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The Impact of ADR on SME Development: A Comparative Study Between England and India

Anirudh Gundumi

Abstract

This article explores the impact of alternative dispute resolution (ADR) on the development of small and medium-sized enterprises (SMEs), focusing specifically on mediation and arbitration. A comparative analysis between ADR frameworks prevalent in England and India is conducted. ADR offers SMEs a flexible, time efficient and cost-effective alternative to traditional litigation, allowing them to resolve disputes while maintaining crucial business relationships. The article highlights mediation as the most suitable form of ADR for SMEs due to its adaptability which gives parties control over the process. While arbitration provides finality, it is identified as less ideal for SMEs due to its high costs, particularly in institutional settings. This article delves into the legislative frameworks supporting ADR in both countries, identifying key differences and areas where improvements are needed. In England, ADR is well integrated into the legal system, with a robust infrastructure supporting its use. In contrast, ADR is gaining traction in India but its adoption is hindered by the perception that ADR is a weak alternative to litigation. The article argues that legal reforms in both nations are necessary to enhance the accessibility and effectiveness of ADR for SMEs, ensuring that these mechanisms evolve alongside the changing landscape of business and technology. Additionally, this article emphasises the importance of increasing awareness of ADR, particularly among vulnerable groups like SMEs. Further, suggestions regarding renaming ADR as “amicable dispute resolution” could make it more appealing. The research also calls for deeper future studies focusing on the cost, speed and efficiency of ADR. This will assist governments to formulate more effective ADR frameworks that meet the evolving needs of SMEs.

1 Introduction

According to the Department of Business and Trade, the United Kingdom is home to 5.6 million businesses in the private sector. Out of these, 5.51 million businesses were classified as small, 36,900 businesses as medium and 8,000 as large.¹ Evidently, the majority of the private sector consists of small and medium enterprises (SMEs). For a business to qualify as a medium enterprise it must satisfy at least two of three criteria – a turnover of less than £36 million, a workforce of less than 250 employees, or a balance sheet total of less than £18 million.² Similarly, a business qualifies as a small enterprise if it satisfies at least two of these three criteria – a turnover of less than £10.2 million, a workforce of less than fifty employees or a balance sheet total of less than £5.1 million.³

SMEs play a vital role in the UK's economy as they contribute to the UK's private sector by employing 16.3 million individuals, constituting 61% of total employment and also generating an estimated turnover of £2.3 trillion, comprising 52% of the sector's total annual turnover.⁴ However, SMEs in their initial years of operation are focused on survival rather than growth.⁵ While all SMEs are bound together through the crucial link of finance, they struggle to access financial resources which impedes their ability to grow.⁶ They are also more vulnerable to economic downturns in comparison to large enterprises due to their limited resources, especially financial resources.⁷ Additionally, SMEs encounter legal obstacles that cause further financial strain.⁸ These obstacles include the length of the trial, inconsistency of judicial decisions, lack of affordability, and additional costs incurred during the litigative processes.⁹ The growing costs of litigation are alarming as the expenditure could exceed the disputed

¹ Department for Business and Trade, 'Business Population Estimates for the UK and Regions (Gov.uk, 5 October 2023) <[Business population estimates for the UK and regions 2023: statistical release – GOV.UK](#)> accessed 16 April 2025.

² Companies Act 2006, s 465.

³ Ibid, s 382.

⁴ Department for Business, Energy and Industrial Strategy, 'BEIS Small and Medium Enterprises (SME) action plan: 2022 to 2025' (Gov.uk, 26 January 2023) <[BEIS small and medium enterprises \(SME\) action plan: 2022 to 2025 – GOV.UK](#)> accessed 16 April 2025.

⁵ Marc Cowling et al., 'What really happens to small and medium-sized enterprises in a global economic recession? UK evidence on sales and job dynamics' (2015) 33(5) International Small Business Journal 488.

⁶ Satish Kumar and Purnima Rao, 'A Conceptual Framework for Identifying Financing Preferences of SMEs' (2015) 22 Small Enterprise Research 99.

⁷ Marc Cowling et al., 'What really happens to small and medium-sized enterprises in a global economic recession? UK evidence on sales and job dynamics' (2015) 33(5) International Small Business Journal 488.

⁸ Thorsten Beck et al., 'Financial and Legal Constraints to Growth: Does Firm Size Matter?' (2005) 60 The Journal of Finance (New York) 137.

⁹ Ibid.

amount in certain cases, when timely disposal is not even promised.¹⁰ While legal obstacles tend to have minimal impact on large enterprises, these obstacles significantly obstruct growth of SMEs and even result in closure of business, due to their limited resources.¹¹

In recent years, there has been growing inefficiency of litigation with overcrowded courts and delayed judgments worldwide.¹² This has raised questions regarding access to justice.¹³ When conflicts arise, parties often attempt to resolve them on their own. However, in case of failure they resort to legal action, which is time-consuming, costly and has other disadvantages.¹⁴ This has prompted a shift towards finding alternatives to resolving disputes in an effective and non-adversarial manner, leading to a growing interest in alternative dispute resolution (ADR). In fact, many legal jurisdictions and frameworks worldwide have adapted to encourage its use.¹⁵

ADR serves as an alternative to litigation for resolution of civil disputes.¹⁶ Generally, the ADR process is overseen by a third party who acts as an evaluative or facilitative authority. This third party could be a commercial or non-profit organisation, both providing parties with a clear structure on how the ADR process unfolds.¹⁷ The ADR process concludes with a binding decision, either made by the third-party authority or the parties themselves through mutual agreement.¹⁸ The ADR processes can either be formal or flexible. ADR is convenient, as it can be conducted through paper documentation, online platforms, or in-person meetings.¹⁹ Each form of ADR has a different method and mechanism of reaching a resolution, giving parties a wide range of choices.²⁰ The parties can also integrate two ADR methods, wherein they adopt the advantages of different ADR options to achieve a resolution.²¹ In addition, parties control the process and occasionally the final decision, based on the form of ADR chosen.²²

¹⁰ Ummey Sharaban Tahura, 'Does mandatory ADR impact on access to justice and litigation costs?' (2019) 30(1) *Australasian Dispute Resolution Journal* 31.

¹¹ Thorsten Beck et al., 'Financial and Legal Constraints to Growth: Does Firm Size Matter?' (2005) 60 *The Journal of Finance* (New York) 137.

¹² Bruno Deffains et al., 'Choosing ADR or Litigation' (2017) 49 *International Review of Law and Economics* 33.

¹³ Ummey Sharaban Tahura, 'Does mandatory ADR impact on access to justice and litigation costs?' (2019) 30(1) *Australasian Dispute Resolution Journal* 31.

¹⁴ Susan Blake et al., *A Practical Approach to Alternative Dispute Resolution* (5th edn, Oxford University Press 2018) 3.

¹⁵ Bruno Deffains et al., 'Choosing ADR or Litigation' (2017) 49 *International Review of Law and Economics* 33.

¹⁶ Susan Blake et al., *The Jackson ADR Handbook* (2nd edition, Oxford University Press 2016) 2.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Maria Goltsman et al., 'Mediation, Arbitration and Negotiation' (2009) 144 *Journal of Economic Theory* 1397.

²¹ Susan Blake et al., *The Jackson ADR Handbook* (2nd edition, Oxford University Press 2016), 20.

²² *Ibid.*

There are a variety of ADR options available to parties; however, this article will only be discussing the two most popular forms of ADR, arbitration and mediation. Arbitration involves parties to a dispute appointing a single arbitrator or a panel of arbitrators, which will render a decision based on the submissions made by both parties.²³ In contrast, mediation involves engaging a neutral third-party facilitator who guides discussions between the parties, encouraging compromise and promoting an amicable settlement of their issues.²⁴ Arbitration is adjudicative, while mediation is non-adjudicative.

1.1 History of ADR

Historically, there has been a significant record of ADRs existence, tracing its roots back to the *Vedas* (religious texts and scriptures of Hinduism).²⁵ There were various types of arbitral bodies in ancient and medieval India, often involving a neutral third person who was either a respected elder or the village chief.²⁶ These bodies paved way for the existence of “Panchayat raj” (people’s rule), a system of dispute resolution where elders of the village would act as a neutral third party. The decisions passed by the Panchayat were accepted by the people and treated as binding.²⁷

Similarly, ADR has existed in England for centuries, coupling local customs with third-party intervention to resolve disputes.²⁸ ADR became part of legal practice following the Norman Conquest where respected members of the community would participate in resolving private disputes. Accordingly, the king would endorse these decisions, essentially promoting an early version of ADR over adjudication through the royal courts.²⁹ More recently in the Victorian era, the use of arbitration was encouraged through statutory regulation and the establishment of the London Court of International Arbitration in 1892.³⁰ Additionally, in the 1990s, the courts motivated the use of ADR by requiring lawyers to advise their clients about its existence

²³ Maria Goltsman et al., ‘Mediation, Arbitration and Negotiation’ (2009) 144 *Journal of Economic Theory* 1397.

²⁴ Ilijana Todorović and Bobby Harges, ‘Alternative dispute resolution in the world of commercial disputes’ (2022) 5 *Journal of Strategic Contracting and Negotiation* 214.

²⁵ Krishna Agrawal, ‘Justice Dispensation through the Alternative Dispute Resolution System in India’ (2015) 2 *Russian Law Journal* 63.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ Michael McManus and Brianna Silverstein, ‘Brief History of Alternative Dispute Resolution in the United States’ (2011) 1(3) *Cadmus* 100.

²⁹ *Ibid.*

³⁰ Susan Blake et al., *A Practical Approach to Alternative Dispute Resolution* (5th edn, Oxford University Press 2018), 7.

and effectiveness.³¹ Furthermore, the Woolf Reforms followed by the Civil Procedural Rules 1998 encourage the use of ADR.³² This shift towards ADR is due to the shortcomings of litigation. Notably, judges in England attributed ADRs growth to the excessive costs and delays in litigation, advocating for mechanisms that divert cases from the courts, reducing backlogs and ensuring access to justice.³³

1.2 Research Objectives

This article addresses the gap in understanding how ADR mechanisms can support SMEs in overcoming legal challenges, thereby easing their financial burdens. Research suggests that ADR has good rates of success and satisfaction amongst parties.³⁴ In fact, the Ministry of Justice in England and Wales has sponsored a number of independent research projects on the use and success of ADR.³⁵ SME owners must be aware of and equipped to use ADR to their advantage, providing them with a dispute resolution option that is cost and time effective. While ADR is compulsory in some cases, parties may voluntarily opt for it if they are aware of its benefits.

