach their own agreement

Conciliation

Neutral suggests terms; more evaluative than pure mediation

Arbitration

Private adjudicator gives a binding award

Hybrid

Med-Arb, Arb-Med, early neutral evaluation, etc.

ADVANTAGES

Advantages of ADR Methods

Speed	Faster than court litigation
Cost	Generally less expensive
Confidentiality	Private process; protects reputation and sensitive information
Flexibility	Parties control procedure and outcome (in consensual ADRs)
Relationship	Preserves or restores commercial and personal relationships
Expertise	Specialist neutrals can be chosen for technical disputes

DISADVANTAGES

Limitations and Disadvantages

Enforceability	Consensual outcomes need conversion into enforceable decrees
Power Imbalance	Weaker party may be disadvantaged without safeguards
Limited Precedent	No public development of law
Quality Control	Variable quality of neutrals and processes
Public Interest	Some disputes require public adjudication and transparency

NEED

Need for ADRs – Domestic and International

Court dockets are overloaded. Many disputes are unsuitable for adversarial adjudication. International commerce demands neutral, enforceable and efficient dispute resolution.

Domestic

Pendency in Indian courts; cost and delay; access to justice

International

Cross-border trade; New York Convention; investment treaties

Commitments

India is party to the New York Convention; UNCITRAL Model Law influence

Policy

Legislative and judicial encouragement of ADR in India

SUITABILITY

Suitability of ADRs to Types of Disputes

Commercial

Arbitration and mediation highly suitable

Family

Mediation and conciliation preferred; counselling

Industrial

Conciliation under ID Act; arbitration in some cases

Consumer

Mediation and negotiation increasingly used

Public Law

Limited suitability; constitutional and criminal matters usually reserved for courts

Community

Lok Adalats and mediation for neighbourhood disputes

Civil Procedure Code and ADRs

Section 89	Court can refer parties to arbitration, conciliation, mediation or Lok Adalat
Order X Rule 1A-1C	Court's duty to explore settlement and refer to ADR
Amendments	2002 amendments strengthened the ADR framework in CPC
Judicial Approach	Supreme Court has repeatedly directed meaningful use of Section 89
Lok Adalat	Statutory under Legal Services Authorities Act; awards are final

LANDMARK

Important Cases on ADR and Section 89

Afcons Infrastructure

Clarified the scope and procedure under Section 89 CPC

Salem Advocate Bar Association

Directions for effective implementation of ADR provisions

K. Srinivas Rao

Emphasised mediation in matrimonial disputes

International

Recognition of foreign awards under the New York Convention

Salient Features of the ADR Landscape

Spectrum	From pure negotiation to binding arbitration
Party Autonomy	Core value in most ADR processes
Statutory Support	Arbitration Act, CPC s.89, ID Act, Family Courts Act
Judicial Support	Strong encouragement from Supreme Court and High Courts
Institutional	Growing number of arbitration and mediation institutions

ESSENTIALS

Core Points

Methods

Inquisitorial, adversarial, ADR spectrum

Advantages

Speed, cost, confidentiality, flexibility, relationships

Need

Court pendency + international commerce

Suitability

Depends on nature of dispute and parties

CPC

Section 89 – statutory gateway to ADR

Policy

ADR is now an integral part of the justice system

Why ADR is Not Just “Alternative”

In modern justice systems ADR is complementary, not merely alternative. Many disputes are better resolved through consensual processes. Courts increasingly function as the backstop for enforcement and for disputes that truly require public adjudication.

HIGHLIGHTS

Key Highlights

Spectrum

Negotiation → Mediation → Conciliation → Arbitration

CPC s.89

Mandatory exploration of ADR by courts

Advantages

Speed, cost, privacy, expertise, relationships

Limitations

Power imbalance, enforceability, public interest cases

International

New York Convention and UNCITRAL influence

Domestic

Overload of courts makes ADR a necessity

Choosing the Right Process

Ask	Is a binding decision needed or a negotiated settlement?
Relationship	Will the parties need to work together in future?
Complexity	Is specialist expertise required?
Urgency	How quickly must the dispute be resolved?
Cost	What can the parties realistically afford?
Enforceability	Will the outcome need to be enforced across borders?

SUMMARY POINTS

Must-Remember Points

- Dispute resolution methods include inquisitorial, adversarial and a spectrum of ADRs.
- ADR offers speed, cost savings, confidentiality, flexibility and relationship preservation.
- There is a strong domestic and international need for effective ADR mechanisms.
- Section 89 CPC and related provisions give statutory recognition to ADR in India.
- Suitability depends on the nature of the dispute, the parties and the desired outcome.
- ADR is now an integral, complementary part of the justice system.

SUMMARY

Key Takeaways

1. ADR is a spectrum of processes, not a single method.
2. Advantages over litigation are significant but not universal.
3. Section 89 CPC is the key statutory link between courts and ADR.
4. Matching the process to the dispute is a critical skill.
5. Understanding the landscape is the foundation for studying each ADR process in depth.

Next Unit: Arbitration under the Arbitration and Conciliation Act, 1996.