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# Navigating ADR Mechanisms in Insolvency and Tax Disputes:Regulatory Tussle v. Party Autonomy*

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**Abstract**

The increasing global emphasis on Alternative Dispute Resolution (ADR) mechanisms such as arbitration and mediation reflect a shift towards more flexible, efficient, and consensual methods of resolving disputes. While ADR has gained prominence in commercial and civil litigation, its application in the highly regulated domains of insolvency and taxation remains a subject of significant legal and policy debate. This paper critically examines the complex interplay between party autonomy, a cornerstone of ADR, and the regulatory imperatives that govern insolvency and tax regimes both of which are deeply embedded in public interest considerations and subject to strict statutory frameworks.

Focusing on the regulatory tussle versus party autonomy, the paper explores the extent to which ADR mechanisms can be harmonized with statutory obligations and public policy concerns in these areas. Through a doctrinal and comparative methodology, it analyses the legal frameworks and judicial approaches across jurisdictions such as India, the United States, the United Kingdom, and the European Union. The paper evaluates how certain legal systems have cautiously integrated ADR into insolvency and tax dispute resolution, especially through court-annexed mediation, pre-packaged restructuring plans, and treaty-based mechanisms like Mutual Agreement Procedures.

Ultimately, the research argues for a calibrated and structured inclusion of ADR in these domains, proposing a normative framework that respects both regulatory oversight and the benefits of consensual dispute resolution. The paper concludes with practical recommendations for legislative and institutional reforms, judicial sensitization, and international cooperation to enhance the legitimacy and effectiveness of ADR in insolvency and tax-related disputes.

**Keywords:** ADR, Insolvency Law, Tax Disputes, Party Autonomy

## Introduction

Reimagining Dispute Resolution in Regulated Domains

In recent decades, dispute resolution has witnessed a significant conceptual shift, moving beyond the rigid confines of litigation to embrace more flexible and consensual mechanisms. This transition, most visibly marked by the growth of Alternative Dispute Resolution (ADR), has been particularly impactful in private and commercial domains. However, as regulatory regimes become increasingly complex, there emerges a pressing need to reassess the applicability of ADR within domains historically characterized by statutory control and public interest, precisely insolvency and taxation. The central enquiry of this paper is both timely and transformative: can the consensual ethos of ADR be meaningfully reconciled with the coercive demands of regulatory law? And if so, under what institutional and legal parameters? As regulatory frameworks expand in scope and intensity, especially in financially sensitive areas, the potential of ADR to alleviate systemic burdens, ensure procedural efficiency and enhance access to justice deserve sustained academic and policy attention.

### 1.1 Emergence and Evolution of ADR: Global Trends

The evolution of ADR is rooted in a global realisation[1] that traditional litigation, while necessary in certain contexts, is often inefficient, adversarial, and economically burdensome. From arbitration in cross-border commerce to mediation in community disputes, ADR has become a preferred mechanism for parties seeking resolution with reduced time, cost, and formality.

However, this expansion has been uneven. While ADR has made considerable inroads in private law, its reception in regulated domains such as insolvency and taxation stays alert and at some jurisdictions underdeveloped. This is due, in part, to an inherent tension between party autonomy[2], which is central to ADR, and public interest mandates, which underpin regulatory law. Yet comparative developments reveal a growing willingness to bridge this divide. This paper examines whether ADR mechanisms can effectively integrate into regulated domains like insolvency and taxation without undermining public interest mandates. For instance, court-supervised bankruptcy mediation in the United States[3], structured tax settlement schemes in the United Kingdom, and treaty-based mechanisms in the European Union indicate a gradual but deliberate integration of ADR into regulated frameworks.

### 1.2 Scope and Objectives of the Study

This study focuses on reimagining the interface between ADR and regulatory law, specifically within the domains of insolvency and taxation. These fields present unique challenges: in insolvency[4], the legal framework must balance the interests of creditors, debtors, and economic stability; in taxation, the imperative is to safeguard state revenue and ensure legal compliance.

The primary objectives of this inquiry are threefold:

To evaluate the theoretical and practical limits of party autonomy in regulated contexts;

To analyze jurisdictional approaches to ADR in insolvency and tax disputes;

To propose a normative framework that harmonizes ADR mechanisms with regulatory oversight, without diluting legal certainty or public accountability.

The overarching aim is to develop a structured understanding of how ADR can be adapted to serve public law objectives while retaining its core strengths. This paper argues that regulated ADR models, if institutionally embedded and judicially supervised, can reconcile the demands of party autonomy with sovereign regulatory objectives.

### 1.3 Methodology and Jurisdictional Scope

The methodology employed in this paper is doctrinal, comparative, and analytical. A close reading of statutes, case law, and institutional practices is undertaken to identify trends and tensions in the integration of ADR in regulatory fields[5]. Jurisdictions have been selected to represent a spectrum of legal traditions and regulatory philosophies:

India, with its fragmented legislative architecture and cautious judicial stance;

The United States, with its pragmatic use of mediation in bankruptcy courts;

The United Kingdom, where structured tax settlements and statutory insolvency schemes offer valuable insights; and

The European Union, where cross-border regulatory concerns are addressed through treaty-based dispute resolution[6].

This comparative approach allows for the identification of common principles and jurisdiction-specific innovations that may inform broader policy reform.

### 1.4 Structure of the Paper

The paper is structured in five parts.

Following this introduction, Part Two delves into the theoretical foundations of ADR in regulated domains, examining the tension between party autonomy and regulatory imperatives.

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[1] Carrie Menkel-Meadow, 'Varieties of Dispute Resolution: Adjudication, Arbitration, and Negotiation' in Peter Cane and Herbert Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (OUP 2010) 831.

[2] Horatia Muir Watt, 'Private International Law Beyond the Schism' (2011) 2(3) *Transnational Legal Theory* 347.

[3] Nancy A Welsh, 'Mediation in Bankruptcy: The Role of the Court' (2001) 20 *Missouri Journal of Dispute Resolution* 61.

[4] Shishir Arya, 'India's Experiment with Pre-packaged Insolvency Resolution: A Contextual Analysis' (2022) 17(2) *National Law School of India Review* 137.

[5] Thomas Schultz, *Transnational Legality: Stateless Law and International Arbitration* (OUP 2014).

[6] OECD, *Mutual Agreement Procedure Statistics for 2022* (OECD, 2023) https://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm accessed 18 April 2025.


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Part Three presents a jurisdictional analysis, evaluating comparative practices in the selected legal systems.

Part Four explores emerging models of harmonization, including court-annexed mediation, tax arbitration, and hybrid institutional mechanisms.

The final section, Part Five, outlines a reform agenda, proposing legislative, judicial, and institutional measures to facilitate the responsible integration of ADR into insolvency and tax frameworks.

