

Beyond the Courtroom: Evaluating Equity, Access, and Social Justice in Alternative Dispute Resolution in Liberia and India

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Abstract: *Access to justice is often described as the first promise of constitutionalism, but in practice the promise is distributed unevenly. Court systems can be slow, expensive, procedurally intimidating, and geographically remote; for many litigants, especially women, persons with disabilities, rural communities, low-income parties, and historically excluded groups, the courthouse may be formally open yet practically inaccessible. Alternative Dispute Resolution (ADR) was developed in part as a corrective to those failures. Mediation, arbitration, conciliation, Lok Adalats, and related hybrid processes can reduce delay, lower transaction costs, and expand the range of dispute-resolution options. Yet ADR is not automatically fair. Informality can hide coercion; party autonomy can mask inequality; and efficiency can become a substitute for justice. The central question of this paper is therefore not whether ADR is faster than litigation, but whether it can be structured so that speed does not erode dignity, equal participation, or substantive justice. This study argues that a socially just ADR system must be designed around constitutional equality, due process, and meaningful access. It examines the Indian constitutional framework, especially Articles 14, 15, 21, 32, 39A, and 50, together with landmark Indian decisions that constitutionalized legal aid and encouraged ADR as a complement to ordinary litigation. It then turns to Liberia, where Articles 11, 20, 21, 24, and related guarantees of the 1986 Constitution establish equality before the law, due process, a right to counsel, a right to trial by jury in appropriate cases, and an inviolable right of appeal. The study also draws on the Universal Declaration of Human Rights, the ICCPR, CEDAW, the CRPD, the African Charter on Human and Peoples' Rights, and UNCITRAL instruments to show that access to justice is now a global normative commitment. The comparative conclusion is straightforward: ADR can serve social justice only when the state, courts, and dispute-resolution institutions actively guard against power imbalance, discrimination, digital exclusion, and procedural unfairness.*

Keywords: Access to justice; ADR; Mediation; Arbitration; Equality; Legal aid; Social justice; India; Liberia; International human rights

1. Introduction

The legitimacy of a legal system is measured not only by the elegance of its statutes or the number of its courts, but by the extent to which ordinary people can actually obtain remedies. Where formal adjudication becomes too slow, too costly, or too distant, the law risks becoming a language spoken only by the well-resourced. ADR emerged as an answer to that problem. It promised speed, flexibility, confidentiality, and the possibility of user-friendly justice. In many settings, it has succeeded in reducing backlog and broadening settlement options. But ADR is not a neutral technology. It is a set of procedures embedded in social hierarchies. When one party is richer, better represented, more educated, or simply more familiar with legal bargaining, informality may magnify inequality rather than reduce it.

This tension matters in societies where constitutional commitments to equality and dignity are especially strong, but implementation remains uneven. India's constitutional text, through Articles 14, 15, 21, 32, 39A, and 50, places justice within a framework of equality, due process, legal aid, and institutional separation between adjudication and executive power. Liberia's Constitution, through Articles 11, 20, 21, and related provisions, protects equal protection, due process, speedy appeal, jury trial, counsel, and legal aid. In both jurisdictions, the constitutional baseline implies that access to justice must be more than formal availability; it must be effective, affordable, and fair. ADR therefore cannot be assessed solely as a mechanism for reducing caseloads. It must be judged by the quality of participation it allows, the safeguards it contains, and the extent to which it protects vulnerable parties from being forced into unequal settlements.

The comparative value of studying India and Liberia is significant. India has developed a dense jurisprudence around legal aid, procedural fairness, and court-referred settlement mechanisms, making it one of the most important constitutional laboratories for ADR in the common-law world. Liberia, by contrast, offers a compelling constitutional and institutional setting in which due process, equal protection, and legal aid are expressly entrenched, yet the practical infrastructure for broad-based ADR remains more limited and uneven. A comparison between the two shows how constitutional rights can either transform ADR into a tool of democratized justice or leave it vulnerable to elite capture.