The research questions are as follows:

1. To what extent can ADR assist SMEs over litigation?
2. To what extent does ADR's effectiveness depend on external factors?
3. How do ADR frameworks in England and India compare?
4. What directions are required to enable ADR to continue to assist SMEs in the future?

1.3 Research Gap

While previous studies have examined the advantages of ADR in civil and commercial disputes, they have largely overlooked its impact on SMEs specifically. This article seeks to address this gap by exploring how the two most popular forms of ADR – arbitration and mediation – benefit SMEs. It compares their benefits and limitations, while suggesting the most appropriate form for SMEs. Furthermore, a comparison of the ADR frameworks in England

³¹ Susan Blake et al., *The Jackson ADR Handbook* (2nd edition, Oxford University Press (2016) 2.

³² Susan Blake et al., *A Practical Approach to Alternative Dispute Resolution* (5th edn, Oxford University Press 2018), 9.

³³ Carrie Menkel-Meadow, 'Mediation, Arbitration, and Alternative Dispute Resolution (ADR)' (2015) 59 International Encyclopaedia of the Social and Behavioural Sciences 1.

³⁴ Susan Blake et al., *The Jackson ADR Handbook* (2nd edition, Oxford University Press 2016), 9.

³⁵ Ibid, 10.

and India is made to determine further strengths, limitations, and best practices of the general framework for ADR in both jurisdictions.

This article is limited to exploring only arbitration and mediation, as these are two most widely used forms of ADR globally. They have seen significant legal development in the recent past, with institutional support in various jurisdictions, making them highly relevant to the present research. However, this research does not provide an analysis of the full range of ADR mechanisms available, focusing solely on these two forms. Additionally, existing literature on other forms of ADR is limited, suggesting a need for future research to further explore other forms of ADR, such as negotiation or expert determination.

1.4 Methodology

This study adopts a doctrinal research method to analyse primary sources, including case law and statutes, in order to understand the legal framework of ADR. Additionally, secondary sources such as books and articles provide broader insights into ADR's development and its impact on SMEs. Moreover, a comparative research method is employed to examine ADR in England and India, thereby identifying strengths, weaknesses and best practices that potentially enhance effectiveness. By combining doctrinal and comparative methods, the article aims to enrich the academic discourse on ADR and advocate for improvements that enhance accessibility and foster a positive perception of ADR among SMEs.

2 To What Extent Can ADR Assist SMEs Over Litigation?

2.1 Challenges Faced By SMEs

SMEs encounter a range of challenges, particularly financial and legal constraints, which hinder their growth. SMEs are bound together through the crucial link of finance, however, SMEs often struggle with insufficient funds and face barriers in obtaining financial support.³⁶ Unlike larger firms, SMEs face high collateral requirements, complicated bank procedures, high interest rates and limited credit history.³⁷ Furthermore, SMEs in both developed and developing countries often rely on short-term debt because financial institutions are hesitant to

³⁶ Satish Kumar and Purnima Rao, 'A Conceptual Framework for Identifying Financing Preferences of SMEs' (2015) 22 Small Enterprise Research 99.

³⁷ Thorsten Beck et al., 'Financial and Legal Constraints to Growth: Does Firm Size Matter?' (2005) 60 The Journal of Finance (New York) 137.

provide long-term loans, seeing them as risky ventures with limited collateral.³⁸ These issues are exaggerated during a recession, leaving SMEs vulnerable to economic downturn or even closure.³⁹

A major contributor to SMEs financial constraints are the legal obstacles and challenges they face.⁴⁰ These include financial and time constraints associated with litigation, insufficient knowledge of dispute resolution options, and uncertainty over the outcome of legal proceedings.⁴¹ It also includes inefficient dispute resolution and enforcement of contracts during litigation.⁴² This negatively impacts the sales growth of SMEs causing further financial strain.⁴³ The inability of SMEs to handle legal obstacles is a result of financial constraints and lack of access to resources.⁴⁴ Additionally, lengthy court procedures, and issues regarding affordability and efficiency of litigation hinder SMEs from timely and fair justice, putting them at a disadvantage compared to larger firms that are equipped to handle such challenges.⁴⁵ Furthermore, a survey conducted by the Asia-Pacific Economic Cooperation (APEC) concluded that 35% of SMEs viewed effective and consistent dispute resolution as a major issue.⁴⁶ Another survey conducted by the Asia-Pacific Economic Cooperation Business Advisory Council (ABAC) in 2022 concluded that 58% of SMEs which engaged in international trade, lacked effective mechanisms for dispute resolution.⁴⁷

³⁸ Satish Kumar and Purnima Rao, 'A Conceptual Framework for Identifying Financing Preferences of SMEs' (2015) 22 Small Enterprise Research 99.

³⁹ Mark Cowling et al., 'What really happens to small and medium-sized enterprises in a global economic recession? UK evidence on sales and job dynamics' (2015) 33(5) International Small Business Journal 488.

⁴⁰ Greta Falavigna and Roberto Ippoliti, 'SMEs' Behaviour under Financial Constraints: An Empirical Investigation on the Legal Environment and the Substitution Effect with Tax Arrears' (2023) 66 The North American Journal of Economics and Finance 101903.

⁴¹ Jean-Francis Roberge and Veronique Fraser, 'Access to Commercial Justice: A Roadmap for Online Dispute Resolution (ODR) Design for Small and Medium-Sized Businesses (SMEs) Disputes' (2019) 35 Ohio State Journal on Dispute Resolution 1.

⁴² Ibid.

⁴³ Anh Tuan Bui et al., 'Legal and Financial Constraints and Firm Growth: Small and Medium Enterprises (SMEs) versus Large Enterprises' (2021) 7(12) Heliyon e08576.

⁴⁴ Jean-Francis Roberge and Veronique Fraser, 'Access to Commercial Justice: A Roadmap for Online Dispute Resolution (ODR) Design for Small and Medium-Sized Businesses (SMEs) Disputes' (2019) 35 Ohio State Journal on Dispute Resolution 1.

⁴⁵ Thorsten Beck and Asli Demirguc-Kunt, 'Small and Medium-Size Enterprises: Access to Finance as a Growth Constraint' (2006) 30 Journal of Banking & Finance 2931.

⁴⁶ Jean-Francis Roberge and Veronique Fraser, 'Access to Commercial Justice: A Roadmap for Online Dispute Resolution (ODR) Design for Small and Medium-Sized Businesses (SMEs) Disputes' (2019) 35 Ohio State Journal on Dispute Resolution 1.

⁴⁷ APEC Business Advisory Council, 'APEC Launches Collaborative Framework on Online Dispute Resolution to Help Small Businesses' (APEC, 19 May 2022) <<https://www.apec.org/press/news-releases/2022/apec-launches-collaborative-framework-on-online-dispute-resolution-to-help-small-businesses>> accessed 28 February 2025.

As legal inefficiencies increase uncertainty, SMEs often adopt alternative strategies such as delaying tax to temporarily boost resources.⁴⁸ This uncertainty stems from procedural delays, expensive trial, enforcement issues and inconsistent decisions, thereby undermining SMEs confidence in institutional protection.⁴⁹ Furthermore, limited access to financial and legal resources due to legal inefficiencies, forces SMEs to rely on informal mechanisms, exposing them to legal and financial risks. These behaviours highlight a direct correlation between legal inefficiencies and the legal vulnerability of SMEs.⁵⁰ However, research suggests that improved access to financial resources and ADR could assist SME growth and improve their economic contribution.⁵¹ One solution is to develop and rely on ADR as an appropriate alternative to tackle legal inefficiencies associated with litigation, while simultaneously improving the business environment to better address the challenges that SMEs face, allowing them to better manage business risks.⁵²

2.2 ADR Mechanisms: Focusing on Arbitration and Mediation for Assisting SMEs

2.2.1 Arbitration

Arbitration is one of the most common forms of ADR used in commercial cases⁵³ and has wide application in labour and consumer disputes.⁵⁴ Arbitration is the preferred choice for resolving international commercial disputes with many notable arbitration institutions capable of handling the arbitral process.⁵⁵ Arbitration is an adjudicatory form of ADR which closely resembles a court trial but involves the appointing of an arbitrator/arbitrators by the parties to the dispute, who then pass an award based on the submissions made.⁵⁶ While consent to arbitration is voluntary, once it has been chosen and a binding decision is made, the courts can

⁴⁸ Greta Falavigna and Roberto Ippoliti, 'SMEs' Behaviour under Financial Constraints: An Empirical Investigation on the Legal Environment and the Substitution Effect with Tax Arrears' (2023) 66 *The North American Journal of Economics and Finance* 101903.

⁴⁹ Jean-Francis Roberge and Veronique Fraser, 'Access to Commercial Justice: A Roadmap for Online Dispute Resolution (ODR) Design for Small and Medium-Sized Businesses (SMEs) Disputes' (2019) 35 *Ohio State Journal on Dispute Resolution* 1.

⁵⁰ *Ibid.*

⁵¹ Rajamani K et al., 'Access to Finance: Challenges Faced by Micro, Small, and Medium Enterprises in India' (2022) 33(1) *Engineering Economics* 73.

⁵² Thorsten Beck and Asli Demirguc-Kunt, 'Small and Medium-Size Enterprises: Access to Finance as a Growth Constraint' (2006) 30 *Journal of Banking & Finance* 2931.

⁵³ Susan Blake et al., *The Jackson ADR Handbook* (2nd edition, Oxford University Press 2016) 14.

⁵⁴ Carrie Menkel-Meadow, 'Mediation, Arbitration, and Alternative Dispute Resolution (ADR)' (2015) 59 *International Encyclopaedia of the Social and Behavioural Sciences* 1.

