Alternative Dispute Resolution in Indian Labor Disputes Compared to China, Indonesia, and the United States

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a. Introduction

The strategic goals of industry, fast pace of information, and competitive pressure of a global market create increasingly complex and combative industrial conflict. Judicial systems in India are facing an immense backlog of labor-related cases, exacerbated by the pandemic. Industrial disputes require rapid resolution to maintain production and preserve employer-employee relationships. Alternative dispute resolution is one answer to meet this high demand for justice in industrial conflict at a rapid pace. Alternative dispute resolution (ADR) refers to methods for resolving conflicts outside the courtroom including conciliation, mediation, and arbitration.

Disputing parties often prefer these mechanisms because they lower costs, ensure confidentiality, and preserve employer-employee relationships better than an adversarial litigation process. While ADR has historical roots in India and has been institutionalized into law, the system is still struggling for awareness and legitimacy. This report compares India's ADR system to that of China, Indonesia, and the United States in an attempt to highlight the strengths and weaknesses of ADR in India and offer suggestions for the future.

b. Alternative Dispute Resolution in India

ADR in India has ancient roots in voluntary systems of consultation with village elders or respected figures. Although informal, these systems achieved settlement while maintaining relationships in tight knit communities. The Industrial Disputes Act, 1947 established settlement mechanisms for any industrial dispute, meaning, "Any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or the conditions of labour."[1] Further, the act defines industry as, "Any business, trade, undertaking, manufacture, or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation.[2] For qualifying disputes, the Act creates pathways for settlement through adjudicatory mechanisms, including Labour Courts and National Tribunals, and non-adjudicatory mechanisms, including conciliation and arbitration.[3] Mediation is also a traditional aspect of Indian ADR systems that is often used in private labor disputes.[4]

[1] Industrial Disputes Act, 1947. Section 2(k).
[2] Industrial Disputes Act, 1947. Section 2(j).
[3] Paul Lansing and Sarosh Kuruvilla, "Industrial Dispute Resolution in India in Theory and Practice," *Loyola of Los Angeles International and Comparative Law Review* 9, no. 2 (1987): 345-375.
[4] Vikrant Yadav, "Use of Alternative Dispute Resolution in Labor Disputes in India: An Analysis," *Indian Journal of Law and Justice* 5, no. 1 (2014): 132 - 138.

The Legal Services Authorities Act, 1987 institutionalized Lok Adalat, a traditional Indian form of ADR.[5] Finally, the Arbitration and Conciliation Act, 1996 provided further framework for ADR including conciliator appointment, arbitration proceedings, and settlement agreements.[6] Despite the long history of Indian ADR, modern ADR is still a relatively new and upcoming approach to dispute resolution in India, particularly for labor and employment disputes.

i. Present Mechanisms

1. Conciliation and Mediation

Both conciliation and mediation apply a voluntary process to facilitate settlement. In Indian labor disputes, conciliation is applied more consistently than mediation. Both conciliators and mediators act as neutral third parties in a party-centered negotiation.[7] The conciliator or mediator attempts to encourage the parties to agree on a settlement that fulfills both of their interests in the dispute. Conciliation and mediation focus on acceptable solutions for the present and future of the industrial relationship, rather than trying to discern the past or who was in the wrong. The difference between these two approaches is that a mediator is largely facilitative, encouraging conversations and leading the parties to an acceptable compromise, while the conciliator investigates and suggests solutions.[8]

As dictated by relevant legislation, conciliation is an investigative and facilitative process overseen by a Conciliation Officer (CO). Disputing parties access COs through a multi-step process. If the worker or employer in an industrial dispute is unsatisfied by the outcome of an internal grievance mechanism and bilateral negotiation fails, they may request in writing to be

[5] The Legal Services Authorities Act, 1987. Chapter VI.
[6] The Arbitration and Conciliation Act, 1996.
[7] Supreme Court of India, Delhi, Mediation and Conciliation Project Committee, *Mediation Training Manual of India,* 16-23, https://main.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf.
[8] Supreme Court of India, Mediation Training Manual, 21-22.

referred for conciliation.[9] The role of a CO is a "guide, advisor, and mediator who counsels the parties to reach an amicable solution."[10] Throughout the process, the CO or board of COs bring the parties together to discuss their dispute and suggest compromises. The IDA empowers COs to compel testimony or documents from disputing parties to understand the dispute and consider potential settlements. Parties may also involve lawyers to draft replies and assist with appearances, though their participation in such appearances is prohibited under the IDA.[11] The IDA also forbids strikes and lockouts during the conciliation process.[12] If the parties agree to settle their dispute, they enter into a binding agreement and the CO reports the settlement to the government. If the parties refuse to settle the dispute, the CO writes a failure report, specifying the facts and circumstances and providing their opinion as to why the settlement failed.[13]