Hypothetical Scenario of the Study

A common Liberian example involves a marriage dispute between a husband and wife living in a rural community. After several years of marriage, the husband decides to separate and refuses to provide financial support for the wife and their children. Because court proceedings are expensive and far from their village, the couple is referred to mediation through a local ADR mechanism. During the process, the wife faces challenges because she has limited education, little knowledge of her legal rights, and less bargaining power than her husband. This scenario highlights how ADR can provide quicker access to justice while also revealing the need for fair procedures that protect vulnerable parties and promote social justice.

2. Research Queries

To address the existing challenge to accessing justice in Liberia, this study therefore asks these practical questions:

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- 1) How do ADR mechanisms address systemic barriers such as cost, geographic distance, and language that prevent vulnerable groups from accessing formal court systems?
- 2) In what ways do local dispute resolution processes (e.g., *Lok Adalats* in India or community elder councils in Liberia) enhance or inhibit the rights of women, youth, and indigenous populations?
- 3) To what extent does the integration of ADR lead to "second-class justice," wherein marginalized populations receive informal settlements rather than enforceable legal rights?

3. Research Problem

The central research problem of this study is that although Alternative Dispute Resolution (ADR) mechanisms such as mediation, arbitration, and conciliation are promoted as accessible, affordable, and efficient alternatives to courts, many marginalized groups still face barriers in accessing fair outcomes. Factors such as poverty, gender inequality, disability, racial discrimination, lack of legal awareness, and unequal bargaining power often prevent vulnerable individuals from fully benefiting from ADR processes. The study therefore investigates whether ADR genuinely promotes equity and social justice or whether it unintentionally reproduces existing social inequalities. It further examines the reforms needed to make ADR more inclusive, accessible, and responsive to the needs of disadvantaged populations.

4. Research Methodology

This research adopts a doctrinal and qualitative methodology. It primarily relies on the examination of secondary sources, including books, journal articles, reports, legal commentaries, statutes, constitutional provisions, and international instruments relating to Alternative Dispute Resolution (ADR), access to justice, equity, and social justice. The study also analyzes relevant judicial decisions from India and other jurisdictions to understand how courts have addressed issues of fairness, inclusion, and protection of vulnerable groups within dispute resolution processes. A comparative approach is used to assess the strengths and weaknesses of existing ADR frameworks and their impact on marginalized communities. Information gathered from academic literature and policy documents is critically reviewed to identify challenges affecting equal access to ADR, such as economic barriers, gender inequality, disability, and social discrimination. The methodology enables a comprehensive understanding of the subject and helps formulate practical recommendations for making ADR more accessible, inclusive, and socially responsive.

Conceptualizing Access, Equity, And Social Justice in ADR

Access, equity, and social justice are related but distinct ideas. Access refers to the ability of people to invoke a dispute resolution mechanism without insurmountable barriers of cost, geography, language, literacy, or intimidation. Equity is concerned with fair treatment in light of unequal starting positions; it asks whether the process compensates for vulnerability rather than treating all parties as if they were

already equal. Social justice goes a step further. It requires institutions not merely to resolve disputes efficiently, but to do so in ways that reduce structural subordination and preserve human dignity.

ADR can advance those values when it is well designed. Mediation can give parties space to craft solutions that litigation would not readily produce. Arbitration can create a specialized forum for technically complex disputes. Conciliation can preserve relationships in labor, family, and community settings. Lok Adalats can provide low-cost and rapid settlement for a wide range of matters. Online Dispute Resolution can overcome distance and reduce travel burdens. Yet the same features can become hazards. Confidentiality can conceal repeat-player advantages. Party autonomy can be a fiction when one party lacks bargaining power. Speed can pressure poor parties to accept inadequate terms. And informality can limit record-making, review, and public accountability.

A justice-sensitive conception of ADR therefore has at least four requirements. First, parties must enter with informed consent and a real choice, not coerced acceptance. Second, the process must be accessible to persons with disabilities, rural populations, non-native language speakers, and others who face practical barriers. Third, neutral decision-makers or facilitators must be trained to identify power imbalances, including gendered and economic asymmetries. Fourth, the results of ADR must remain subject to limited but meaningful judicial oversight when fundamental rights, fraud, coercion, illegality, or unconscionability are at stake. Without these safeguards, ADR may reproduce the very inequalities it claims to solve.