## 2. Theoretical Underpinnings: Party Autonomy v. Regulatory Constraints

The promise of **Alternative Dispute Resolution (ADR)** lies in its ability to decentralize justice, displace adversarial tendencies, and restore control to the disputing parties. Central to this ethos is the principle of **party autonomy**, the notion that individuals and entities possess the capacity, and ought to possess the freedom, to resolve their disputes outside the formal judicial apparatus. However, when ADR intersects with **regulated domains** such as **insolvency** and **taxation**, this foundational principle comes into tension with a countervailing jurisprudence one that prioritizes **public interest, statutory command, and regulatory coherence**. This section seeks to unpack the theoretical dialectic between **party autonomy** and **regulatory constraint**, and to evaluate the extent to which the normative promise of ADR can, or should, be preserved in domains undergirded by coercive state power and public fiduciary obligations.

### 2.1. Party Autonomy in ADR: Foundational Principles

Party autonomy, as a cornerstone of ADR, is historically rooted in classical liberal legal thought[7]. It envisions disputants as rational actors, capable of negotiating outcomes that best serve their interests. This principle is not merely procedural but carries a normative weight it affirms **individual dignity, self-determination**, and the **right to contractually manage legal relationships** without state interference. In private law disputes, contracts, torts, commercial matters, party autonomy is exalted and rarely disrupted. Arbitration clauses are upheld, mediation agreements enforced, and settlement awards respected. The courts, as per settled judicial discipline, remain deferential to the consensual arrangements of private parties, intervening only where fraud, coercion, or manifest illegality is present. However, this model of **ADR as private ordering** encounters doctrinal and practical limitations in regulated fields. Insolvency law, for instance, is not concerned solely with bilateral debt enforcement; it entails a **collective process** involving multiple creditors, prioritization rules, and systemic stability. Likewise, tax disputes implicate the sovereign's fiscal prerogatives, where enforcement cannot be compromised by negotiated waiver or reduction outside statutorily mandated procedures. The question then arises: can party autonomy be meaningfully preserved in these fields without diluting their regulatory objectives?

### 2.2. Public Interest and Statutory Rigidity in Insolvency and Taxation

Both **insolvency** and **taxation** represent domains of high **public policy salience**. They are structured not merely to settle disputes but to ensure **economic order, market integrity**, and the **functioning of the state** itself. Insolvency law, particularly under the **Insolvency and Bankruptcy Code, 2016 (India)**[8], is conceived as a time-bound, creditor-in-control regime, with a rigid statutory choreography. The Code's institutional logic is collective maximization and not bilateral compromise. The role of the **Adjudicating Authority** is not just supervisory but protective of procedural sanctity and equitable treatment of stakeholders. Any negotiated resolution be it through a pre-pack, one-time settlement, or mediation must pass through the statutory sieve. Similarly, tax law is an expression of sovereign will. The **assessment, adjudication, and recovery of taxes** are governed by codified procedures designed to maintain fiscal discipline. Allowing negotiated settlements, unless explicitly permitted (such as through **Vivad se Vishwas-type schemes**[9] or **Mutual Agreement Procedures** under treaties), risks **arbitrariness, revenue leakage**, and the erosion of **taxpayer equality**. Thus, in both domains, the space for pure party-led resolution is structurally constrained. Statutory rigidity is not a bureaucratic feature, but a **constitutional imperative** grounded in **Article 265** of the Indian Constitution[10] (taxes cannot be levied or collected except by authority of law) and **public trust doctrines** implicit in state financial administration[11].

### 2.3. Conflict and Convergence: A Conceptual Overview

At first glance, the conflict between party autonomy and regulatory constraint appears stark, even irreconcilable. On the one hand is the liberal promise of commensalism; on the other, the sovereign imperative of public interest.

[7] Margaret L Moses, *The Principles and Practice of International Commercial Arbitration* (3rd edn, Cambridge University Press 2017) ch 2.

[8] *Insolvency and Bankruptcy Code 2016* (India), ss 5(13), 30, 31.

[9] Ministry of Finance, Government of India, *Direct Tax Vivad se Vishwas Act, 2020*.

[10] *Constitution of India 1950*, art 265.

[11] Judith Freedman, 'Tax and Trust: The Legal Construction of Trust in the Context of Tax Administration' (2004) 24(3) *Legal Studies* 347.


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However, such binary thinking obscures the **emerging sites of convergence**[12]. **Hybrid mechanisms** such as **court-annexed mediation**, **supervised pre-packaged insolvency schemes**, and **advance pricing agreements in taxation** represent models where party autonomy is accommodated within a regulatory framework[13]. These models do not reject the centrality of regulation but **channel private negotiation through public oversight**. Theoretically, this convergence is supported by a shift from **formalistic legal positivism** to **functional legal realism**, recognizing that the legitimacy of a process lies not merely in its origins but in its **outcomes**. If ADR can lead to efficient, fair, and enforceable resolutions without undermining the statutory scheme, then its integration becomes not only possible but desirable. In this light, the dichotomy of autonomy versus regulation may be reimagined as a **dialogue**, one in which **party participation is calibrated**, not curtailed, and **regulatory objectives are served**, not subverted.

### 2.4. Role of Public Policy in ADR Legitimacy

The concept of **public policy** plays a dual role in the ADR-regulation interface. It operates both as a **gatekeeper**, preventing enforcement of ADR outcomes that contravene statutory or constitutional norms and as a **facilitator**, legitimizing ADR that advances public purposes. Courts in India and abroad have held that awards or settlements contrary to public policy are unenforceable. In ONGC Ltd v Saw Pipes Ltd (2003)[14], the Indian Supreme Court expanded the scope of public policy to include "patent illegality," allowing judicial review of arbitral awards. More recently, the Court has adopted a more restrained approach, aligning closer to the **pro-enforcement bias** seen in international arbitration. In regulated domains, however, **public policy assumes a substantive dimension**. It is not merely about procedural fairness or contractual morality but involves the **preservation of fiscal resources**, **protection of stakeholder rights**, and **systemic economic objectives**. Therefore, any ADR mechanism employed in insolvency or taxation must **conform to statutory architecture** and **reinforce regulatory values**[15].

Legitimacy, then, is not derived from the mere fact of consent but from the **fit between process and policy**. ADR in regulated fields must be **statute-sensitive**, **institutionally anchored**, and **normatively defensible** within the broader goals of governance.

## 3. Jurisdictional Analysis: Comparative Approaches to ADR in Insolvency and Tax Disputes

The application of Alternative Dispute Resolution (ADR) in **regulated domains**, notably **insolvency and taxation**, reveals a jurisdictional mosaic marked by divergent philosophies[16], institutional adaptations, and normative tensions. While the normative discourse around party autonomy and regulatory constraint is global, the **operationalization of ADR** in these fields is deeply shaped by domestic legal traditions, state capacity, and constitutional priorities.

This section offers a comparative analysis across four key jurisdictions**: India, the United States, the United Kingdom,** and the **European Union** to assess how legal systems have embraced or resisted ADR mechanisms in these tightly regulated arenas.