Conciliation provides a less costly and time consuming alternative to court. Effective mediators and conciliators could relieve the immense burden on the judicial system while resolving conflicts expediently and preserving employer-employee relationships. Efficient conciliation would be an immense asset to Indian industry, saving time, reducing costs, and enhancing production. However, the potential for conciliation is not fully realized at present in Indian labor disputes as parties have grown disillusioned with the conciliation system. First, conciliation is framed as biased in favour of employees. Conciliators or union leaders may accept bribes, or employers may leverage a drawn out conciliation process as a tactic to stall striking workers.[14]

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[9] Aishwarya Bhuta, "Imbalancing Act: India's Industrial Relations Code, 2020," *Indian Journal of Labour Economics* 65, no. 3 (2022): 821.
[10] Ernesto Noronha and Premilla D. Cruz, "Mediation and Conciliation in Collective Labor Conflicts in India," *Cham: Springer International Publishing* (2019): 279–292.
[11] Noronha and D'Cruz, "Mediation and Conciliation," 279-292.
[12] Industrial Disputes Act, 1947. Section 23(a)
[13] Industrial Disputes Act, 1947. Section 12(3) and 12(4)
[14] Noronha and D'Cruz, "Mediation and Conciliation," 279-292.

Further, undertrained, under-incentivised, and overburdened COs are unable to encourage resolution or uncover innovative solutions, leading to a very low settlement rate.[15]

2. Arbitration

As a quasi-judicial adjudicatory mechanism in which a court-appointed arbitrator decides the dispute,[16] arbitration is more inherently adversarial than other ADR mechanisms. The third-party arbitrator declares a binding decision based on the rights and liabilities of the parties to the dispute.[17] In India, there is both voluntary and contractual arbitration. For voluntary arbitration, parties may elect to consult a private arbitrator at any point in their dispute prior to beginning judicial proceedings. Parties would agree on an arbitrator and submit to being bound by the arbitrator's decision. The advantages of this option are confidentiality and expediency. However, employers avoid this process because there are limited opportunities to appeal an unfavorable decision and a dearth of qualified arbitrators, making voluntary arbitration quite rare.

Under Section 8 of the Arbitration & Conciliation Act, 1996, judicial authorities must refer a dispute to arbitration where the matter is subject to an arbitration agreement.[18] One arbitrator or a board of arbitrators may be agreed upon by the parties, subject to the process outlined in Section 11.[19] The arbitrator will collect facts from both parties, giving equal treatment to each. The arbitrator is at liberty to call oral hearings or limit their investigation to documents and written materials. While the arbitrator holds adjudicatory power, they may still encourage parties to seek

[15] Noronha and D'Cruz, "Mediation and Conciliation," 279-292. .
[16] Supreme Court of India, Delhi, Mediation and Conciliation Project Committee, *Mediation Training Manual of India,* pp. 21-22.
[17] Supreme Court of India, Mediation Training Manual, 21-22.
[18] Arbitration and Conciliation Act, 1996. Section 8.
[19] Arbitration and Conciliation Act, 1996. Section 8.

a voluntary settlement through an agreement if the opportunity arises. After the final decision is made, a signed copy of the arbitral award is delivered to both parties.[20]

3. Lok Adalat

Lok Adalat evolved from the pre-colonial system of informal village tribunals, known as panchayats, where respected community elders helped mediate a dispute settlement.[21] Today's Lok Adalat system is rooted in the Legal Services Authorities Act, 1987. Also referred to as the "People's Court," Lok Adalat is a forum where disputants air grievances and seek a settlement through discussion, counseling, persuasion, and conciliation. Holding semi-regular Lok Adalat serves as an incentive to pursue settlement and clear up judicial backlog, with the added benefit that court fees are refunded to the disputing parties.[22] Parties with pending cases are incentivized to settle by the return of their court fees. Under Sec. 18, Lok Adalat includes judicial officers or qualified consultants with jurisdiction to settle any dispute currently pending before the court or any dispute pre-litigation.[23] During National Lok Adalats, all courts across India hold Lok Adalat and dispose of a high number of cases in a single day. These sessions are offered monthly on varying subject matters. Permanent Lok Adalats help resolve public utility disputes, while Mobile Lok Adalats facilitate dispute resolution in diverse communities. As of 2015, over 15 lakhs Lok Adalats have aided in the settlement of over 8 crore cases.[24]

Lok Adalat is a unique ADR mechanism tailored to the Indian context. Increased use and awareness of Lok Adalat could improve employer-employee relationships through rapidly dispensed justice in a community-centered model, sparing the costs of litigation.