The Indian Constitutional Foundation for Access to Justice

India's Constitution is unusually rich in access-to-justice values. Article 14 guarantees equality before the law and equal protection of the laws. Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Article 21 protects life and personal liberty except according to procedure established by law. Article 32 gives constitutional remedies for the enforcement of fundamental rights. Article 39A directs the State to secure equal justice and free legal aid, while Article 50 calls for separation of the judiciary from the executive. Together, these provisions create a constitutional architecture in which justice is not a luxury product but a public good.

Article 39A is especially important for ADR. It makes explicit that the legal system must promote justice on a basis of equal opportunity and must provide free legal aid to ensure that opportunities for securing justice are not denied by reason of economic or other disabilities. In practical terms, that means a dispute-resolution ecosystem cannot be judged only by how quickly it settles cases. It must also be judged by whether the poor, the illiterate, the socially marginalized, and the geographically isolated can actually use it. Article 21 has also been interpreted by the Supreme Court to require procedures that are fair, just, and reasonable, a doctrinal move that has had deep consequences for legal aid and access to counsel.

Indian Landmark Cases: From Due Process to ADR

The modern Indian law of access to justice did not emerge from ADR alone. It was built through a series of cases that read the Constitution as a living commitment to fairness. In *M.H. Hoskot v. State of Maharashtra*, the Court treated access to counsel as part of a fair criminal process and emphasized that procedural justice must be real, not symbolic. In *Hussainara Khatoon v. Home Secretary, State of Bihar*, the Court linked Article 21 to the right to free legal services and speedy trial, recognizing that the system cannot remain just while indigent prisoners wait for years without representation. In *Khatri (II) v. State of Bihar*, the Court reinforced the same idea by holding that free legal aid is a fundamental right that attaches from the moment an accused is first produced before a magistrate.

These cases matter for ADR because they reframe access to justice as a constitutional duty rather than an administrative convenience. If legal aid is constitutionally required in criminal proceedings, and if fair procedure is part of Article 21, then a civil and commercial dispute-resolution system that systematically excludes the poor or the disadvantaged is hard to justify. The constitutional logic is not that every dispute must be litigated in court, but that any alternative must be measured against the same baseline of fairness, dignity, and meaningful participation.

The Court's ADR jurisprudence deepened that logic. *Salem Advocate Bar Association (I) and Salem Advocate Bar Association (II) v. Union of India* upheld the constitutional and statutory validity of the 1999 and 2002 amendments to the Code of Civil Procedure and clarified that Section 89 was meant to encourage settlement outside the courtroom. The significance of *Salem* lies not merely in promoting compromise, but in acknowledging that civil procedure should assist, rather than obstruct, the efficient and fair resolution of disputes. The Court's approach also signaled that institutionalized mediation and conciliation were compatible with constitutional justice when properly supervised and procedurally disciplined.

Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. is the most important single Indian case on Section 89 CPC. The Court gave practical guidance on the kinds of disputes suitable for ADR and stressed that courts should be cautious before referring matters to arbitration without consent. It distinguished between disputes that are genuinely amenable to settlement and those that involve public rights, serious allegations, or issues requiring authoritative adjudication. This distinction is central to equity. It avoids the simplistic idea that every dispute can be diverted into a private forum. Some disputes, especially those involving inequality, public accountability, or strong interests of third parties, need the discipline of public adjudication. ADR should supplement the court system, not hollow it out.

Later cases refined the constitutional limits of ADR. In *State of Punjab v. Jalour Singh*, the Court explained that a Lok Adalat does not impose a decision by adjudication in the ordinary sense; rather, it functions on the basis of settlement. That insight is important because it shows why consent matters. A settlement process that lacks meaningful assent is not simply inefficient; it is conceptually defective. In *Emaar*

MGF Land Ltd. v. Aftab Singh, the Court held that an arbitration clause does not bar a consumer complaint from being pursued before a consumer forum. The case is frequently cited for the proposition that private arbitration cannot displace statutory public remedies where the legislature has created a protective jurisdiction for weaker parties. This is a direct equity principle: when the law gives consumers a specialized public forum, party autonomy in a standard-form contract cannot casually override that protection.