⁵⁵ *Ibid.*

⁵⁶ Maria Goltsman et al. 'Mediation, Arbitration and Negotiation' (2009) 144 *Journal of Economic Theory* 1397.

be asked to enforce it against a noncompliant party.⁵⁷ The disputed parties can either mutually agree to a process (known as ad hoc arbitration) or it can be delegated to an arbitral tribunal. In fact, arbitration institutions have their own set of rules and provide facilities to further simplify the arbitral process, including sample arbitration agreements.⁵⁸

2.2.2 Control, Expertise and Confidentiality in Arbitration

The popularity of arbitration stems from the control it gives to the parties over the process and its flexibility to be tailored to the specific needs of a dispute. In fact, parties have the opportunity to appoint an arbitrator with particular experience and expertise that is required for the adjudication of that specific dispute.⁵⁹ In most cases, retired judges are appointed as arbitrators in order to maintain a standard of expertise for adjudication.⁶⁰ This guarantees that no matter how complex the dispute, it will be adjudicated by a referee who fully understands the legal intricacies surrounding the subject matter. Additionally, arbitration may involve hearings similar to trial, or it may be conducted through written submissions.⁶¹ The entire process is private and confidential, unlike trial in open court where members of the public are present.⁶² The parties can also control their submissions to the arbitral tribunal.⁶³

2.2.3 Arbitral Awards: Binding Decisions and Challenge of Award

Arbitration is beneficial to parties that want a binding decision using a particular approach that is suitable and mutually agreed upon for their specific dispute.⁶⁴ Arbitration is used to definitively resolve an existing dispute that requires fact-finding, interpretation of contractual terms and the application of legal principles.⁶⁵ The process is less formal than litigation and results in a written decision known as an arbitral award.⁶⁶ The award passed is binding on the parties.⁶⁷ However, in England, the Arbitration Act 1996 allows challenge of an award in cases of serious irregularity affecting the tribunal, arbitral proceedings or final award which has led

⁵⁷ United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Art. III (1958).

⁵⁸ Susan Blake et al., *The Jackson ADR Handbook* (2nd edition, Oxford University Press 2016), 13.

⁵⁹ Ibid, 14.

⁶⁰ Carrie Menkel-Meadow, 'Mediation, Arbitration, and Alternative Dispute Resolution (ADR)' (2015) 59 *International Encyclopaedia of the Social and Behavioural Sciences* 1.

⁶¹ Susan Blake et al., *The Jackson ADR Handbook* (2nd edition, Oxford University Press 2016), 13.

⁶² Ibid, 14.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Carrie Menkel-Meadow, 'Mediation, Arbitration, and Alternative Dispute Resolution (ADR)' (2015) 59 *International Encyclopaedia of the Social and Behavioural Sciences* 1.

⁶⁶ Ibid.

⁶⁷ Susan Blake et al., *The Jackson ADR Handbook* (2nd edition, Oxford University Press 2016), 13.

to substantial injustice affecting the applicant.⁶⁸ Fraud, corruption, serious legal errors and miscarriages of justice through the arbitral process are strong grounds for challenging an award before court.⁶⁹

Additionally, challenging the award on a point of law arising from the award is also permitted.⁷⁰ However, precedent depicts that the success of such challenges is rare. Notably, the High Court of England and Wales in *K v S*⁷¹ while rejecting the appeal, held that there is an exhaustive list of grounds for challenging an award under Section 68 of the Arbitration Act 1996. These grounds include: tribunals failure to comply with its general duty; tribunal exceeding its powers; irregularity in proceedings, etc. Recently, in *The Federal Republic of Nigeria v Process & Industrial Developments Ltd.*,⁷² the High Court acknowledged the high threshold set under Section 68 of the Act but nevertheless set aside the award. Similarly, in *Tricon Energy Ltd v MTM Trading LLC*,⁷³ the court while overturning the tribunals decision, affirmed that challenges brought under Section 69 of the Arbitration Act 1996 also face a high threshold for success.

Alternatively, nonbinding arbitrations allow parties to appeal or proceed to other forms of dispute resolution such as mediation or to use litigation as the award merely serves as a recommendation. Nonbinding arbitrations are rare but possible if parties agree to such terms in advance.⁷⁴ This demonstrates the flexibility of arbitration, allowing parties to a dispute to establish mutually acceptable rules for the arbitral process.

2.2.4 Time and Cost Efficiency in Arbitration

Arbitration is praised for its time and cost efficiency. Time is saved by implementing a prescribed plan outlining when each stage of the adjudicative process will commence.⁷⁵ This plan might feature automatic scheduling of the prehearing conference once a milestone is reached, limited discovery, and a time limit for requesting a retrial. These elements not only save time, but also significantly cut costs.⁷⁶ Even lawyers have reported that time saving allows

⁶⁸ Arbitration Act 1996, s 68.

⁶⁹ Carrie Menkel-Meadow, 'Mediation, Arbitration, and Alternative Dispute Resolution (ADR)' (2015) 59 International Encyclopaedia of the Social and Behavioural Sciences 1.

⁷⁰ Arbitration Act 1996, s 69.

⁷¹ [2019] EWHC 2386 (Comm).

⁷² [2023] EWHC 2638 (Comm).

⁷³ [2020] EWHC 700 (Comm).

⁷⁴ Carrie Menkel-Meadow, 'Mediation, Arbitration, and Alternative Dispute Resolution (ADR)' (2015) 59 International Encyclopaedia of the Social and Behavioural Sciences 1.

⁷⁵ Lynn A. Kerbeshian, 'ADR: to be or ...?' (1994) 70 North Dakota Law Review 381, 405

⁷⁶ Ibid.

cost saving.⁷⁷ Additionally, judges have stated that arbitration provides speedier dispute resolution than litigation.⁷⁸ This result of quick dispute resolution is directly connected to saving lawyer fees and related costs.⁷⁹ In addition to saving time, arbitration also produces accelerated disposition if there is no new trial.⁸⁰ While a request for a new trial is permitted in court referred arbitrations, the requesting party must post bond or deposit a hefty amount for costs to prevent misuse.⁸¹

2.2.5 Evaluating Arbitration: Cost, Time, Efficiency, Fairness and Judicial Perspectives

A study conducted on mandatory court-referred arbitration programs focusing on cost reduction, litigation speed, providing alternatives to litigants, and reducing caseload concluded that 70% of litigants found the time required for arbitration reasonable. Additionally, lawyers had a positive opinion on the cost and time savings associated with arbitration unless there was a retrial.⁸² Another study on arbitration concluded that participants experienced enhanced dignity and worth due to the formality and structure of arbitration. Some 84% of participants supported arbitration programs and 80% of participants believed the process to be fair, even though the outcome was not in their favour. This sense of fairness is linked to the litigants understanding of the arbitral process, their ability to exercise control over it and the reasonable amount of time taken to reach an outcome.⁸³ In cases where arbitration is court referred, litigants did not feel like they received inferior justice.⁸⁴ While clients have expressed appreciation for the arbitral process, 92% of the lawyers involved in the study also deemed the procedures fair, highlighting factors such as formality, well-prepared arbitrators, reasonable time and cost savings.⁸⁵ Considering factors such as cost, time and fairness, arbitration was favoured over court proceedings by half of the litigants and majority of the lawyers involved in the study.⁸⁶ In another study conducted amongst judges who were to evaluate mandatory arbitration programs, it was found that they support these programs as it was directly associated

⁷⁷ Ibid.

⁷⁸ Ibid, 409.

⁷⁹ Ibid.

⁸⁰ Ibid, 402.

⁸¹ Carrie Menkel-Meadow, 'Mediation, Arbitration, and Alternative Dispute Resolution (ADR)' (2015) 59 International Encyclopaedia of the Social and Behavioural Sciences 1.

⁸² Lynn A. Kerbeshian, 'ADR: to be or ...?' (1994) 70 North Dakota Law Review 381, 406.

⁸³ Ibid, 407.

⁸⁴ Ibid.

⁸⁵ Ibid, 408.

⁸⁶ Ibid.

with reducing the caseload on courts.⁸⁷ Overall, studies consistently show high satisfaction rates amongst users of arbitration.⁸⁸

In summary, arbitration assists SMEs by providing a structured, confidential and enforceable resolution process that has the potential to reduce costs and delays in comparison to litigation. It also provides greater control and predictability through its flexible procedure, choice of arbitrators and limited scope for appeal. Such features assist SMEs in overcoming financial and legal constraints by offering an accessible dispute resolution option.

2.3 Mediation

Mediation is a non-adjudicatory ADR process where a neutral third party facilitates discussions between the disputing parties, thereby fostering compromise and promoting a mutually agreeable resolution.⁸⁹ The facilitator is known as a mediator, and they are required to be independent and impartial towards the parties and the subject matter of the dispute.⁹⁰ Mediation is utilised to enhance communication between the parties, particularly those having existing relationships, with the intention to help them reconnect and create forward-looking solutions to their conflicts.⁹¹ The outcome of mediation involves compromise and a fair distribution of resources as the mediator's goal is a balanced outcome. To achieve this, the mediator promotes open communication, encouraging the parties to voice out their concerns.⁹²

Participation in mediation is voluntary (unless mandated by courts) and any agreements which are reached are based on mutual consent.⁹³ Mediation is not legally binding unless the parties explicitly agree otherwise in writing.⁹⁴ While the mediator's proposal is not binding, parties should exercise caution when rejecting it. If mediation fails and the court's decision in trial mirrors the mediator's suggestion, the judge may disallow the winning party from recovering their expenses. Even if the final ruling differs, the judge may still order the winning party to

⁸⁷ Ibid, 410.

⁸⁸ Ilijana Todorović and Bobby Harges, 'Alternative dispute resolution in the world of commercial disputes' (2022) 5 Journal of Strategic Contracting and Negotiation (Print) 214.

⁸⁹ Ibid.

⁹⁰ Giuliana Romualdi, 'Problem-Solving Justice and Alternative Dispute Resolution in the Italian Legal Context' (2018) 14 Utrecht Law Review 52.

⁹¹ Carrie Menkel-Meadow, 'Mediation, Arbitration, and Alternative Dispute Resolution (ADR)' (2015) 59 International Encyclopaedia of the Social and Behavioural Sciences 1.

⁹² Lynn A. Kerbeshian, 'ADR: to be or ...?' (1994) 70 North Dakota Law Review 381, 393.

⁹³ Carrie Menkel-Meadow, 'Mediation, Arbitration, and Alternative Dispute Resolution (ADR)' (2015) 59 International Encyclopaedia of the Social and Behavioural Sciences 1.