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[20] Arbitration and Conciliation Act, 1996. Section 31(5).
[21] Shravan Kumar Mohanty, "The Significance and Effectiveness of the Indian System of Lok Adalat," *Law Essentials Journal* 2, no. 4 (2022): 118.
[22] Mohanty, "Indian System of Lok Adalat," 119.
[23] Arbitration and Conciliation Act, 1996. Section 18.
[24] National Legal Services Authority, *Lok Adalat, https://nalsa.gov.in/lok-adalat.*

b. Alternative Dispute Resolution in China

China provides an interesting alternative for study as another nation with high population and rapid economic growth. Like India, China is an essential vendor for global supply chains and is still in a period of rapid development. However, the distinction between authoritarianism in China and democracy in India impacts the structure of the nations' ADR systems.

i. Present Mechanisms

In China, the Law on Mediation and Arbitration of Labor Disputes of 2008 responded to economic pressures, expanding forums for labor ADR to create more efficient resolution processes. In many cases, ADR services are provided for free, allowing both employers and employees to access mediation and arbitration.[25] The decrease in collective disputes after the implementation of these laws shows the efficacy of these mechanisms.[26]

In the grievance redressal process, mediation is voluntary while arbitration is mandatory. However, if parties elect to bypass mediation, arbitrators often replicate the role of a mediator in attempting to facilitate discussion and encourage a mutually-agreed solution.[27] Companies often pursue internal mediation first, wherein a board of staff, worker representatives, and management representatives attempt to negotiate a solution. If this fails, parties may request arbitration.[28]

All employees in China are represented by a single union that is largely ineffective or uninterested in pursuing collective action. Instead, employees often pursue dispute resolution on an individual basis, creating an imbalance in power.[29] This imbalance is furthered by the quick

[25] Xenia Dvoriantchikova, "ADR in China: Market Expansion and Implications for Workers' Rights," *American Bar Association*, 2019.
[26] Dvoriantchikova, "ADR in China."
[27] Dvoriantchikova, "ADR in China." .
[28] Roberto Gilardino, "Labor Disputes in China – What You Need To Know", *Mondaq* (2022).
[29] Xenia Dvoriantchikova, "ADR in China: Market Expansion and Implications for Workers' Rights," *American Bar Association*, 2019.

timeline for redressal, as parties must request arbitration within sixty days of the industrial dispute. Arbitration has been seen as favouring employers, while the workers perceived the court as more sympathetic to their complaints.[30] While an arbitration decision is binding, the settlement can be disputed by either party within fifteen days of the decision, progressing the dispute to litigation.[31]

ii. Comparative Analysis

The Indian ADR system is strong compared to China. As a democratic country, Indian ADR creates opportunities for employers and employees to voice their complaints and improve their relationships during disputes. The lack of mandatory conciliation or mediation forces China to focus on rights-based approaches in arbitration or labor courts. Despite room for improvement, India's embrace of conciliation as a mandatory and useful step in the dispute process should be admired. Similarly, China offers no system comparable to Lok Adalat. Further, arbitration is weak in China because parties can dispute a settlement with which they do not agree. This negates the benefits of ADR, requiring time intensive litigation even after enduring arbitration. However, China's system has shown the positive impacts of ADR on decreasing industrial conflict because of mandatory arbitration. Raising awareness of India's ADR system and strengthening conciliation and arbitration are essential to mirroring this positive trend.

c. Alternative Dispute Resolution in Indonesia

Indonesia serves as a southeast asian comparison to India. Both countries are newly industrialized countries competing in a global market. Thus, Indonesia provides a comparison of measures and systems that might also be realistic for India today.