Taken together, these cases establish an Indian doctrine in which ADR is welcome, but only so long as it does not compromise substantive fairness. The Court has repeatedly insisted that procedure exists to advance justice, not defeat it. In effect, India has moved from a narrow understanding of justice as courtroom adjudication to a broader constitutional ecology of courts, legal aid, mediation, conciliation, Lok Adalats, and carefully bounded arbitration.

The Indian Legislative and Institutional Ecosystem

India's constitutional jurisprudence is supported by a statutory network. The Code of Civil Procedure, as amended, authorizes referral to ADR under Section 89. The Legal Services Authorities Act, 1987, operationalizes the promise of free legal aid and supports Lok Adalats and legal services institutions. The Arbitration and Conciliation Act, 1996, reflects India's alignment with the UNCITRAL Model Law and gives commercial parties a structured framework for private adjudication. The Mediation Act, 2023, further consolidates mediation as a distinct legal process and confirms that institutional mediation is no longer merely an adjunct to litigation.

These enactments show that access to justice is not achieved by a single reform. It requires interlocking institutions. Courts need referral powers and supervision. Legal aid bodies need funding and reach. Mediators need training, accreditation, and ethical standards. Arbitration requires safeguards against unequal bargaining power and abusive clauses. Digital platforms require infrastructure that does not exclude rural users, persons with disabilities, or those without stable internet access. When any of these links fails, the promise of ADR becomes thinner and less socially legitimate.

The Liberian Constitutional Baseline

Liberia's Constitution contains a remarkably clear set of justice-oriented guarantees. Article 11 provides that all persons are born equally free and independent, that persons are entitled to the fundamental rights and freedoms of the individual regardless of ethnic background, race, sex, creed, place of origin, or political opinion, and that all persons are equal before the law and therefore entitled to the equal protection of the law. Article 20(a) further provides that no person shall be deprived of life, liberty, security, property, privilege, or any other right except through a hearing and judgment consistent with the Constitution and due process of law, and that justice shall be done without sale, denial, or delay. Article 20(b) guarantees the right of appeal from judgments and requires the Legislature to prescribe rules and procedures for easy, expeditious, and inexpensive appeals. Article 21(c) guarantees counsel at every stage of criminal investigation, and Article 21(e) makes the right to counsel and

the rights of counsel inviolable while also providing for legal aid where the accused cannot secure representation.

These provisions matter in the ADR context because they reveal that Liberian constitutionalism is not indifferent to procedure. It insists on hearing, appeal, counsel, and speed. That constitutional structure supports a dispute-resolution model that values efficiency only insofar as it remains consistent with due process and equal protection. In other words, ADR in Liberia cannot legitimately be designed as a low-cost shortcut for the powerful. It must serve the constitutional promise that justice is neither sold nor denied, and that the poorest litigant is still entitled to a hearing that is fair in both form and substance.

Liberian Case Law and the Shape of Procedural Justice

The Supreme Court of Liberia has repeatedly treated due process as a foundational principle. In *Selena Mappy-Polson v. Republic of Liberia*, the Court engaged the meaning of equal protection and constitutional limits on legislative or executive action in the face of rights-based objections. That decision is useful for comparative purposes because it shows a willingness to understand equality not as an abstract slogan but as a real constraint on state action. The Court's reasoning also reflects an awareness that constitutional rights must be interpreted in light of actual political and social conditions.

In *H. Varney G. Sherman & Sherman Inc. v. Republic of Liberia*, the Court addressed due-process objections surrounding subpoenas and investigative processes, indicating that procedural protections remain central even where public interests such as investigation and accountability are present. In *Hannah Saba Gardiner v. Esther Pyne James*, the Court held that a report was not the outcome of arbitration as contemplated by the Civil Procedure Law and therefore could not be treated as a valid arbitral award. The significance of that ruling is not that Liberia rejects arbitration. On the contrary, it shows that the Court distinguishes carefully between genuine arbitration and informal or incomplete settlement exercises. That distinction is vital to access and fairness: a process labeled 'arbitration' does not become legitimate merely because the parties or a lower court call it so. It must conform to the legal requirements that give it authority.