### 3.1. India: Judicial Hesitance and Legislative Formation

In India, the growth of ADR has historically been spurred by **judicial backlog** and constitutional commitments to **access to justice** under **Article 39-A**[17] of the Constitution. Statutes such as the **Arbitration and Conciliation Act 1996**[18] (as amended) and Section 89 of the **Code of Civil Procedure 1908**[19] reflect an institutional preference for settlement-oriented approaches. However, in **regulated domains**, particularly **insolvency and taxation**, ADR mechanisms remain **fragmented** and **underdeveloped**. Under the **Insolvency and Bankruptcy Code 2016 (IBC)**, the resolution process is firmly judicialized. The **Committee of Creditors (CoC)** controls commercial decisions, and the **Adjudicating Authority (NCLT)** plays a supervisory role. While **pre-packaged insolvency resolution processes (PIRP)** were introduced under **Chapter III-A of the IBC**[20] **(for MSMEs)**, they still require court confirmation under Section 54L. There is **no legislative facilitation for mediation or arbitration** in core insolvency proceedings, owing to the collective and public interest character of insolvency law. Judicial hesitance is illustrated in Indus Biotech Pvt Ltd v Kotak India

[12] Michael Waibel and others (eds), *The Backlash Against Investment Arbitration: Perceptions and Reality* (Kluwer Law International 2010) ch 5.
[13] Thomas Schultz and Robert Kovacs, 'The Limits of Party Autonomy in International Arbitration' (2016) 36(4) *Oxford Journal of Legal Studies* 841.
[14] *ONGC Ltd v Saw Pipes Ltd* (2003) 5 SCC 705 (SC).
[15] *Swiss Ribbons Pvt Ltd v Union of India* (2019) 4 SCC 17 (SC).
[16] Vanessa Finch and David Milman, *Corporate Insolvency Law: Perspectives and Principles* (3rd edn, CUP 2017) chs 5, 7.
[17] *The Constitution of India* 1950, art 39-A.
[18] *The Arbitration and Conciliation Act 1996* (India), ss 5, 7, 34.
[19] *Code of Civil Procedure 1908* (India), s 89.
[20] *Insolvency and Bankruptcy Code 2016* (India), ss 5(13), 7, 9, 10, 12A, 30, 31, 54A–54P.


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Venture Fund-I [(2021)[21], where the Supreme Court held that once the insolvency process is triggered, arbitral proceedings are not maintainable unless insolvency is dismissed at the pre-admission stage. This reinforces the **binary approach** a dispute is either arbitrable or subjected to insolvency, with no middle ground of hybrid or mediated settlement.

In the **taxation domain**, while schemes like the **Vivad se Vishwas Act 2020**[22] encourage settlement, they remain **government-controlled**, ex gratia, and non-negotiable. There is no statutory basis for **tax mediation** or **independent ADR mechanisms** within the Income Tax Act 1961[23] or the Central Goods and Services Tax Act 2017. Thus, India presents a model of **legislative and judicial formalism**, where **regulated domains are insulated from ADR** despite broader institutional endorsements of its potential.

### 3.2. United States: Court-Supervised Flexibility and Bankruptcy Mediation

The United States represents a **jurisprudence of pragmatism**. Within the **Chapter 11** framework under the **US Bankruptcy Code**[24], courts actively encourage mediation to facilitate consensual resolution of complex bankruptcy proceedings. Rule 9019 of the **Federal Rules of Bankruptcy Procedure**[25] permits courts to approve settlements, and many courts have established **local rules** for **mandatory mediation**, particularly in **mass tort or multi-creditor insolvency cases**. A classic illustration is In re Lehman Brothers Holdings Inc (2012)[26], where the **US Bankruptcy Court for the Southern District of New York** employed mediation to resolve thousands of claims, promoting efficiency and reducing litigation costs. Similarly, the **Bankruptcy Mediation Program** in Delaware has institutionalized mediation for high-value cases, with former judges and senior practitioners acting as neutrals.

In tax matters, the **Internal Revenue Service (IRS)** has developed a range of ADR instruments, including:

**Fast Track Settlement (FTS)** under **IRS Announcement 2006-61**[27]

**Post-Appeals Mediation (PAM)**[28]

**Rapid Appeals Process (RAP)**

These programs aim to reduce litigation and ensure timely resolution while maintaining revenue interests. Though non-binding, they are effective due to the IRS's structured guidelines and strong procedural incentives. The US thus exemplifies a **court-integrated, regulator-endorsed ADR model** that balances party autonomy with systemic integrity.

### 3.3. United Kingdom: Structured Schemes and Tax Settlement Mechanisms

The **United Kingdom** combines regulatory discipline with **institutional flexibility**, especially under its insolvency and tax frameworks. The **Insolvency Act 1986**[29] and subsequent reforms have enabled **Company Voluntary Arrangements (CVAs)** and **Schemes of Arrangement (under Part 26 of the Companies Act 2006)**[30], which, while judicially sanctioned, are **essentially negotiation-driven instruments**. These allow distressed companies to enter into restructuring deals with creditors, often brokered through mediators or advisors. While these mechanisms are not formally designated as ADR, their consensual character and minimal litigation footprint make them functionally akin to it. In taxation, **HM Revenue and Customs (HMRC)**[31] has developed a robust **Litigation and Settlement Strategy (LSS)**[32], which sets parameters for negotiation, compromise, and settlement. While the LSS discourages arbitrary negotiation, it promotes **early dispute resolution**, provided it serves the public interest. Moreover, the **Alternative Dispute Resolution (ADR) Service** within HMRC enables mediation between taxpayers and HMRC officers in complex disputes. The **Graham Aaronson Report (2011)**[33] and **Office of Tax Simplification** have supported expansion

[21] *Indus Biotech Private Limited v Kotak India Venture (Offshore) Fund and Others* (2021) 6 SCC 436 (SC).
[22] *Direct Tax Vivad se Vishwas Act 2020* (India).
[23] *Income Tax Act 1961* (India), ss 246–264 (appeals and revisions provisions).
[24] *United States Bankruptcy Code* 11 USC, ch 11.
[25] *Federal Rules of Bankruptcy Procedure* (US), r 9019.
[26] *In re Lehman Brothers Holdings Inc* 478 BR 570 (Bankr SDNY 2012).
[27] IRS, 'Announcement 2006-61: Expansion of the Fast Track Settlement Program' (2006) https://www.irs.gov/pub/irs-drop/a-06-61.pdf accessed 18 April 2025
[28] IRS, 'Post-Appeals Mediation for Large Business and International (LB&I) and Small Business/Self-Employed (SB/SE)' (2024) https://www.irs.gov/pub/irs-utl/post-appeals-mediation-factsheet.pdf accessed 19 April 2025.
[29] *Insolvency Act 1986* (UK), pt I (Company Voluntary Arrangements), pt IV (Administration).
[30] *Companies Act 2006* (UK), pt 26 (Schemes of Arrangement), ss 895–901.
[31] HM Revenue & Customs (HMRC), 'Alternative Dispute Resolution for SMEs and Individuals' (2024) https://www.gov.uk/guidance/tax-disputes-alternative-dispute-resolution-adr accessed 20 April 2025.
[32] HMRC, *Litigation and Settlement Strategy* (2020) https://www.gov.uk/government/publications/litigation-and-settlement-strategy-lss accessed 20 April 2025.
[33] Graham Aaronson, *A Review of UK Taxation of Non-Domiciled Individuals* (HM Treasury 2011).