[30] Dvoriantchikova, "ADR in China."
[31] Roberto Gilardino, "Labor Disputes in China – What You Need To Know", *Mondaq*, 2022.

i. Present Mechanisms

Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution provides the foundation for ADR in Indonesia. This general law defined a broad arbitration process for settling a variety of disputes outside of court, including provisions for arbitrator appointment and confidentiality.[32] Law No. 2 of 2004 on Settlement of Industrial Relations Disputes (SIRD) specified the provisions of ADR for industrial disputes. While disputing parties are obligated to first seek a bipartite solution under Article 3 of SIRD, the law sets out mediation, conciliation, and arbitration for some industrial disputes. If these alternative mechanisms fail to bring about a settlement, parties may turn to judicial mechanisms.[33]

First, SIRD establishes mediation and conciliation. While mediators must be government officials, any qualified person may register as a conciliator with the Ministry in charge of labor.[34] In both mechanisms, the third-party is attempting to bring the two sides to a compromise through discussion facilitation, fact investigation, and proposed solutions. While participation is voluntary, any signed agreement is enforceable. If the mediation fails, the mediator may issue a final recommendation to both parties. If either party rejects their proposal, the dispute will continue in court.[35] In limited circumstances, the Ministry of Labor has asked other institutions to play a mediator role in high profile labor disputes, such as the National Commission of Human Rights.[36]

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[32] Andi Kadir and Bernard Sihombing, "Arbitration Procedures and Practice in Indonesia: Overview," *Thomson Reuters Practical Law* (2023).
[33] Law No. 2 of 2004 on Settlement of Industrial Relations Disputes, Section 3.
[34] Hikmahanto Juwana, "Dispute Resolution Process in Indonesia," Asian Law Series, *Institute of Developing Economies - Japan External Trade Organization*, No. 21 (2003): 80-88.
[35] Juwana, "Dispute Resolution," 82.
[36] Juwana, "Dispute Resolution," 82.

Next, Article 29 of SIRD allows arbitration across a wide variety of industrial disputes. While arbitration is commonly used in commercial disputes,[37] industrial dispute arbitration is far rarer, due to a lack of awareness among workers and employers.[38] Parties may select one to three arbitrators from the pool registered at the Ministry in charge of manpower.[39] The Badan Arbitrase Nasional Indonesia (Indonesian National Arbitration Board) provides a set of rules and arbitration procedures to guide arbitrators, providing institutional support and credibility to arbitration beyond the government.[40]Arbitration is constrained to 30 working days, with one optional extension. The arbitrator may attempt to mediate an amicable settlement between parties, but if this fails the arbitrator issues a final and binding decision.

ii. Comparative Analysis

There are many similarities in ADR between India and Indonesia. While conciliation is not a mandatory part of the resolution process in Indonesia, the ADR process is broadly similar to India. A noticeable difference is that any qualified person may register as a conciliator or arbitrator. Additionally, the Indonesian National Arbitration Board plays an important role training arbitrators and standardizing procedure, thus increasing the credibility of arbitration. To improve the public perception of arbitration, the government could support the Indian Council of Arbitrators. Despite existing for over fifty years, the organization has only twelve registered Businessmen and two hundred thirteen judges as arbitrators. The amount of accredited arbitrators is nowhere near sufficient in comparison to the rate of industrial disputes in India. Endorsing and supporting NGOs with a focus on training arbitrators and standardizing adjudication would

[37] Ahmad Irfan Afifin, "The Dispute Resolution Review: Indonesia," *The Law Reviews* 23, 2023.
[38] Hikmahanto Juwana, "Dispute Resolution Process in Indonesia," Asian Law Series, Institute of Developing Economies - Japan External Trade Organization, No. 21, 2003: pp. 80-88.
[39] Juwana, "Dispute Resolution," 82.
[40] Marshall Situmorang and Audria Putri, "Indonesia: An Overview of Indonesia's Dispute Settlement," *Nusantara Legal Partnership* (2023).

enhance arbitration without immense government intervention or oversight. Along a similar vein, India could similarly invite well respected NGOs as mediators in high profile disputes. The use of unbiased, outside organizations could increase the credibility and visibility of the ADR process. However, India's system still holds distinct advantages because of the institutionalization of conciliation and the existence of Lok Adalat.

d. Alternate Dispute Resolution in the United States

The United States has largely embraced ADR, with many corporations preferring these mechanisms to litigation. Using the comparative of a country that has fully embraced ADR provides deeper insight into the future progression of ADR in India.

i. Present Mechanisms

Facing an overburdened judicial system, ADR gained popularity in the United States as a more direct process with higher efficiency and lower costs.[41] Conciliation, mediation, and voluntary arbitration were first formalized in the United States in the Erdman Act of 1898 before being enshrined in the National Labor Relations Act (NLRA).[42] The Federal Mediation and Conciliation Service (FMCS) was created in 1947 with the goal of promoting industrial peace by offering ADR services to private and some public employees.[43] ADR has expanded beyond the employment and legal complex to community settings, seen in neighborhood justice centers and dispute resolution centers. However, some argue that employers in the United States are now abusing mandatory arbitration clauses, with over half of non-union workers being contractually blocked from judicial justice pathways.[44]