A further Liberian theme appears in decisions recognizing that arbitration awards can be enforceable when grounded in agreement and consistent with law. Judicial materials from Liberia indicate that a board of arbitration report may be enforced as a judgment unless it is contrary to public policy or the validity of the obligation to bind the parties. That proposition makes sense in a justice-centered system. Arbitration is a useful mechanism, but it is not self-justifying. It becomes legitimate because law, consent, and public policy converge. Where consent is compromised, where procedure is defective, or where a vulnerable party is structurally overborne, courts must be able to intervene.

The Liberian picture is therefore not one of ADR versus courts. It is a picture of constitutional due process operating as the measure of ADR's legitimacy. For Liberia, the most important question is whether arbitration, mediation, or other informal processes can be scaled without weakening the

rights to hearing, appeal, counsel, and equal protection that the Constitution so clearly protects.

International Human Rights Instruments and the Normative Case for ADR Fairness

International human rights law supplies the deeper normative framework for access to justice. The Universal Declaration of Human Rights states that everyone has the right to an effective remedy and to a fair and public hearing by an independent and impartial tribunal. The ICCPR guarantees equality before courts and tribunals and equal protection of the law. CEDAW requires women to enjoy equality before the law and equal legal capacity in civil matters. The CRPD explicitly recognizes the right of persons with disabilities to access to justice on an equal basis with others. The African Charter on Human and Peoples' Rights provides a right to have one's cause heard and a right to appeal to competent national organs. The African Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa further elaborate fair-trial and legal-aid requirements. Finally, UNCITRAL instruments offer the technical architecture for modern arbitration and model laws that many states, including India, have adapted.

Taken together, these instruments do not require every dispute to be resolved by a full trial. Rather, they require that whatever process is used must protect equality, participation, and remedy. A mediation program that excludes women by cultural pressure, a digital platform that excludes rural users because of poor connectivity, or an arbitration clause inserted into a take-it-or-leave-it consumer contract may be efficient in a narrow sense, but it sits uneasily with the global norm of equal access. In this sense, international law does not oppose ADR. It civilizes it.

Gender, Disability, and the Problem of Unequal Participation

Any serious account of equity in ADR must confront gender and disability. Women are often underrepresented among neutrals and may enter mediation or arbitration from a position shaped by economic dependency, social pressure, or fear of stigma. Family disputes can be especially difficult because they occur in settings where emotional vulnerability and social expectations are high. Workplace disputes may also reproduce hierarchy if the weaker party fears reprisal or settlement pressure. CEDAW's equality guarantee is therefore directly relevant: women must not only be present in ADR as parties; they must be able to participate on equal terms.

Disability presents a similar but distinct challenge. The CRPD's Article 13 recognizes access to justice as an explicit right and requires procedural accommodation on an equal basis with others. In ADR settings this can mean physical accessibility, sign-language interpretation, accessible documents, reasonable deadlines, privacy safeguards, and process design that respects supported decision-making. Without such accommodations, an ADR process may look neutral while quietly excluding the very people most in need of low-cost and flexible justice.

Economic Inequality and the Risk of Coercive Settlement

The most common justification for ADR is efficiency. That is not a trivial value. Delayed justice can be denied justice. Yet

efficiency becomes dangerous when it is used to push poor parties into settlement simply because they cannot afford the time or expense of litigation. Economic inequality distorts bargaining power in mediation, conciliation, and arbitration. A party with deep pockets can retain better counsel, prolong negotiations, and absorb delay; a poor party may settle early, not because the settlement is fair, but because continuing is unbearable.

Courts and institutions should therefore treat consent as a substantive inquiry. Was the agreement informed? Was legal assistance available? Was the environment coercive? Were language or literacy barriers addressed? Were settlement terms explained in plain language? Was the weaker party given a real chance to consult outside the room? These questions are not formalities. They are the difference between consensual dispute resolution and privatized pressure. India's legal-aid jurisprudence and Liberia's due-process clauses both support the view that access must be practical, not theoretical.