⁹⁴ Ilijana Todorović and Bobby Harges, 'Alternative dispute resolution in the world of commercial disputes' (2022) 5 Journal of Strategic Contracting and Negotiation 214.

bear their own expenses, if justified on reasonable grounds.⁹⁵ This is intended to prevent misuse of mediation and to ensure that litigation is not used as a tool to harass the opposite party. Mediation is binding only after the parties have executed a settlement agreement which is enforceable in a court of law.⁹⁶ Additionally, parties can abandon mediation if they deem it futile, provided this occurs before reaching an agreement. However, if the dispute resolution clause i.e., a provision in a contract that states the agreed-upon method for resolving any disputes between the parties, mandates a minimum number of mediation sessions, abandonment is not permissible.⁹⁷

2.3.1 Advantages of Adopting Mediation

Mediation reduces costs in resolving disputes especially when it is successful, however, an unsuccessful mediation does not necessarily increase expenses either.⁹⁸ In fact, many judges find mediation particularly suitable for civil and commercial cases where the cost of litigation could exceed the disputed amount.⁹⁹ Additionally, mediation saves cost and time for parties which lack the financial resources to fully utilise the court system.¹⁰⁰ Furthermore, mediation allows customised settlements to be tailored to meet individual needs.¹⁰¹ Mediation also offers faster resolution than litigation because it allows a thorough analysis of the issues in a short time with the collective efforts of all the parties involved.¹⁰²

Mediation helps reduce court caseload by avoiding trial.¹⁰³ In fact, mandatory mediation programs are implemented in many jurisdictions to reduce backlogs. Additionally, mediation does not compel parties to disclose confidential information. If parties disclose confidential information during mediation it remains inadmissible in court. This confidentiality encourages parties to engage openly in mediation without fear of public exposure or potential bias in court.¹⁰⁴

⁹⁵ Giuliana Romualdi, 'Problem-Solving Justice and Alternative Dispute Resolution in the Italian Legal Context' (2018) 14 *Utrecht Law Review* 52.

⁹⁶ Carrie Menkel-Meadow, 'Mediation, Arbitration, and Alternative Dispute Resolution (ADR)' (2015) 59 *International Encyclopaedia of the Social and Behavioural Sciences* 1.

⁹⁷ Ilijana Todorović and Bobby Harges, 'Alternative dispute resolution in the world of commercial disputes' (2022) 5 *Journal of Strategic Contracting and Negotiation* 214.

⁹⁸ Lynn A. Kerbeshian, 'ADR: to be or ...?' (1994) 70 *North Dakota Law Review* 381, 392.

⁹⁹ *Ibid*, 398.

¹⁰⁰ Thomas J. Stipanowich, 'ADR and the "Vanishing Trial": The Growth and Impact of Alternative Dispute Resolution' (2004) 1 *Journal of Empirical Legal Studies* 843.

¹⁰¹ Lynn A. Kerbeshian, 'ADR: to be or ...?' (1994) 70 *North Dakota Law Review* 381, 398.

¹⁰² *Ibid*, 391.

¹⁰³ *Ibid*, 398.

¹⁰⁴ Ilijana Todorović and Bobby Harges, 'Alternative dispute resolution in the world of commercial disputes' (2022) 5 *Journal of Strategic Contracting and Negotiation* 214.

Research consistently shows that client satisfaction in mediation is higher than litigation.¹⁰⁵ In fact, judges report that mediation settlements are typically accepted, with many litigants expressing satisfaction.¹⁰⁶ One study found that approximately 75% of mediation participants were satisfied with the process, even without a settlement. This was directly related to the control, privacy, fairness, and opportunity to express opinions.¹⁰⁷ Furthermore, satisfaction remains high even after a settlement, with participants being reassessed six to twelve months after the settlement still viewing mediation as fairer and more satisfactory than litigation.¹⁰⁸ Further, research shows higher compliance rates (67%–87%) with mediated outcomes compared to traditional court rulings, promising long term stability.¹⁰⁹

In conclusion, research indicates that mediation is effective, adaptable and can achieve multiple objectives with appropriate adjustments.¹¹⁰ It is increasingly preferred over arbitration as it emphasises party autonomy and flexibility.¹¹¹ As dispute resolution evolves, mediation remains a cornerstone for fostering understanding and cooperation while resolving disputes.

2.3.2 Disadvantages of mediation

While mediation has its advantages, it is not recommended in all cases. Since mediation places the responsibility for resolving disputes on parties, it is unlikely to yield a positive outcome in cases involving deliberate bad faith or where public vindication is sought.¹¹² Additionally, the process is confidential with no record, making mediation agreements difficult to appeal¹¹³. In fact, the absence of formal procedures and rules leaves parties with no recourse if they discover procedural misconduct.¹¹⁴ Finally, mediators (unlike arbitrators or judges) lack any enforcement authority during the process.¹¹⁵

¹⁰⁵ Carrie Menkel-Meadow, 'Mediation, Arbitration, and Alternative Dispute Resolution (ADR)' (2015) 59 *International Encyclopaedia of the Social and Behavioural Sciences* 1.

¹⁰⁶ Lynn A. Kerbeshian, 'ADR: to be or ...?' (1994) 70 *North Dakota Law Review* 381, 409.

¹⁰⁷ *Ibid.*, 387.

¹⁰⁸ *Ibid.*

¹⁰⁹ Carrie Menkel-Meadow, 'Mediation, Arbitration, and Alternative Dispute Resolution (ADR)' (2015) 59 *International Encyclopaedia of the Social and Behavioural Sciences* 1.

¹¹⁰ James A. Wall and Timothy C. Dunne, 'Mediation Research: A Current Review' (2012) 28(2) *Negotiation Journal* 217.

¹¹¹ Carrie Menkel-Meadow, 'Mediation, Arbitration, and Alternative Dispute Resolution (ADR)' (2015) 59 *International Encyclopaedia of the Social and Behavioural Sciences* 1.

¹¹² Ilijana Todorović and Bobby Harges, 'Alternative dispute resolution in the world of commercial disputes' (2022) 5 *Journal of Strategic Contracting and Negotiation* 214.

¹¹³ Zeynep Derya Tarman, 'Mediation as an Option for International Commercial Disputes' (2016) 48 *Annales de la Faculté de Droit d'Istanbul* 244.

¹¹⁴ *Ibid.*

¹¹⁵ Benjamin Balzer and Johannes Schneider, 'Managing a Conflict: Optimal Alternative Dispute Resolution' (2021) 52 *The Rand Journal of Economics* 415.

2.4 Mediation vs Arbitration

Mediation differs from arbitration as it is a non-adjudicative dispute resolution mechanism wherein parties retain their decision-making power.¹¹⁶ This distinction leads to two conclusions. Firstly, arbitration outcomes are determined by objective standards (applicable laws) making it a rights-based process, while mediation outcomes are based on subjective standards (will and interests of parties), making it an interest-based process.¹¹⁷ Secondly, in arbitration, the parties present their arguments before an arbitrator seeking a ruling, while mediation involves the parties working alongside the mediator to reach a mutually acceptable outcome, with the mediator acting as a facilitator rather than a decision-maker.¹¹⁸ Furthermore, arbitrators have limited enforcement powers during the process, allowing them to enforce decisions and hearings. However, once the award is passed, enforcement depends on the courts, which can be approached to compel a reluctant party to comply with the award. On the other hand, mediators lack any such enforcement authority.¹¹⁹

2.4.1 How Does ADR Provide More Assistance to SMEs Than Litigation?

ADR is a highly effective conflict resolution method, offering multiple advantages over litigation. ADR is cheaper than litigation, making it beneficial for SMEs operating on limited budgets, as the high expenses of litigation can prove detrimental to them.¹²⁰ Since ADR allows parties to manage their disputes, it becomes cheaper than litigation.¹²¹ When early settlements are unsuccessful, ADR can still help reduce overall costs in the long run.¹²² The rising cost of legal counsel further improves the appeal of ADR's cost efficiency.¹²³ Alternatively, litigation not only involves direct fixed costs such as court fees but also includes indirect costs during lengthy proceedings, including strain on operations, reputation management and loss of

¹¹⁶ Ilijana Todorovic and Bobby Harges, 'Alternative dispute resolution in the world of commercial disputes' (2022) 5 Journal of Strategic Contracting and Negotiation 214.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Benjamin Balzer and Johannes Schneider, 'Managing a Conflict: Optimal Alternative Dispute Resolution' (2021) 52 The Rand Journal of Economics 415.

¹²⁰ Thomas J. Stipanowich, 'ADR and the "Vanishing Trial": The Growth and Impact of Alternative Dispute Resolution' (2004) 1 Journal of Empirical Legal Studies 843.

¹²¹ Ilijana Todorovic and Bobby Harges, 'Alternative dispute resolution in the world of commercial disputes' (2022) 5 Journal of Strategic Contracting and Negotiation 214.

¹²² Benjamin Balzer and Johannes Schneider, 'Managing a Conflict: Optimal Alternative Dispute Resolution' (2021) 52 The Rand Journal of Economics 415.

¹²³ Thomas J. Stipanowich, 'ADR and the "Vanishing Trial": The Growth and Impact of Alternative Dispute Resolution' (2004) 1 Journal of Empirical Legal Studies 843.

clientele, all of which can severely impact a business's ability to function.¹²⁴ Furthermore, ADR provides a solution by allowing the swift and private resolution of disputes. In minimising disruptions, ADR allows SMEs to focus on their core business activities.¹²⁵ ADR also provides predictability, structure and collaborative resolution, which enables SMEs to strategise and anticipate outcomes with greater certainty than in litigation.¹²⁶

ADR prioritises maintaining business relationships, which is vital for SMEs that rely on partnerships, customer goodwill and vendor networks to remain competitive. Since litigation is adversarial in nature, it risks destroying these valuable relationships.¹²⁷ The rigid win-lose structure increases bitterness between disputing parties, ruining future business collaborations. In contrast, ADR focuses on finding mutually agreeable solutions while preserving business relationships, which can be just as important as securing a financial victory in court.¹²⁸ Furthermore, ADR improves access to legal remedies by offering a streamlined and cost-effective alternative to litigation.¹²⁹ It provides a fair platform for resolving disputes, unlike litigation which is more suited for parties with greater financial and legal resources. By reducing the formal constraints of a courtroom, ADR creates a balanced environment where both parties have the opportunity to be heard.¹³⁰

In conclusion, ADR triumphs over litigation by offering SMEs a flexible, cost-effective and efficient approach to dispute resolution. The ability to preserve business relationships and reduce legal fees are added advantages. Ultimately, ADR allows SMEs to focus on growth and stability by negating the burdens associated with litigation. Thus, depicting that arbitration, and mediation can successfully assist SMEs. The next section will discuss ADRs limitations which could potentially hamper its ability to assist SMEs.