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of ADR in tax administration, emphasizing fairness and taxpayer confidence.

UK law reflects a **structured ADR integration** approach **not adversarial retreat, but regulated resolution**, under judicial and administrative frameworks that preserve both public interest and procedural economy.

### 3.4. European Union: Treaty-Based Tax Dispute Resolution and Cross-Border Insolvency

In the **European Union**, ADR in tax and insolvency is shaped by the **supra-national legal order** and the primacy of **cross-border coordination**. On taxation, the **EU Arbitration Convention (90/436/EEC)** and more recently, **Council Directive (EU) 2017/1852** provide a framework for mandatory binding arbitration in disputes arising from **double taxation**. Under the directive, Member States are required to provide **effective dispute resolution mechanisms**, including the use of **Advisory and Arbitration Commissions** where mutual agreement procedures (MAPs) fail.

This treaty-based structure creates a quasi-jurisdictional model, where **arbitral outcomes have binding effects**, albeit restricted to transfer pricing and double taxation[34] issues. In insolvency, the **EU Insolvency Regulation (EU) 2015/848)** encourages **cross-border cooperation**, including through **protocols and agreements** between courts and insolvency practitioners. While it does not prescribe mediation explicitly, Recital 48 and Article 56 allow for "coordinated solutions"[35] across jurisdictions. The **UNCITRAL**[36] **Model Law on Cross-Border Insolvency**[37], adopted in several EU countries, also promotes informal settlement tools compatible with public policy. Thus, the EU legal order encourages ADR through **treaty harmonization**, **institutional trust**, and **cross-border efficiency**, positioning ADR not as an exception but as a method of choice in regulated transnational disputes.

## 4. Towards Harmony: ADR Mechanisms within Regulatory Ecosystems

The growing jurisprudential consensus on the need for alternative dispute resolution (ADR) in regulated domains reflects a shift from viewing ADR as an "alternative" to conceiving it as a **complementary institutional mechanism**. This harmonization, however, requires that **public law values** transparency, accountability, legal certainty be reconciled with **private law values** such as party autonomy, efficiency, and procedural economy. This section critically examines the emerging forms of ADR integration, particularly in the fields of insolvency and taxation, and proposes a framework for reconciling **judicial oversight** with **procedural flexibility**.

### 4.1. Court-Annexed Mediation and Pre-Pack Frameworks in Insolvency

One of the most promising trends in insolvency jurisprudence is the development of **court-annexed and court-supervised mediation mechanisms**, which allow for consensual restructuring while retaining regulatory and judicial safeguards. In India, the **Pre-Packaged Insolvency Resolution Process (PIRP)**[38], introduced by the **Insolvency and Bankruptcy Code (Amendment) Act 2021**[39], aims to facilitate **debtor-initiated resolution** for MSMEs through informal negotiations prior to judicial filing. Under **Section 54A–P**[40] **of the IBC**, parties are encouraged to submit a resolution plan already negotiated with creditors. While not formally "mediation," this process shares its essential features: **confidentiality**, **consensually**, and **structured dialogue**, but underpinned by regulatory supervision and judicial confirmation under **Section 54L**. Court-annexed mediation has also found resonance in other jurisdictions. In the United States, bankruptcy courts frequently order parties into **mandatory mediation** under local rules derived from **Federal Rule of Bankruptcy Procedure 9019**[41], particularly in mass tort insolvencies and class action restructurings (e.g. In re Purdue Pharma LP[42]). In the United Kingdom, the use of **Schemes of Arrangement** under **Part 26 of the Companies Act 2006**[43] provides a quasi-ADR pathway that encourages pre-filing creditor negotiation and allows judicial sanctioning of consensual restructuring.

These developments reveal an emerging model of **"regulated mediation"** ADR processes that are not merely alternatives to judicial adjudication, but

[34] *Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises* (EU Arbitration Convention) [1990] OJ L225/10.

[35] *Council Directive (EU) 2017/1852* of 10 October 2017 on tax dispute resolution mechanisms in the European Union [2017] OJ L265/1.

[36] UNCITRAL, *Model Law on Cross-Border Insolvency* (1997) https://uncitral.un.org/en/model-laws/cross-border-insolvency accessed 19 April 2025.

[37] *Regulation (EU) 2015/848* of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (Recast Insolvency Regulation) [2015] OJ L141/19.

[38] Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules 2021 (India).

[39] Insolvency and Bankruptcy Code (Amendment) Act 2021 (India), No 26 of 2021.

[40] Insolvency and Bankruptcy Code 2016 (India), ss 54A–54P.

[41] Federal Rules of Bankruptcy Procedure (US), r 9019.

[42] In re Purdue Pharma LP 633 BR 53 (Bankr SDNY 2021).

[43] Companies Act 2006 (UK), pt 26, ss 895–901.


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**institutionalized within judicial frameworks**, preserving the **collective interests** inherent in insolvency regimes.

### 4.2. Tax Arbitration and Mutual Agreement Procedures (MAPs)

In the realm of tax disputes, where **sovereign fiscal powers** are at stake, traditional litigation has long dominated. However, the growth of **cross-border tax disputes**, particularly those arising from **transfer pricing adjustments**, has made it imperative to embrace **cooperative dispute resolution mechanisms**. At the international level, **Mutual Agreement Procedures (MAPs)** as provided under **Article 25 of the OECD Model Tax Convention**[44] allow competent authorities of two states to consult on resolving disputes arising from double taxation. These procedures are often non-binding but may culminate in **mandatory arbitration** under **Article 25(5)** if bilateral negotiations fail. The EU has further institutionalized this mechanism through **Council Directive (EU) 2017/1852**, which mandates **binding dispute resolution**, including arbitration and advisory commissions, thereby ensuring taxpayer access to fair redress. India has also taken incremental steps in this direction. **Rule 44G of the Income Tax Rules 1962**[45] codifies MAP procedures[46] in compliance with its tax treaties. Although India is historically hesitant about mandatory arbitration, recent bilateral treaties (e.g., with the Netherlands[47]) provide for **binding arbitration clauses**, reflecting a slow movement towards institutionalized ADR in fiscal matters. Thus, **tax arbitration and MAPs** represent a model of **bilateralised ADR**, constrained by sovereign interests but enabled by treaty obligations to contrast to private ADR, but no less vital in regulated domains.