Digital Justice, Online Dispute Resolution, and the New Divide

Online Dispute Resolution has become one of the most attractive promises of modern justice reform. It can reduce travel costs, speed communication, and connect parties across long distances. For rural users and diaspora communities, it can be transformative. But digital justice has its own hierarchy. It presupposes access to devices, data, electricity, stable connectivity, and digital literacy. It also raises questions about confidentiality, identity verification, and the ability of vulnerable parties to obtain real-time assistance.

In India, the logic of constitutional access to justice suggests that ODR must be designed with inclusion in mind, not merely technological elegance. In Liberia, the same conclusion follows from Articles 11 and 20 and the commitment to due process without sale, denial, or delay. ODR should therefore be treated as a supplemental channel, not a universal substitute. Its legitimacy depends on the reduction, not the replication, of exclusion.

Comparative Blend: India, Liberia, and the Constitutionalization of ADR

India and Liberia share a common-law heritage, constitutional rights language, and a belief that justice must be accessible to ordinary people. Both systems use equality, due process, and legal aid as constitutional anchors. Both also recognize that the legitimacy of alternative fora depends on the values they preserve. Yet India has produced a more elaborate jurisprudence and institutional network around ADR, legal aid, and court-connected settlement. Liberia, by contrast, offers a strong constitutional foundation but a thinner visible ADR infrastructure.

The comparison yields three lessons. First, constitutional text matters, but it is not self-executing. The presence of Articles 39A or 20(e) does not by itself create equal justice; institutions must implement those promises. Second, the quality of ADR depends on judicial oversight. Indian case law shows how the Supreme Court can preserve the boundary between settlement and adjudication, between private autonomy and public protection. Third, ADR is most socially valuable when it is embedded in a broader access-to-justice

ecosystem that includes legal aid, court supervision, public-interest safeguards, and special procedures for vulnerable groups.

For Liberia, that means strengthening mediation and arbitration not as substitutes for rights, but as rights-sensitive complements. For India, it means continuing to refine the line between voluntary settlement and coercive diversion. In both systems, justice requires that ADR remain an instrument of empowerment rather than extraction.

5. Policy Recommendations

A socially just ADR system should rest on several practical reforms. First, legislatures and courts should require early screening for power imbalance, especially in family, labor, consumer, and land disputes. Second, legal aid should extend to ADR processes where one party would otherwise be unable to participate meaningfully. Third, mediators and arbitrators should receive mandatory training on gender sensitivity, disability inclusion, trauma-aware practice, and ethical recognition of coercion. Fourth, settlement agreements should use plain language and include cooling-off or review periods in suitable categories of disputes. Fifth, digital ADR platforms should be made accessible through public kiosks, assisted facilities, and offline alternatives.

For India, the challenge is to ensure that the growing mediation culture does not become procedural pressure disguised as efficiency. For Liberia, the challenge is to build institutional depth without sacrificing constitutional rights. For both, the ultimate goal is the same: not merely to increase the number of disputes settled, but to ensure that each dispute is resolved in a way that is fair, comprehensible, and dignified.

6. Conclusion

ADR deserves its place in modern justice systems. It can be faster, less adversarial, more flexible, and more humane than conventional litigation. But those benefits are not automatic. Without careful design, ADR can privatize inequality, conceal coercion, and strip weak parties of the procedural protections they need. The constitutional texts of India and Liberia, read alongside landmark case law and international human rights instruments, teach the opposite lesson: speed is valuable only when it is disciplined by equality, due process, and real access.

India's constitutional jurisprudence shows how legal aid, procedural fairness, and court-supervised settlement can be integrated into a broader social-justice project. Liberia's Constitution offers a similarly strong framework of equal protection, due process, counsel, appeal, and timely justice. International instruments reinforce the same ideal by insisting that access to justice be effective for women, persons with disabilities, and all others at risk of exclusion. The lesson is not that ADR should be abandoned. It is that ADR must be democratized. In the end, the measure of a just alternative dispute system is whether it makes justice more reachable for those who have historically found it hardest to reach.

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