3 To What Extent Does ADR's Effectiveness Depend on External Factors?

¹²⁴ Jean-Claude Goldsmith et al, *ADR in Business: Practice and Issues across Countries and Cultures, Volume I* (Kluwer Law International 2006), 5.

¹²⁵ Lynn A. Kerbeshian, 'ADR: to be or ...?' (1994) 70 North Dakota Law Review 427.

¹²⁶ Ibid.

¹²⁷ Jean-Claude Goldsmith et al, *ADR in Business: Practice and Issues across Countries and Cultures, Volume I* (Kluwer Law International 2006) 5.

¹²⁸ Ilijana Todorović and Bobby Harges, 'Alternative dispute resolution in the world of commercial disputes' (2022) 5 Journal of Strategic Contracting and Negotiation 214.

¹²⁹ Motiwal OP, 'Alternative Dispute Resolution in India' (1998) 15 Journal of International Arbitration 117.

¹³⁰ Lynn A. Kerbeshian, 'ADR: to be or ...?' (1994) 70 North Dakota Law Review 428.

3.1 Factors that Influence Effectiveness

3.1.1 Cost

ADR is recognised for reducing costs compared to litigation.¹³¹ However, the extent of these savings depends on the specific ADR method chosen. The cost-effectiveness of ADR may reduce when a court mandated ADR session fails and litigation resumes, or when an ADR clause is poorly drafted, leaving the parties unable to determine the appropriate form of ADR.¹³² Moreover, litigation adopts safeguards to prevent unnecessary delays, such as imposing costs on the party responsible for delays and requiring processes like discovery. Such safeguards are generally absent in ADR (except arbitration) due to its flexible nature, which can lead to potential delays and increased costs if disputes remain unresolved and proceed to court.¹³³

In particular, mediation offers substantial reduction in costs.¹³⁴ However, this may be lost if mediation fails and the dispute proceeds to court after significant resources have been spent, regardless of how the mediation process began.¹³⁵ Similarly, arbitration occasionally resembles the costs of litigation, particularly when the process becomes judicialised through procedural complexities.¹³⁶ Moreover, it involves fixed expenses such as arbitrator's fees, facility fees and administrative costs which can accumulate in high-stakes matters, further reducing arbitration's cost-effectiveness.¹³⁷ Overall, mediation has proven to be a cost-effective alternative to litigation, largely because it involves fewer formalities and legal fees.¹³⁸ Whereas arbitration's cost-effectiveness depends on the nature of the dispute and the procedural complexities involved.¹³⁹

¹³¹ Lynn a. Kerbeshian, 'ADR: to be or ...?' (1994) 70 North Dakota Law Review 397.

¹³² Jean-Claude Goldsmith et al, *ADR in Business: Practice and Issues across Countries and Cultures, Volume I* (Kluwer Law International 2006) 116.

¹³³ Pham Thanh Nga, 'Alternative Dispute Resolution (ADR): A New Trend of Economic Conflicts Settlement' (2022) 8 (6) International Journal of Legal Developments and Allied Issues 1.

¹³⁴ Thomas J. Stipanowich, 'ADR and the "Vanishing Trial": The Growth and Impact of Alternative Dispute Resolution' (2004) 1 Journal of Empirical Legal Studies 843.

¹³⁵ Susan Blake et al., *The Jackson ADR Handbook* (2nd edition, Oxford University Press 2016), 18.

¹³⁶ Thomas J. Stipanowich, 'ADR and the "Vanishing Trial": The Growth and Impact of Alternative Dispute Resolution' (2004) 1 Journal of Empirical Legal Studies 843.

¹³⁷ Yusuf Olaoluwa, 'Analysis of The Strengths and Weaknesses of Alternative Dispute Resolution (ADR) In Commercial Disputes' (*Afribary*, 2021) <<https://afribary.com/works/adr-in-commercial-disputes>> accessed 23rd Sept. 2024.

¹³⁸ Pranay Prakash Singh, 'ADR Processes: Comparative Analysis and Effectiveness' in Komal Vig and Ritu Gautam (eds), *ADR Strategies: Navigating Conflict Resolution in the Modern Legal World* (Inkbound Publishers 2022).

¹³⁹ Thomas J. Stipanowich, 'ADR and the "Vanishing Trial": The Growth and Impact of Alternative Dispute Resolution' (2004) 1 Journal of Empirical Legal Studies 843.

3.1.2 Time

ADR can potentially resolve disputes faster than litigation. However, this depends on the third party involved as poor preparation and lack of skill can lead to deadlock which reduces time efficiency.¹⁴⁰ Additionally, where a dispute involves a contract with an ADR clause, the contract becomes crucial in setting timeframes for each stage of the process, helping to safeguard against delays. If poorly drafted, it can inevitably prolong the dispute.¹⁴¹ Furthermore, parties may exploit nonbinding ADR as a dilatory tactic, particularly when there is a lack of cooperation between the parties, thereby causing delays.¹⁴²

In particular, mediation resolves disputes efficiently by avoiding the lengthy procedures of litigation, although this depends on its success, as failure would see parties approaching or returning to court.¹⁴³ Since mediation lacks safeguards to address power imbalances, one party may dominate the process and prolong the session, thereby reducing time efficiency.¹⁴⁴ Moreover, the time efficiency of mediation largely depends on the mediator's skill, as an unskilled mediator may cause delays.¹⁴⁵ Alternatively, arbitration saves time compared to litigation, provided the parties waive their right to a new trial in nonbinding arbitration or no challenge is made to the award. However, if these rights are exercised by the parties, then significant time may be lost.¹⁴⁶ While arbitration can be swift when parties cooperate, enforcing the award relies on court intervention if a party refuses to comply.¹⁴⁷ Hence, arbitration may mimic litigations lengthy procedures if it becomes too judicialised.¹⁴⁸

3.1.3 Party Autonomy and Satisfaction

¹⁴⁰ Susan Blake et al., *A Practical Approach to Alternative Dispute Resolution* (5th edn, Oxford University Press 2018), 3.

¹⁴¹ Jean-Claude Goldsmith et al, *ADR in Business: Practice and Issues across Countries and Cultures, Volume I* (Kluwer Law International 2006), 116.

¹⁴² Sterling Miller, 'The problems and benefits of using Alternative Dispute Resolution' (*Thomson Reuters*, 29th April 2022) <<https://legal.thomsonreuters.com/en/insights/articles/problems-and-benefits-using-alternative-dispute-resolution>> accessed 29th Sept 2024.

¹⁴³ Susan Blake et al., *The Jackson ADR Handbook* (2nd edition, Oxford University Press 2016), 18.

¹⁴⁴ Lynn A. Kerbeshian, 'ADR: to be or ...?' (1994) 70 North Dakota Law Review 381, 433.

¹⁴⁵ Giuliana Romualdi, 'Problem-Solving Justice and Alternative Dispute Resolution in the Italian Legal Context' (2018) 14 Utrecht Law Review 52.

¹⁴⁶ Lynn A. Kerbeshian, 'ADR: to be or ...?' (1994) 70 North Dakota Law Review 410.

¹⁴⁷ Yusuf Olaoluwa, 'Analysis of The Strengths and Weaknesses of Alternative Dispute Resolution (ADR) In Commercial Disputes' (*Afribary*, 2021) <<https://afribary.com/works/adr-in-commercial-disputes>> Accessed 23rd Sept. 2024.

¹⁴⁸ Thomas J. Stipanowich, 'ADR and the "Vanishing Trial": The Growth and Impact of Alternative Dispute Resolution' (2004) 1 Journal of Empirical Legal Studies 843.

In comparison to litigation, ADR provides more autonomy by giving parties some control over the process. However, in cases where the referee exercises excessive control over the process, clients may feel as if they have lost autonomy, negatively impacting satisfaction rates.¹⁴⁹ Additionally, ADR does not guarantee the finality that litigation provides, except in the case of binding arbitration. This lack of finality may reduce party satisfaction.¹⁵⁰ Further, ADR can reinforce existing power imbalances amongst parties, resulting in less favourable outcomes for weaker participants.¹⁵¹ Mediation is lauded for its party autonomy, however, its success depends on the genuine commitment of the parties involved.¹⁵² The process may fail if the relationship between the parties is beyond repair or if one party has unrealistic expectations.¹⁵³ Further, the potential power imbalance that may exist in mediation could lead to weaker parties assuming that stronger parties are dominating the process and ultimately lead to dissatisfaction, especially in commercial disputes involving companies of different sizes.¹⁵⁴ Despite these concerns, research consistently reports high levels of satisfaction with mediation.¹⁵⁵ In contrast, arbitration offers minimal party autonomy as it is adjudicative, and satisfaction levels depend on the complexity of the dispute. In fact, clients and lawyers prefer litigation over arbitration in complex cases, particularly when arbitration does not meet their expectations.¹⁵⁶

3.1.4 Confidentiality and Privacy

Confidentiality is a hallmark of ADR; however, this may lead to the privatisation of justice as private settlements hinder the creation of legal precedents and reduce public awareness of broader issues.¹⁵⁷ Confidentiality can also limit the development of public legal standards, as private settlements do not contribute to broader legal reform.¹⁵⁸ Furthermore, confidentiality

¹⁴⁹ Susan Blake et al., *A Practical Approach to Alternative Dispute Resolution* (5th edn, Oxford University Press 2018), 3.

¹⁵⁰ Ibid.

¹⁵¹ Alysia Blackham, *Reforming Age Discrimination Law: Beyond Individual Enforcement* (1st edn., Oxford University Press 2022), 169.

¹⁵² Thomas Wälde, 'ADR in Business: Practice and Issues across Countries and Cultures by J.C. Goldsmith, A. Ingen-Housz, and G. Pointon' (2008) 24 *Arbitration International* 503.

¹⁵³ Susan Blake et al., *The Jackson ADR Handbook* (2nd edition, Oxford University Press 2016), 17.

¹⁵⁴ Yusuf Olaoluwa, 'Analysis of The Strengths and Weaknesses of Alternative Dispute Resolution (ADR) In Commercial Disputes' (*Afribary*, 2021) <<https://afribary.com/works/adr-in-commercial-disputes>> Accessed 23rd Sept. 2024.

¹⁵⁵ Carrie Menkel-Meadow, 'Mediation, Arbitration, and Alternative Dispute Resolution (ADR)' (2015) 59 *International Encyclopaedia of the Social and Behavioural Sciences* 1.