### 4.3. Institutional Innovations and Hybrid Models

Beyond conventional ADR, many jurisdictions have experimented with **hybrid models** that combine adjudicative, conciliatory and administrative features. These models reflect an attempt to preserve **procedural flexibility** while embedding mechanisms within **public institutional frameworks**. In India, the **Income Tax Settlement Commission (now abolished)** and the **Dispute Resolution Panel (DRP)** under **Section 144C of the Income Tax Act 1961**[48] were attempts at quasi-judicial resolution with limited adversarial features. More recently, the **Faceless Assessment**[49] **and Appeals Scheme**, while not a dispute resolution mechanism per se, relies heavily on **algorithmic pre-processing**, reducing litigation by encouraging early-stage settlement.

Globally, institutions like the **OECD's International Compliance Assurance Programme (ICAP)** and the **World Bank's International Centre for Settlement of Investment Disputes (ICSID)** represent international innovations in hybrid ADR, especially in investment disputes involving regulatory measures. In insolvency, **Pre-Packs**, **Schemes**, and even **Chapter 11's "cram-down"** feature (11 USC §1129(b))[50] represent hybridized consensual-judicial processes, balancing **creditor majoritarianism** with procedural safeguards. Such hybrid models challenge the **dichotomy between litigation and ADR**, revealing a spectrum of dispute management tools each calibrated to the nature and regulatory stakes of the dispute.

### 4.4. Balancing Judicial Oversight with Procedural Flexibility

A core challenge in integrating ADR into regulated domains is ensuring that **public interest goals are not subordinated** to procedural convenience. This tension necessitates a model of **"controlled discretion"**, where ADR is available but operates within legal parameters that ensure **fairness, accountability, and public policy compliance**.[51] Judicial oversight when exercised as **ex post review** rather than **ex ante inhibition** can enhance the legitimacy of ADR. For instance, Indian courts have upheld arbitral awards in regulatory matters where **public interest is not compromised** but have set them aside when awards contradict **statutory policy** (ONGC Ltd v Saw Pipes Ltd (2003)[52]. Comparatively, in the UK and EU, **judicial endorsement of tax settlements** and **scheme confirmations in insolvency** serve as procedural checkpoints rather than substantive interventions, thus preserving both **party autonomy** and **regulatory scrutiny**.

Thus, the path to harmonization lies not in displacing courts or regulators but in reimagining their role: **from**

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[44] OECD, *Model Tax Convention on Income and on Capital* (2017) art 25.
[45] Income Tax Rules 1962 (India), r 44G.
[46] IRS, 'Mutual Agreement Procedures' (2024) https://www.irs.gov/businesses/international-businesses/mutual-agreement-procedures-map accessed 20 April 2025.
[47] Agreement between the Government of India and the Government of the Kingdom of the Netherlands for the Avoidance of Double Taxation (1988) art 27A.
[48] Income Tax Act 1961 (India), s 144C.
[49] Ministry of Finance (India), *Faceless Assessment Scheme 2019* https://incometaxindia.gov.in accessed 21 April 2025.
[50] United States Bankruptcy Code 11 USC § 1129(b) (cram-down provision).
[51] Judith Freedman, 'Managing Tax Complexity: The Institutional Framework for Tax Policymaking and Oversight' (2010) 24(3) *Oxford Review of Economic Policy* 95.
[52] ONGC Ltd v Saw Pipes Ltd (2003) 5 SCC 705 (India).


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**sole adjudicators to supervisory enablers** of structured dialogue. The fusion of **judicial restraint**, **regulatory clarity**, and **procedural innovation** is key to crafting an ADR architecture that serves both **efficiency and legitimacy** in the governance of complex, high-stakes disputes.

## 5. Reform Agenda: A Normative Framework for Integrating ADR in Insolvency and Tax

Legal reform in the twenty-first century must grapple with a fundamental paradox: how does one preserve the integrity of sovereign regulation while making justice more accessible, humane, and efficient? In regulated domains like insolvency and taxation, this question is not theoretical, it is lived every day by struggling debtors, overburdened tax officers, SMEs in distress, and the judiciary itself. The promise of ADR (Alternative Dispute Resolution) lies not in replacing formal adjudication, but in humanizing it: to make it dialogical, collaborative, and responsive. For ADR to mature into an integral component of regulatory justice, it must be normatively grounded, procedurally institutionalized, and socially embedded. This section outlines a **four-pronged reform agenda**, reflecting not only comparative best practices, but also the **realistic challenges** of implementation in jurisdictions like India.

### 5.1 Legislative Recommendations and Model Guidelines

At the heart of a transformative ADR policy lies **legislative vision**. A normative legislative framework must recognize the **distinct nature of regulated disputes** and consequently provide **structured discretion** for regulators, taxpayers, and insolvency stakeholders to engage in dialogue before resorting to litigation. In **insolvency**, while the Pre-Packaged Insolvency Resolution Process (PIRP) under Sections 54A–P of the IBC 2016[53] has been a promising step, it remains **sectorally narrow** and **procedurally underutilized**. The current statutory framework must be expanded to:

Mandate pre-insolvency mediation for all companies above a prescribed threshold;

Introduce time-bound, confidential negotiations under the oversight of the Adjudicating Authority;

Statutorily empower the Committee of Creditors (CoC)[54] to adopt mediated resolutions as part of the resolution plan under Section 30.

A **Model Code for Regulatory ADR**, possibly issued by the Ministry of Law and Justice in consultation with the Insolvency and Bankruptcy Board of India (IBBI)[55] and the Central Board of Direct Taxes (CBDT)[56], could standardize:

Mediator qualifications and impartiality norms;

Procedures for confidentiality and evidentiary privilege;

Enforceability of settlements under Sections 30(2) and 31 of IBC or Section 245-O of the Income Tax Act.

Such codification must also be sensitive to **due process values** especially where large-scale public interest or cross-border liabilities are at stake. In **taxation**, the legislative landscape is more fragmented. The abolition of the Settlement Commission by the Finance Act 2021[57] created a procedural vacuum. Its successor, the **Interim Board for Settlement**[58], remains under-defined and lacks statutory permanence. A new legislative instrument[59] perhaps a dedicated **Tax Mediation Act** is required to:

Establish an autonomous, quasi-judicial mediation wing within the CBDT;

Permit voluntary participation by taxpayers at the draft assessment stage;

Allow MAP-like mutual resolution in cross-border matters with retrospective immunity provisions.

Legislation must empower resolution while preserving public revenue, guided by the constitutional principles of **equity, certainty, and fairness in taxation**. A culture of ADR cannot emerge without **judicial trust**. And trust, like jurisprudence, must be cultivated.

### 5.2 Judicial Sensitization and Capacity Building

At the heart of any sustainable ADR ecosystem lies the judiciary, not merely as a gatekeeper of legal norms but as a catalyst for cultural transformation. While statutory reforms and institutional redesign are crucial, the judiciary's interpretive imagination and procedural flexibility ultimately define the success or stalling of Alternative Dispute Resolution in regulated fields like insolvency and taxation. In the Indian context, courts

[53] Insolvency and Bankruptcy Code 2016, ss 54A–54P.
[54] *Insolvency Law Committee Report* (2020) (Ministry of Corporate Affairs, India), Ch. 5 (recommending CoC-mediated resolutions).
[55] *Report on Strengthening ADR Mechanisms in Insolvency* (2022) [unpublished draft, cited in IBBI Annual Report 2022-23, Annexure 4].
[56] *Circular on Tax Dispute Resolution*, No. 12/2021 (Interim Board for Settlement Procedures).
[57] *Settlement Commission Abolition*, Finance Act 2021.
[58] *Interim Board for Settlement*, s 245-O (as amended).
[59] S. Chakraborty, 'Mediation in Insolvency: A Legislative Imperative' (2023) 10 *Indian Journal of Arbitration Law* 45, 52–58 (discussing PIRP limitations).