[41] David N. Smith, "A Warmer Way of Disputing: Mediation and Conciliation," *American Journal of Comparative Law Supplement* 26, 1977: pp. 205-216
[42] Patrice M. Mareschal, "Insights from the Federal Mediation and Conciliation Service," *Review of Public Personnel Administration* 18, no. 4, 1998: pp. 55-67.
[43] Mareschal, "Insights," 56.
[44]Alexander J.S. Colvin, "The Growing Use of Mandatory Arbitration," *Economic Policy Institute,* 2018.

In the United States, mediation is generally used more than conciliation. Under the NLRA, unions must notify the Federal Mediation and Conciliation Service before calling a strike. Then, public mediators and officials can participate in attempts to resolve the conflict. Private mediation is also regularly leveraged to resolve disputes. In the United States, conciliators typically meet with parties separately rather than hosting facilitation meetings like mediators. In employment contexts opposing sides can decide if they want to be bound by the conciliator's recommendations. Mediation as applied in the United States has been highly effective. One study found that across four major providers, mediation effectively settled 78 percent cases.[45]

ii. Comparative Analysis

The United States offers a comparison of a heavy use of ADR mechanisms. Compared to India, where both parties often feel they can prevail in court, American companies have exhibited an overwhelming preference for arbitration, leading many employers to include mandatory arbitration clauses in employee contracts. These clauses bar employees from judicial pathways, instead bringing them before an arbitrator. Employers benefit significantly from this arrangement, with studies showing they win more and face lower damages costs than in the courtroom.[46] As Indian corporations continue to realize the cost-saving measures and employer advantages in arbitration, this trend may follow. While ADR can be broadly useful, the overuse of ADR can also create problems.

On the other hand, the United States could learn from Lok Adalat and the conciliation process. Currently, American judicial and ADR systems continue to emphasize rights-based considerations of liability and obligations, with less emphasis on party-side concerns of

[45] Jeanne M. Brett, Zoe I. Barsness, and Stephen B. Goldberg, "The Effectiveness of Mediation: An Independent Analysis of Cases Handled by Four Major Service Providers," Negotiation Journal 12, no. 3, 1996: 261
[46] Alexander J.S. Colvin, "The Growing Use of Mandatory Arbitration," *Economic Policy Institute,* 2018.

preserving relationships and meeting interests. Increasing emphasis on mediation in the United States could create more effective solutions to industrial disputes.

e. Recommendations

As ADR continues to grow in India, the industrial dispute system will continue to evolve. In an increasingly globalized world with complex business undertakings, ADR has immense potential. There are two key necessities to advance ADR in India:

i. Increase Conciliator and Arbitrator Credibility

Indian ADR would be greatly benefited by a greater number of thoroughly trained mediators, arbitrators, and conciliation officers. By collaborating with national professional associations of arbitrators or conciliators, the government could build up this professional capacity. In the short term, another solution might be to use judicial officers as conciliators. Their office and knowledge of the law will temper parties' demands and lend credibility to the process. Although this would increase the burden on judicial officials, it would also decrease their burden in court by reallocating some of their time to a faster and less adversarial process. In the long term, India should invest in training conciliation officers more thoroughly in facilitation skills and the law. While increasing their credibility, better training would also discourage corruption and improve their efficacy. Ultimately, more credible arbitrators and conciliators would assist more parties in reaching a settlement, decreasing judicial overload while enhancing the dispersal of justice.

ii. Build Awareness of ADR

At present, the courtroom is the default pathway for justice in the mind of the public. However, building awareness and capacity of ADR in Lok Adalat, conciliation, mediation and arbitration would be highly advantageous to the people of India. Moreover, companies should be made

aware of the many benefits of ADR. If they understand the many benefits of this system, disputes may be resolved more efficiently.

f. Conclusion

Resolving industrial disputes with expediency while preserving relationships is essential to maintain productivity. Each country must build the ADR system that is best suited to their culture and industry. However, in comparing India ADR systems to China, Indonesia, and the United States, the strengths and weaknesses of other countries become apparent. ADR is an essential complement to the judicial system and an asset to the employees and employers of India.

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