¹⁵⁶ Lynn A. Kerbeshian, 'ADR: to be or ...?' (1994) 70 *North Dakota Law Review* 411.

¹⁵⁷ Carrie Menkel-Meadow, 'Mediation, Arbitration, and Alternative Dispute Resolution (ADR)' (2015) 59 *International Encyclopaedia of the Social and Behavioural Sciences* 1.

¹⁵⁸ Thomas J. Stipanowich, 'ADR and the "Vanishing Trial": The Growth and Impact of Alternative Dispute Resolution' (2004) 1 *Journal of Empirical Legal Studies* 843.

limits public scrutiny and reduces opportunities for systemic change.¹⁵⁹ Arbitration allows businesses to resolve disputes privately without divulging sensitive information. This does not serve the larger public as wrongful acts could remain private, with the wrongful party facing no backlash.¹⁶⁰ Similarly, mediation allows parties to resolve issues without public scrutiny.¹⁶¹ Overall, the confidentiality promised by ADR limits transparency and accountability, especially in disputes with broader societal implications.¹⁶²

3.1.5 Limitations of ADR in Certain Disputes

ADR is not universally effective, particularly in disputes requiring formal resolution mechanisms. ADR may also fail where the power imbalance is excessive, or where the relationship between the parties is beyond repair.¹⁶³ Additionally, court-mandated ADR may disadvantage marginalised groups, as power imbalances can influence less formal processes that lack strong procedural safeguards.¹⁶⁴ Mediation is unsuitable for adversarial disputes where the parties want a clear winner and loser as its informal and flexible nature is not designed for definitive resolutions.¹⁶⁵ Similarly, arbitration's inability to issue injunctions or address non-monetary disputes reduces its scope in complex disputes.¹⁶⁶ However, it is more definitive than mediation. This highlights how insufficient judicial oversight may lead to unjust ADR outcomes.¹⁶⁷

3.1.6 The Importance of Skilled ADR Practitioners

¹⁵⁹ Alysia Blackham, *Reforming Age Discrimination Law: Beyond Individual Enforcement* (1st edn., Oxford University Press 2022), 168.

¹⁶⁰ Pham Thanh Nga, 'Alternative Dispute Resolution (ADR): A New Trend of Economic Conflicts Settlement', (2022) 8 (6) *International Journal of Legal Developments and Allied Issues* 1.

¹⁶¹ Pranay Prakash Singh, 'ADR Processes: Comparative Analysis and Effectiveness' in Komal Vig and Ritu Gautam (eds), *ADR Strategies: Navigating Conflict Resolution in the Modern Legal World* (vol 1, Inkbound Publishers 2022).

¹⁶² Susan Blake et al., *The Jackson ADR Handbook* (2nd edition, Oxford University Press 2016) 18.

¹⁶³ Susan Blake et al., *A Practical Approach to Alternative Dispute Resolution* (5th edn, Oxford University Press 2018), 3.

¹⁶⁴ Yusuf Olaoluwa, 'Analysis of The Strengths and Weaknesses of Alternative Dispute Resolution (ADR) In Commercial Disputes' (*Afribary*, 2021) <<https://afribary.com/works/adr-in-commercial-disputes>> accessed 23rd Sept. 2024.

¹⁶⁵ Jean-Claude Goldsmith et al, *ADR in Business: Practice and Issues across Countries and Cultures, Volume I* (Kluwer Law International 2006), 117.

¹⁶⁶ Pham Thanh Nga, 'Alternative Dispute Resolution (ADR): A New Trend of Economic Conflicts Settlement' (2022) 8 (6) *International Journal of Legal Developments and Allied Issues* 1.

¹⁶⁷ Alysia Blackham, *Reforming Age Discrimination Law: Beyond Individual Enforcement* (1st edn., Oxford University Press 2022), 169.

The success of ADR hinges on proper education and training of its practitioners (mediators and arbitrators).¹⁶⁸ Underqualified practitioners risk causing deadlock and ineffective outcomes.¹⁶⁹ Poor performance in ADR potentially results in confusion, unsatisfactory resolutions and wasted resources undermining the process and increasing expenses and frustration.¹⁷⁰ Additionally, the quality of practitioners impacts fairness and satisfaction of the ADR process.¹⁷¹ Lawyers play a significant role in ADR as their attitudes and practices influence client satisfaction and public acceptance of ADR.¹⁷² However, research indicates that lawyers hesitate to participate in compulsory mediation as they lack trust in the mediator's abilities.¹⁷³

3.2 What Factors Ultimately Influence the Effectiveness Of ADR?

The effectiveness of ADR depends on the nature of the dispute, the skill of the practitioner and the clarity of contractual terms. In particular, mediation generally offers more flexibility, speed and cost-effectiveness compared to arbitration. Although, a successful mediation relies on the cooperation of the parties involved, as only a genuine involvement in mediation can provide satisfying results. Unrealistic expectations by parties and power imbalances risk causing failure.

Alternatively, arbitration offers formal procedures and finality, which can provide the certainty and enforceability that mediation may lack, making it valuable in complex disputes where a clear outcome is necessary. However, arbitration can mirror the complexities and costs of litigation, with fixed costs, including arbitrator fees and administrative expenses, which may make it less cost-effective than expected. Despite its strengths, the flexibility and lower costs of mediation often make it a more suitable option for SMEs.

ADR's potential is best realised in disputes suited to its flexible nature. However, in complex cases, its limited ability to manage intricate legal issues can cause delays or ineffective outcomes. The effectiveness of ADR also depends on clear contractual terms and the

¹⁶⁸ Giuliana Romualdi, 'Problem-Solving Justice and Alternative Dispute Resolution in the Italian Legal Context' (2018) 14 Utrecht Law Review 52.

¹⁶⁹ Susan Blake et al., *A Practical Approach to Alternative Dispute Resolution* (5th edn, Oxford University Press 2018), 3.

¹⁷⁰ Susan Blake et al., *The Jackson ADR Handbook* (2nd edition, Oxford University Press 2016), 17.

¹⁷¹ Pranay Prakash Singh, 'ADR Processes: Comparative Analysis and Effectiveness' in Komal Vig and Ritu Gautam (eds), *ADR Strategies: Navigating Conflict Resolution in the Modern Legal World* (vol 1, Inkbound Publishers 2022).

¹⁷² Lynn a. Kerbeshian, 'ADR: to be or ...?' (1994) 70 North Dakota Law Review 412.

¹⁷³ Yusuf Olaoluwa, 'Analysis of The Strengths and Weaknesses of Alternative Dispute Resolution (ADR) In Commercial Disputes' (*Afribary*, 2021) <<https://afribary.com/works/adr-in-commercial-disputes>> Accessed 23rd Sept. 2024.

willingness of the parties to cooperate. Ultimately, ADR's effectiveness depends on both internal factors, such as the skill of the practitioner, and external factors, such as the complexity of the dispute. Its success also relies on choosing the method that aligns with the parties' intentions, whether they seek finality through arbitration or wish to preserve business relationships through mediation.

4 How Do ADR Frameworks in England And India Compare?

4.1 What is the Difference Between ADR Frameworks in England and India?

ADR is a more efficient and cost-effective alternative to litigation, with both India and England incorporating it into their legal framework. However, their approaches vary due to differences in their legal traditions, sociocultural backgrounds, and economic conditions. India's ADR framework is a blend of modern legislation and traditional mechanisms such as Lok Adalats, reflecting the country's commitment and intention to offer accessible justice to all sections of society. On the other hand, England's ADR framework emphasises formal and strict arbitration and mediation processes with definitive outcomes. This comparative analysis explores the ADR frameworks in both countries, highlighting their differences and similarities.

4.1.1 Arbitration: India vs England

Arbitration is the most formalised method of ADR in both jurisdictions, governed by comprehensive legal frameworks. In England, arbitration is governed by the Arbitration Act 1996.¹⁷⁴ The Act aligns with the UNCITRAL Model Law to ensure a globally recognised standard for arbitration.¹⁷⁵ The Act also incorporates the New York Convention.¹⁷⁶ It mandates the enforcement of arbitral awards, making arbitration a preferred method for resolving commercial disputes.¹⁷⁷ Furthermore, the Act emphasises party autonomy.¹⁷⁸ This ensures that the parties retain control over the arbitration process.¹⁷⁹ Additionally, judicial intervention is

¹⁷⁴ Arbitration Act 1996.

¹⁷⁵ UNCITRAL Model Law on International Commercial Arbitration (1985), UN Doc A/40/17, Annex I.

¹⁷⁶ United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

¹⁷⁷ Prashant Subhash Arbune and Priti Vijaynarayan Yadav, 'Comparative Analysis of the Efficacy of Alternative Dispute Resolution Mechanisms in India and the UK' (2023) 12 European Chemical Bulletin 7734.

¹⁷⁸ Arbitration Act 1996, s 1(b).

¹⁷⁹ Shakthi Jayanth S And Kavitha Durai, 'Reforms to Be Made In ADR Laws – A Comparative Study With UK Laws' (2023) 11(3) Russian Law Journal 2485.

limited to concerns about procedural fairness and there is reluctance to allow challenges to arbitral awards.¹⁸⁰ The framework adopts a focused approach towards swift and efficient dispute resolution that promises finality, particularly in commercial transactions.¹⁸¹ This effectively allows SMEs in England to avoid prolonged uncertainty, potentially reduce legal costs and maintain business stability.

In India, the Arbitration and Conciliation Act governs arbitration.¹⁸² It aligns with the UNCITRAL Model Law and emphasises swift and efficient resolution through judicial oversight. In fact, Indian courts play an active role in arbitration, for example the courts appoint arbitrators when parties fail to do so.¹⁸³ Initially, Indian courts were allowed to intervene in international arbitration awards.¹⁸⁴ However, the Supreme Court of India later held that the Indian court's jurisdiction is limited to domestic arbitrations, aligning India's arbitration framework with international standards.¹⁸⁵ Additionally, the scope for challenging domestic arbitral awards is wider, wherein courts can set aside awards that are considered to be in violation of public policy or "patently illegal".¹⁸⁶ Despite these reforms, arbitration continues to face challenges in India, including delays in enforcement and frequent judicial intervention.¹⁸⁷

England's approach regarding judicial intervention in arbitration depicts its commitment to upholding the autonomy of ADR and promises finality in the process, while India's approach allows for greater judicial oversight to ensure fairness and efficiency.¹⁸⁸ The broad interpretation of public policy in India contrasts with England's narrower approach, where intervention is limited to procedural or jurisdictional issues.¹⁸⁹ For SMEs, India's greater judicial oversight may offer protection against unfair outcomes, particularly for less experienced parties, while England's emphasis on autonomy can benefit SMEs seeking faster resolutions with minimal court involvement.