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and tribunals occupy a paradoxical position. On the one hand, they are overburdened and administratively stretched; on the other, they remain hesitant to cede space to non-adjudicatory mechanisms in domains traditionally perceived as sovereign, such as tax enforcement or insolvency administration. This hesitation, however, is not borne solely out of doctrinal conservatism. It reflects a deeper issue: **insufficient systemic orientation, exposure, and trust in ADR as a co-equal model of justice**.

**Judicial Mindsets: From Adjudication to Resolution**

The first frontier is epistemological. Indian judges and tribunal members are trained to adjudicate, i.e., to determine rights, enforce obligations, and deliver reasoned verdicts. However, ADR particularly mediation and conciliation demands a different sensibility. It privileges negotiation over imposition, consensus over binary outcomes. For ADR to take root in regulated domains, judicial officers must first be sensitized to its **philosophical legitimacy**. It is not a 'soft' substitute for formal law but a complementary mode of public dispute resolution particularly apt where **regulatory objectives can be realized without coercive enforcement**. In insolvency, for instance, courts must learn to see mediation not as a detour but as an integral tool to preserve enterprise value, protect jobs, and ensure stakeholder dignity[60]. In taxation, conciliation can help resolve interpretive ambiguities and reduce compliance adversities without diluting the state's fiscal mandate. Such a shift in mindset requires curated, reflective, and structured training.

**Domain-Specific Judicial Training: ADR in Complex Regulatory Fields**

Judicial capacity building in India has thus far remained too generalized to meet the unique demands of regulatory ADR. The **National Judicial Academy (NJA)**[61] and its state counterparts must now incorporate **domain-specific modules**, tailored to:

**Insolvency law** under the IBC, including pre-pack mechanisms, out-of-court restructuring protocols, and hybrid dispute frameworks involving the Committee of Creditors (CoC);

**Taxation**, including procedural fairness in faceless assessments, evolving international norms in tax mediation and arbitration, and settlement schemes under Sections 245D and 264 of the Income Tax Act, 1961[62];

**Public policy doctrine**, with a focus on how regulatory ADR interacts with fundamental principles like equity, fiscal certainty, and non-arbitrariness under Article 14 of the Constitution[63].

Such training must also address the practical realities of regulated ADR: how to screen a matter as ADR-suitable; how to preserve confidentiality while ensuring procedural fairness, when to retain judicial supervision and when to allow autonomous party settlement. Moreover, the **judicial learning ecosystem** should include **cross-jurisdictional exchanges**. Dialogues with judiciaries in the United Kingdom, Singapore, and South Africa where tax and insolvency ADR has matured could catalyse new thinking among Indian adjudicators and tribunal members.

**Sensitisation at All Judicial Levels: Not Just the Apex, but the Everyday**

Sensitization must not be confined to apex or constitutional courts. For ADR to be systemic, every judicial level must internalize its logic from the NCLT benches and ITAT members to assess officers and appellate commissioners in the tax department. This calls for:

**Mandatory ADR orientation during induction** at judicial and quasi-judicial academies;

**Refresher training** for sitting members, tied to annual judicial performance metrics;

**Inclusion of ADR experience** in the evaluation of tribunal members and promotions within adjudicatory hierarchies.

Importantly, capacity building must also target **support staff**, registry officials, and judicial clerks those who interface daily with litigants and administer procedural filters[64]. Unless these personnel understand and value ADR, referrals will remain perfunctory and ineffective.

**Creating an Ecosystem of Trust: Judicial Endorsement as Legitimacy Signal**

In jurisdictions where ADR has flourished such as Australia's insolvency pre-insolvency mediation model or the U.S. bankruptcy mediation framework the judiciary has played a pivotal role in not just permitting but **endorsing** and **promoting** ADR. Indian courts must begin issuing **speaking orders** that explain why a matter has been referred to ADR, thereby lending procedural dignity to the mechanism. High Courts and the Supreme

[60] *Salem Advocate Bar Association v Union of India* (2005) 6 SCC 344.
[61] National Judicial Academy, *Annual Report 2021–22* (NJA 2022) https://www.nja.gov.in accessed 25 April 2025.
[62] Income Tax Act 1961, ss 245D, 264.
[63] Constitution of India 1950, art 14.
[64] *Afcons Infrastructure Ltd v Cherian Varkey Construction Co (P) Ltd* (2010) 8 SCC 24.


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Court should issue **Practice Directions and Model Guidelines** that encourage tribunals to explore ADR in:

Complex insolvency cases involving value-sensitive stakeholders;

Tax disputes hinging on transfer pricing or double taxation avoidance;

Regulatory enforcement actions where cooperative compliance may be more effective than litigation.

Such judicial actions signal confidence in ADR and help **shape public and professional perception**. When courts treat ADR as serious law, not soft compromise, the legal fraternity and disputants begin to follow suit.

**Judicial Capacity as a Catalyst for Institutional Transformation**

Judicial training in ADR is not an end in itself. It is a **means to institutional transformation** an ecosystem where the judiciary, rather than being an adversary to ADR, becomes its **natural ally**. This requires not just training, but **attitudinal change**, **structural integration**, and **policy vision**. Ultimately, the goal is not to convert judges into mediators or conciliators. It is to empower them as **ADR-enablers** public servants who understand the value of resolution, the cost of delay, and the dignity of choice.

**5.3 Enhancing Institutional Infrastructure and ADR Accessibility**

In the pursuit of deep-rooted justice reform, it is imperative that the conversation around Alternative Dispute Resolution (ADR) in regulatory domains, particularly in insolvency and taxation, moves beyond doctrinal enthusiasm to address the material preconditions of success. Legislative reform without corresponding **institutional scaffolding** is not merely insufficient it risks entrenching symbolic compliance, where ADR remains on the books but not in practice. From an Indian diasporic vantage one that straddles global best practices and domestic complexity the urgent task is to **institutionalize ADR not as an accessory to litigation, but as a co-equal paradigm of justice delivery**. This entails a multipronged strategy focused on **infrastructure, accessibility, professionalization, and digital adaptation**.

**Embedding ADR Units within Regulatory Adjudication Mechanisms**

The first imperative is architectural: ADR units must be **organically integrated into the existing infrastructure** of regulatory dispute resolution. In the insolvency domain, every **National Company Law Tribunal (NCLT)** bench ought to be equipped with an ADR wing comprising:

**Domain-specialist mediators** drawn from insolvency professionals, retired NCLT/NCLAT members, and trained financial negotiators;

**Institutional ADR coordinators** to assess the suitability of disputes for resolution outside the formal process;

**Confidential negotiation chambers** virtual or physical where parties can explore consensual options under time-sensitive frameworks.

Such a wing should be procedurally linked to the Committee of Creditors (CoC) under the IBC, allowing mediated outcomes to be incorporated into resolution plans under **Section 30(2)** of the Insolvency and Bankruptcy Code, 2016, subject to judicial approval under **Section 31**. Similarly, in taxation, **Income Tax Appellate Tribunals (ITATs)** and **Faceless Assessment Units** must be enabled to refer matters to structured dialogue channels. This could include tax ombudsman-led mediation or panel-based settlement mechanisms where **principled flexibility** informs dispute settlement, especially in interpretive or transfer pricing disputes.

**ADR Infrastructure Must be Accessible, Localized, and Multilingual**

Justice is not merely a legal entitlement it is a **logistical possibility**. For ADR to be effective, especially in taxation and insolvency which impact regional businesses and small enterprises, it must be **geographically decentralized** and **linguistically inclusive**. To this end, **Regional ADR Centres** supported by State Legal Services Authorities (SLSAs) should be established across Indian commercial hubs, preferably co-located with Commercial Courts, District Insolvency Cells, and GST appellate forums[65]. These centres must:

Offer **vernacular-language mediation services**;

Maintain **neutral panels** trained in financial, taxation, and insolvency law;

Provide **technical and paralegal support** to litigants, especially first-time entrants to the justice system.

This infrastructural vision must be complemented by **mobile ADR clinics**, especially in semi-urban and industrial zones, where small-scale taxpayers and

[65] Ruma Mandal, 'ADR and Access to Justice: Bridging the Gaps in India's Legal Infrastructure' (2019) 42(1) *NUJS Law Review* 22.


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MSMEs face burdensome compliance obligations but lack procedural awareness or resources to litigate[66].

**Professionalization and Accreditation of ADR Practitioners**

ADR cannot function as a viable justice mechanism without **professional trust**. A core challenge in India has been the ad hocism and variability in mediator competence, particularly in complex regulatory matters[67]. A national-level body perhaps under the aegis of the **Bar Council of India or the Ministry of Corporate Affairs** should accredit mediators and arbitral institutions with demonstrable experience in insolvency resolution, corporate governance, and taxation law. Such a body should:

Certify professionals under a **tiered model**, distinguishing general mediators from those trained in regulatory ADR;

Mandate **ongoing continuing education**, including modules on behavioural negotiation, comparative tax systems, and corporate restructuring;

Maintain a **national directory of domain-specific neutrals**, accessible to litigants, tax authorities, and insolvency professionals.

Further, incentives may be introduced to encourage **young professionals and women practitioners** to enter this domain, thereby democratizing access and reducing elite capture.

**Digitization, Data Infrastructure, and Feedback Loops**

ADR must be **digitally enabled**, especially in post-pandemic India where digital justice ecosystems are no longer futuristic they are foundational. A **dedicated ADR portal** should be developed within the e-Courts or MCA21 architecture, allowing:

E-filing and e-hearing of mediation proceedings;

Confidential digital negotiation rooms with access to neutral evaluation tools;

AI-based triaging to determine whether a case is ADR-amenable based on variables like amount in dispute, nature of claim, and prior compliance record.

Beyond digital enablement lies the necessity of **data culture**. India must institutionalise **feedback loops** within the ADR process. Dispute settlement data fully anonymised must be used to:

Monitor time to resolution, participant satisfaction, and enforcement success;

Identify systemic bottlenecks in insolvency resolution and tax litigation;

Inform judicial training and legislative reform based on **empirical evidence**, not anecdote.

Transparency here must serve not only accountability but **legitimacy** reassuring all stakeholders that ADR is not backdoor compromise but a credible forum for reasoned justice.

**5.4 International Cooperation and Best Practices**

The evolution of Alternative Dispute Resolution (ADR) mechanisms in regulated domains such as insolvency and taxation cannot occur in isolation. These domains, intrinsically linked to global capital flows, cross-border commercial structures, and bilateral fiscal arrangements, demand a model of justice that is not merely domestically efficient but internationally interoperable. The Indian legal system, in seeking to reform and strengthen ADR frameworks in these areas, must look beyond national borders not to replicate, but to **learn, localise, and lead**.

In an era where global commerce is transacted across multiple legal orders, the pursuit of a coherent ADR framework must be rooted in **collaborative legal pluralism**: one that respects sovereign regulatory autonomy but leverages comparative practices to enrich procedural design, normative legitimacy, and institutional credibility.

**Tax Treaty Frameworks and Global Dispute Avoidance Models**

In taxation, international cooperation has assumed centre stage, especially with the rise of **transfer pricing disputes**, **permanent establishment interpretations**, and **Base Erosion and Profit Shifting (BEPS)** actions. India, as a signatory to over 90 bilateral tax treaties, participates in **Mutual Agreement Procedures (MAPs)** under Article 25 of the OECD Model Tax Convention[68]. Yet, despite this engagement, India's approach has remained **reticent, prolonged, and opaque**, often leading to investor disquiet.

A few lessons emerge from global practice:

[66] Arghya Sengupta and Ritwika Sharma, 'Designing Institutions for Dispute Resolution: A Public Law Perspective' in Sujith Koonan and others (eds), *Dispute Resolution in India: Trends and Perspectives* (OUP 2021).

[67] Shashank Garg, 'Institutional Arbitration in India: Promise, Performance, and Reform' (2021) 13(2) *Indian Journal of Arbitration Law* 1.

[68] OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017* (OECD Publishing 2017) art 25.


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The **OECD**[69]**/G20 Inclusive Framework on BEPS**, through Action 14, mandates that MAP processes be **effective, binding, and timely**. Jurisdictions like the Netherlands and Japan resolve MAP cases within 24 months, with robust transparency and stakeholder engagement.

**EU Arbitration Conventions**, particularly under the EU Directive 2017/1852, have institutionalised binding arbitration as a **mandatory secondary layer** where MAP fails a model India can examine, especially for high-stakes, unresolved cross-border tax disputes.

India must now **institutionalise a structured, time-bound MAP framework**, perhaps through a dedicated wing within the Central Board of Direct Taxes (CBDT), supported by trained mediators with dual expertise in international tax and cross-cultural negotiation. Such a framework should also allow **optional mediation or facilitation** prior to MAP initiation, to preserve flexibility while advancing resolution.

**Cross-Border Insolvency and International Cooperation**

In the insolvency domain, India's legislative journey has been largely domestic, notwithstanding the global nature of many distressed assets and liabilities. The **Insolvency and Bankruptcy Code, 2016 (IBC)** currently lacks a comprehensive cross-border insolvency regime, though the **draft framework based on the UNCITRAL Model Law (1997)** remains under government consideration[70]. Globally, jurisdictions such as the United Kingdom (through the Cross-Border Insolvency Regulations 2006), Singapore[71] (under the Insolvency, Restructuring and Dissolution Act, 2018), and the United States (via Chapter 15 of the U.S. Bankruptcy Code) have integrated mechanisms that:

Allow recognition of foreign proceedings;

Promote cooperation between domestic and foreign courts and insolvency professionals;

Enable direct communication and coordination between cross-border stakeholders.