¹⁸⁰ Arbitration Act 1996, s 68 and 69.

¹⁸¹ Shakthi Jayanth S And Kavitha Durai, 'Reforms to Be Made In ADR Laws – A Comparative Study With UK Laws' (2023) 11(3) Russian Law Journal 2485.

¹⁸² Arbitration and Conciliation Act 1996.

¹⁸³ Ibid, s 11.

¹⁸⁴ *Bhatia International v. Bulk Trading S.A* [2002] 4 SCC 105.

¹⁸⁵ *Bharath aluminium co. v. Kaiser Aluminium Technical Services Inc.* [2012] 9 SCC 552.

¹⁸⁶ *Oil & Natural Gas Corporation Ltd v. Saw Pipes Ltd* [2003] 5 SCC 705.

¹⁸⁷ Pham Thanh Nga, 'Alternative Dispute Resolution (ADR): A New Trend of Economic Conflicts Settlement' (2022) 8 (6) International Journal of Legal Developments and Allied Issues 1.

¹⁸⁸ Ibid.

¹⁸⁹ Prashant Subhash Arbune and Priti Vijaynarayan Yadav, 'Comparative Analysis of the Efficacy of Alternative Dispute Resolution Mechanisms in India and the UK' (2023) 12 European Chemical Bulletin 7734.

4.1.2 Mediation: India vs England

Mediation is commonly used in India and England, but its application differs. In England, mediation is formal and encouraged, particularly in commercial disputes. Parties to a dispute are mandatorily required to explore mediation, at different stages of the dispute.¹⁹⁰ Courts in England have power to penalise parties that unreasonably refuse to mediate.¹⁹¹ In fact, English courts have emphasised the importance of mediation in reducing litigation costs and promoting settlements.¹⁹² Furthermore, pre-action protocols within the Civil Procedure Rules 1998 mandate that parties consider ADR before litigation, thereby embedding mediation into the legal framework.¹⁹³ Finally, English courts take a proactive stance in promoting mediation and this can be seen in *Halsey v. Milton Keynes General NHS Trust*, wherein the court imposed penalties on the party that refused to mediate with no reasonable justification.¹⁹⁴ This legal infrastructure ensures that mediation is not perceived as an alternative path but as a necessary route to be explored in the dispute resolution process.

In contrast, India's approach to mediation is less formal and is governed by the Mediation Act.¹⁹⁵ Mediation in India is nonbinding unless the parties voluntarily settle the dispute.¹⁹⁶ However, there is mandatory pre-instituted mediation in commercial cases (where no urgent reliefs are sought)¹⁹⁷ and in divorce cases.¹⁹⁸ Additionally, Lok Adalat incorporates elements of mediation offering flexibility in resolving disputes. While comparing the two, India's less formal approach offers flexibility and lower costs for SMEs but may prolong disputes due to limited structure and enforceability. In contrast, England's formal mediation framework offers SMEs greater certainty and enforceability but may increase costs and reduce flexibility.

4.1.3 The Role of Lok Adalats in India

¹⁹⁰ Shakthi Jayanth S And Kavitha Durai, 'Reforms to Be Made In ADR Laws – A Comparative Study With UK Laws' (2023) 11(3) Russian Law Journal 2485.

¹⁹¹ *Halsey v. Milton Keynes General NHS Trust* [2004] EWCA Civ 576.

¹⁹² Shakthi Jayanth S And Kavitha Durai, 'Reforms to Be Made In ADR Laws – A Comparative Study With UK Laws' (2023) 11(3) Russian Law Journal 2485.

¹⁹³ Prashant Subhash Arbune and Dr. Priti Vijaynarayan Yadav, 'Comparative Analysis of the Efficacy of Alternative Dispute Resolution Mechanisms in India and the UK' (2023) 12 European Chemical Bulletin 7734.

¹⁹⁴ [2004] EWCA Civ 576.

¹⁹⁵ Mediation Act 2023.

¹⁹⁶ Pham Thanh Nga, 'Alternative Dispute Resolution (ADR): A New Trend of Economic Conflicts Settlement' (2022) 8 (6) International Journal of Legal Developments and Allied Issues 1.

¹⁹⁷ Commercial Courts Act 2015, s 12A.

¹⁹⁸ Family Courts Act 1984, s 9.

A distinctive feature of India's ADR framework is Lok Adalat. It is an informal and community-based approach to dispute resolution governed by legislation.¹⁹⁹ It provides a platform for resolving disputes through compromise and mutual agreement with no court proceedings.²⁰⁰ This system may effectively resolve disputes involving marginalised groups as Lok Adalats operate without rigid legal formalities, making them accessible and cost-effective.²⁰¹

The success of Lok Adalats can be attributed to its non-adversarial nature. Lok Adalats encourage parties to find a mutually acceptable solution, making it useful in disputes where maintaining relationships is important, such as commercial disputes involving SMEs.²⁰² The informality of the process and the absence of court fees makes Lok Adalat a popular option for resolving minor disputes quickly and efficiently. Additionally, Lok Adalats are praised for their ability to reduce the burden on courts. However, this informality can be a disadvantage when disputes involve complex legal issues or power imbalances. Lok Adalats in India can be contrasted with the approach taken in England, where ADR is formal, ensures clear procedures, legal certainty and enforceability, which can protect SMEs in high-stakes disputes. However, the increased formality raises costs and causes delays, with no community-driven aspect attached.²⁰³ While Lok Adalats are ideal for minor conflicts, England's formal ADR is ideal for disputes requiring legal clarity and protection.²⁰⁴

4.1.4 Public Awareness and Challenges

India and England face similar challenges in raising public awareness and encouraging use of ADR. In England, public awareness of ADR is high but misconceptions about the enforceability of ADR outcomes still exist with parties choosing litigation assuming that court judgments are more easily enforceable.²⁰⁵ England's legal framework encourages the use of ADR, but further efforts are needed to remove misconceptions, thereby ensuring ADR is

¹⁹⁹ Legal Services Authorities Act 1987.

²⁰⁰ Pham Thanh Nga, 'Alternative Dispute Resolution (ADR): A New Trend of Economic Conflicts Settlement' (2022) 8 (6) International Journal of Legal Developments and Allied Issues 1.

²⁰¹ Prashant Subhash Arbune and Priti Vijaynarayan Yadav, 'Comparative Analysis of the Efficacy of Alternative Dispute Resolution Mechanisms in India and the UK' (2023) 12 European Chemical Bulletin 7734.

²⁰² Pham Thanh Nga, 'Alternative Dispute Resolution (ADR): A New Trend of Economic Conflicts Settlement' (2022) 8 (6) International Journal of Legal Developments and Allied Issues 1.

²⁰³ Prashant Subhash Arbune and Priti Vijaynarayan Yadav, 'Comparative Analysis of the Efficacy of Alternative Dispute Resolution Mechanisms in India and the UK' (2023) 12 European Chemical Bulletin 7734.

²⁰⁴ Pham Thanh Nga, 'Alternative Dispute Resolution (ADR): A New Trend of Economic Conflicts Settlement' (2022) 8 (6) International Journal of Legal Developments and Allied Issues 1.

²⁰⁵ Shakthi Jayanth S And Kavitha Durai, 'Reforms to Be Made In ADR Laws – A Comparative Study With UK Laws' (2023) 11(3) Russian Law Journal 2485.

understood as an equally effective means of resolving disputes.²⁰⁶ Alternatively, ADR in India is regarded as secondary to litigation.²⁰⁷ ADR has proven successful in resolving disputes at the ground level, but many individuals remain unfamiliar with it.²⁰⁸ However, targeted public awareness campaigns and legal literacy programs can help promote ADR as a viable option in disputes that include ongoing relationships, potentially encouraging greater use amongst SMEs.²⁰⁹

4.2 How Could The ADR Frameworks in England and India Benefit from Each Other?

ADR frameworks in India and England share common goals, reflecting their unique legal, cultural and social contexts. In England, ADR is formalised and structured, offering strong alternatives to litigation by promoting efficiency, reducing costs and providing quick resolutions.²¹⁰ In India, ADR encompasses both modern and traditional community-driven approaches, such as Lok Adalats that provide informal, accessible and cost-effective dispute resolution.²¹¹ However, India faces challenges in raising public awareness of ADR and improving the enforcement of arbitral awards.²¹² Despite these challenges, ADR retains its potential to reduce the backlog of cases in Indian courts.

India could benefit from adopting England's formalised and structured ADR system, which incorporates procedural safeguards to enhance effectiveness. This may also encourage viewing ADR not just as an alternative, but as an essential component of the dispute resolution process. In contrast, England could benefit from adopting community-driven mechanisms like Lok Adalats, particularly in disputes that involve ongoing relationships between parties, such as disputes pertaining to SMEs. Lok Adalats emphasis on compromise and community resolution

²⁰⁶ Prashant Subhash Arbune and Priti Vijaynarayan Yadav, 'Comparative Analysis of the Efficacy of Alternative Dispute Resolution Mechanisms in India and the UK' (2023) 12 European Chemical Bulletin 7734.

²⁰⁷ Pham Thanh Nga, 'Alternative Dispute Resolution (ADR): A New Trend of Economic Conflicts Settlement' (2022) 8 (6) International Journal of Legal Developments and Allied Issues 1.

²⁰⁸ Ibid.

²⁰⁹ Prashant Subhash Arbune and Priti Vijaynarayan Yadav, 'Comparative Analysis of the Efficacy of Alternative Dispute Resolution Mechanisms in India and the UK' (2023) 12 European Chemical Bulletin 7734.

²¹⁰ Shakthi Jayanth S and Kavitha Durai, 'Reforms to Be Made In ADR Laws – A Comparative Study With UK Laws' (2023) 11(3) Russian Law Journal 2485.

²¹¹ Prashant Subhash Arbune and Priti Vijaynarayan Yadav, 'Comparative Analysis of the Efficacy of Alternative Dispute Resolution Mechanisms in India and the UK' (2023) 12 European Chemical Bulletin 7734.