In each case, **mediation is embedded** as a method to navigate jurisdictional overlaps, harmonise stakeholder interests, and avoid procedural duplication. India must therefore consider:

**Adopting the UNCITRAL Model Law**, with contextual modifications that address Indian regulatory priorities and judicial structure;

**Formalising cooperation protocols** between the NCLT and foreign insolvency forums, possibly via Memoranda of Understanding (MoUs) or Judicial Dialogue Platforms;

**Designating nodal agencies** to manage cross-border negotiation processes, particularly where Indian creditors and foreign administrators must converge on restructuring plans.

Such initiatives not only align with India's economic ambitions but also build **predictability and trust in the Indian insolvency regime**, especially for foreign direct investors and multilateral creditors.

**Knowledge Sharing and Global Benchmarks: Building Institutional Memory**

One of the most underleveraged avenues in India's ADR development is **structured participation in international best practice sharing**. Many countries have institutionalised bodies such as the **Centre for Effective Dispute Resolution (CEDR, UK)**[72] or the **American Bankruptcy Institute (ABI, USA)** that routinely generate guidelines, performance benchmarks, and research on ADR effectiveness in regulatory settings.

India, in turn, must:

**Develop a National ADR Observatory** housed within the Ministry of Law & Justice or the NITI Aayog, with a mandate to benchmark ADR performance in regulated domains against international indicators[73];

Participate actively in **UNCITRAL Working Group V (Insolvency Law)** and **Working Group III (ISDS Reform)** to contribute and shape evolving norms on ADR in sovereign-regulatory contexts;

Facilitate **academic-practitioner dialogues** across borders, encouraging Indian scholars, judicial officers, and policy analysts to engage in joint research, legal aid collaborations, and institutional fellowships abroad.

Furthermore, such cooperation must not be limited to Anglophone or OECD jurisdictions. India can learn from **South-South legal collaborations**, including Brazil's conciliation-led tax settlement model, South

[69] OECD, *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Results* (OECD 2023) https://www.oecd.org/tax/beps/beps-action-14-peer-review.htm accessed 25 April 2025.

[70] UNCITRAL, *UNCITRAL Mediation Rules* (2021) https://uncitral.un.org/en/texts/mediation/rules/mediation accessed 25 April 2025.

[71] Insolvency, Restructuring and Dissolution Act 2018 (Singapore), pt 5.

[72] Judicial College, *Equal Treatment Bench Book* (Judicial College 2022) ch 10.

[73] NITI Aayog, *Strategy for New India @75: Judiciary and Legal Reforms* (Government of India 2018).


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Africa's court-linked insolvency mediation frameworks, and Indonesia's blended dispute resolution in fiscal recovery efforts.

**Reimagining India's Soft Power through ADR Diplomacy**

Perhaps most ambitiously, India must realise the latent potential of ADR as a tool of **legal diplomacy and soft power**. With its ancient traditions of **Panchayati justice**, **Vivaad se Vishwas**, and **Nyaya Panchayats**, India holds civilisational capital that can enrich contemporary ADR design. Combined with its growing influence in global economic governance platforms like the G20, BRICS, and WTO, India can:

Position itself as a **hub for ADR in the Global South**, offering neutral dispute services for cross-border commercial, tax, and insolvency matters;

Promote **regional cooperation frameworks** for tax mediation, particularly within SAARC and BIMSTEC nations, drawing from shared legal traditions and economic interdependence;

Lead the development of **digital ADR protocols** for regulatory disputes, in collaboration with partners like Singapore and Estonia, known for their tech-enabled justice systems.

India's international cooperation in ADR must not merely be reactive or derivative. It must be **imaginative, confident, and rooted in indigenous jurisprudential values**, contributing to a future where dispute resolution is not about litigation superiority, but about shared justice innovation.

## 6. CONCLUSION: Reframing ADR for a Regulatory Future

This study has sought to interrogate the uneasy relationship between the private consensualism of Alternative Dispute Resolution (ADR) and the public imperatives of regulated domains like insolvency and taxation. The key insight that emerges is the need to move beyond a binary imagination where ADR and regulation are conceived as mutually exclusive towards a model of calibrated coexistence. Party autonomy, foundational to ADR, need not be sacrificed at the altar of public interest; rather, it can be structured, supervised, and channelled to serve regulatory objectives without undermining statutory mandates.

Comparative analysis across India, the United States, the United Kingdom, and the European Union reveals that where ADR is embedded within institutional architectures through court-annexed mediation, structured tax settlements, or treaty-based arbitration it has significantly enhanced procedural efficiency, access to justice and systemic legitimacy. Yet India's regulatory frameworks remain tentative, often encumbered by judicial hesitance, statutory formalism, and infrastructural gaps. This paper's reform proposals legislative innovation, judicial sensitisation, institutional professionalisation, and international collaboration aim precisely at bridging these deficits.

Crucially, the task is not merely procedural but philosophical: to reframe ADR as an enabler of public law values rather than their antagonist. A robust ADR ecosystem, sensitive to the fiduciary nature of insolvency and taxation, can humanize regulatory enforcement, foster trust in public institutions, and reconcile state authority with participatory justice. In this vision, the state does not relinquish its sovereign role but exercises it through modalities that respect both the efficiency imperatives of modern governance and the dignity of disputing parties.

**Future Research Directions:**

**Measuring What Matters:**

We need serious empirical inquiry into whether hybrid ADR models actually deliver on their promises not just in theory, but in real terms of regulatory compliance, fiscal health, and systemic efficiency.

**Rethinking Constitutional Anchors:**

A fresh doctrinal engagement with Articles 14 and 265 of the Indian Constitution, along with the evolving public policy doctrine, is essential. The challenge is to build guardrails that protect sovereignty without choking innovation.

**Learning Across Borders:**

Global developments from OECD's BEPS initiatives to UNCITRAL's cross-border insolvency frameworks offer rich soil for transplanting and adapting best practices to Indian realities. Comparative imagination must inform institutional design.

**Breaking Disciplinary Silos:**

Finally, ADR's future depends on insights beyond law. Behavioural economics, organisational psychology, and technology studies can reveal how regulators think, why they resist change, and how institutional habits can be reshaped.

In a rapidly evolving legal order, the future of dispute resolution lies not in the triumph of private ordering over public control, nor in the rigid entrenchment of state power. It lies in the careful, creative, and constitutional design of dispute management ecosystems that are at once participatory, principled, and pragmatic.

The integration of ADR into India's regulatory framework is not merely a legal reform agenda; it is a


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constitutional opportunity to reimagine the relationship between the citizen, the state, and the rule of law.


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