²¹² Pham Thanh Nga, 'Alternative Dispute Resolution (ADR): A New Trend of Economic Conflicts Settlement' (2022) 8 (6) International Journal of Legal Developments and Allied Issues 1.

could offer an inclusive and accessible form of justice, particularly for vulnerable groups in England.

England's ADR framework can reduce legal uncertainty and instil confidence in SMEs by offering predictability, enforceability and institutional support. On the other hand, India's community-driven approach provides SMEs with greater accessibility and cultural familiarity through its informal characteristics. While England's approach may better assist SMEs in complex or cross-border disputes, India's approach may better assist SMEs in local, modest-value disputes where procedural simplicity is key. Ultimately, both jurisdictions can improve their respective ADR frameworks by learning lessons from one another.

5 How Can ADR Continue to Assist SMEs?

5.1 Proposed Recommendations

5.1.1 Increasing Awareness and Accessibility of ADR

There is a requirement to improve awareness of availability and benefits of ADR amongst SMEs. One suggestion is to provide brochures to clients and have lawyers discuss ADR options with clients at the outset of the dispute, ensuring that ADR is not an afterthought.²¹³ Furthermore, technology can improve awareness and accessibility of ADR. Digital platforms for online mediation and arbitration reduce geographical barriers and allow parties with limited resources to access ADR, which is beneficial in large countries like India with an urban–rural divide that creates accessibility challenges.²¹⁴ Additionally, the inclusion of ADR in a university curriculum can help build a legally literate population.²¹⁵ Law and business courses should prioritise ADR as a primary subject to ensure that future lawyers and entrepreneurs are aware of all the available dispute resolution options.²¹⁶ Early exposure to ADR can encourage future generations to embrace diverse dispute resolution methods. Furthermore, awareness campaigns that go beyond the legal community and focus on the public can produce greater

²¹³ Lynn a. Kerbeshian, 'ADR: to be or ...?' (1994) 70 North Dakota Law Review 381, 430.

²¹⁴ Prashant Subhash Arbune and Priti Vijaynarayan Yadav, 'Comparative Analysis of the Efficacy of Alternative Dispute Resolution Mechanisms in India and the UK' (2023) 12 European Chemical Bulletin 7734.

²¹⁵ Vishnu Konoorayar et al. , 'Alternative Dispute Resolution in India – ADR: status/effectiveness study' (*Social Science Open Access Repository*, 2014) <[\(PDF\) Alternative Dispute Resolution in India – ADR: status/effectiveness study](#)> accessed 16 April 2025.

²¹⁶ Prashant Subhash Arbune and Priti Vijaynarayan Yadav, 'Comparative Analysis of the Efficacy of Alternative Dispute Resolution Mechanisms in India and the UK' (2023) 12 European Chemical Bulletin 7734.

benefits including added collaboration with media outlets to amplify the message.²¹⁷ Finally, ADRs appeal could be enhanced by rebranding “alternative dispute resolution” to “amicable dispute resolution” as done by the International Chamber of Commerce, thereby preventing it from being perceived as a mere alternative.²¹⁸

5.1.2 Strengthening the Role of Mediation

Mediation is the most useful ADR method for SMEs due to its ability to save cost and time, especially when they lack the financial resources to initiate litigation.²¹⁹ More importantly, mediation preserves business relationships, which is invaluable to small businesses.²²⁰ Hence, SMEs could benefit from including mandatory mediation clauses in contracts, allowing them to handle conflicts efficiently.²²¹ Additionally, the voluntary and flexible nature of mediation needs to be promoted as it gives parties a sense of control over the outcome.²²² Efforts should also focus on improving mediator skills, including problem-solving techniques and relationship-building techniques.²²³ By enhancing these aspects, mediation can become an even more powerful tool for resolving disputes efficiently.

5.1.3 Enhancing ADR Training for Legal Professionals

Many lawyers struggle to fulfil their roles in ADR as they must act as advisors and educators, which is difficult if they are unfamiliar with ADR processes or if they view ADR as a threat to litigation.²²⁴ Hence, training lawyers in ADR can increase its efficiency and also help improve the lawyer’s negotiation skills.²²⁵ Eventually, such training initiatives should be extended to include ADR practitioners as well.²²⁶

²¹⁷ Vishnu Konoorayar et al., ‘Alternative Dispute Resolution in India – ADR: status/effectiveness study’ (*Social Science Open Access Repository*, 2014) <[\(PDF\) Alternative Dispute Resolution in India – ADR: status/effectiveness study](#)> accessed 16 April 2025.

²¹⁸ Jean-Claude Goldsmith et al, *ADR in Business: Practice and Issues across Countries and Cultures, Volume I* (Kluwer Law International 2006), 4.

²¹⁹ Thomas J. Stipanowich, ‘ADR and the “Vanishing Trial”: The Growth and Impact of Alternative Dispute Resolution’ (2004) 1 *Journal of Empirical Legal Studies* 843.

²²⁰ Mare Lampe and Seth R. Ellis, ‘Resolving Small Business Disputes Through Mediation’ (1995) 6 *Journal of Small Business Strategy* 85.

²²¹ *Ibid.*

²²² Lynn A. Kerbeshian, ‘ADR: to be or ...?’ (1994) 70 *North Dakota Law Review* 381, 430.

²²³ James A. Wall, and Timothy C. Dunne, ‘Mediation Research: A Current Review’ (2012) 28 (2) *Negotiation Journal* 217.

²²⁴ Lynn A. Kerbeshian, ‘ADR: to be or ...?’ (1994) 70 *North Dakota Law Review* 381, 434.

²²⁵ Mare Lampe and Seth R. Ellis, ‘Resolving Small Business Disputes Through Mediation’ (1995) 6 *Journal of Small Business Strategy* 85.

²²⁶ Vishnu Konoorayar et al., ‘Alternative Dispute Resolution in India – ADR: status/effectiveness study’ (*Social Science Open Access Repository*, 2014) <[\(PDF\) Alternative Dispute Resolution in India – ADR: status/effectiveness study](#)> accessed 16 April 2025.

5.1.4 Monitoring and Evaluating ADR Effectiveness

ADRs success largely hinges on continuous monitoring and evaluation. Much of the existing ADR literature reiterates well-researched issues, highlighting the need for more structured research programs, especially with mediation.²²⁷ Additionally, further research into arbitrations benefits could be achieved through deeper comparison with litigation.²²⁸ Empirical studies on real-world ADR cases can help identify areas for improvement and determine the most effective techniques. Additionally, controlled comparisons between mediation, arbitration, and litigation are needed to further assess factors like cost, speed and participant satisfaction.²²⁹

Examining the impact of ADR on SMEs is specifically vital as cost reduction, preserving business relationships, and the speed of dispute resolution are critical concerns for SMEs.²³⁰ Creating comparison groups to assess effectiveness of each form of ADR on different groups could offer valuable insight.²³¹ The continuous evaluation of ADR systems is crucial.²³² Constant evaluation, data collection, and case analysis can continuously improve ADR effectiveness.²³³ Additionally, stakeholders (litigants, lawyers, etc) can contribute to improving ADR by participating in feedback loops.²³⁴

6 Conclusion

The findings of this article indicate that ADR offers significant benefits for SMEs. In particular, mediation offers flexibility, cost and time effectiveness and control over the process and outcome. Additionally, mediation preserves business relationships by fostering collaboration and mutual understanding, which is essential for SMEs that depend on long-term partnerships. Since SMEs operate on limited financial and human resources, these advantages make

²²⁷ James A. Wall and Timothy C. Dunne, 'Mediation Research: A Current Review' (2012) 28 (2) Negotiation Journal 217.

²²⁸ Lynn A. Kerbeshian, 'ADR: to be or ...?' (1994) 70 North Dakota Law Review 411.

²²⁹ James A. Wall, and Timothy C. Dunne, 'Mediation Research: A Current Review' (2012) 28 (2) Negotiation Journal 217.

²³⁰ Mare Lampe and Seth R. Ellis, 'Resolving Small Business Disputes Through Mediation' (1995) 6 Journal of Small Business Strategy 85.

²³¹ James A. Wall and Timothy C. Dunne, 'Mediation Research: A Current Review' (2012) 28 (2) Negotiation Journal 217.

²³² Vishnu Konoorayar et al. 'Alternative Dispute Resolution in India – ADR: status/effectiveness study' (*Social Science Open Access Repository*, 2014) <[\(PDF\) Alternative Dispute Resolution in India – ADR: status/effectiveness study](#)> accessed 16 April 2025.

²³³ Ibid.

²³⁴ Ameen Jauhar, 'Hearing the 'Little Guy – Litigant Involvement to Promote Alternative Dispute Resolution Mechanisms in India' (2019) 15 Socio-Legal Review 30.

mediation a viable alternative to litigation. While mediation is effective for SMEs, arbitration often proves to be expensive. For instance, the London Court of International Arbitration charges £1,950 for registering a domestic arbitration dispute in England. While arbitration provides finality and efficiency, its high costs make it unsuitable for SMEs that lack financial resources. Therefore, mediation is advised as the preferred ADR method for SMEs.

The weaknesses of ADR need to be addressed to prevent them from reducing its efficiency. In countries having significant backlog of cases like India, ADR has the potential to alleviate some burdens. However, current ADR mechanisms need improvements to fully address the needs of SMEs. Legislative reforms are also required to help ADR adapt to societal changes and the evolving legal landscape. Another key solution is to integrate technology into ADR which enables remote participation and reduces costs while streamlining dispute resolution. It is also crucial for India to follow England in introducing legislative reforms and backing for mediation. Such reforms will provide SMEs with well-regulated and efficient ADR processes, allowing them to fully benefit from these mechanisms with no hindrance.

Another crucial requirement is to increase awareness of ADR among SMEs, which remain unaware of ADR's ability to stand as a viable alternative to litigation. Increased awareness and use of ADR among SMEs could prompt government support, as seen with arbitration in international commercial disputes. This may drive investment in improving ADR frameworks and strengthen ADR's role as a necessary step before litigation. Future research should prioritise deeper analysis of the cost, speed, and efficiency of all forms of ADR. Regular data collection, case analysis, and feedback integration can provide continuous evaluations to help policymakers strengthen ADR frameworks that meet SMEs evolving needs. As society advances and technology reshapes business landscapes, the complexity of disputes will grow, requiring laws and ADR mechanisms to adapt. This ensures SMEs and other vulnerable groups can compete fairly in a dynamic business environment.