

ROLE OF THE ALTERNATIVE DISPUTE RESOLUTION IN ACCESS TO JUSTICE FOR THE SPECIALLY-ABLED COMMUNITY IN INDIA

by

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ABSTRACT

Specially-abled persons are a disadvantaged group in society with their disabilities, and they face discrimination even in access to justice. Article 14 of the Constitution of India and Section 3 of the Rights of Persons with Disabilities Act, 2016, provide that specially-abled persons have the right to equality with others in society. But they face challenges in access to justice through the traditional or formal court system. This study delves into the role of the Alternative Dispute Resolution in access to justice, especially to specially-abled persons. This study aims to explore the challenges faced by specially-abled persons in accessing justice through the doctrinal approach. It aims to reveal the challenges faced by specially-abled persons in accessing the traditional courts and the inefficiency of the traditional courts in providing access to justice to the specially-abled community, who are a disadvantaged group of society due to their disabilities. It aims to investigate existing articles of scholars, reports and policies of the government, statutory instruments, and judicial precedents of the Supreme Court and High Courts, which give an understanding of what challenges prevail in accessing formal courts for specially-abled

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persons and how the ADR mechanisms can help the specially-abled community in achieving access to justice. This study relies on secondary data that exist, and these can help to explore gaps in the policy implementation and challenges for specially-abled communities in accessing justice. This study can help the legislature and policymakers in making decisions to bring new policies and laws for specially-abled persons so that they can access justice outside the formal court, i.e., through the Alternative Dispute Resolution (ADR).

Key words: Specially-abled persons, Access to Justice, Traditional or formal courts, ADR, Discrimination.

1. INTRODUCTION

Every person, including a specially-abled person, has the right to live with basic human dignity, and the Constitution of India ensures life with human dignity to specially-abled persons¹. Specially-abled persons have the right to equality, which is guaranteed by Article 14 of the Constitution of India, and Section 3 of the Rights of Persons with Disabilities Act, 2016, and under these provisions, specially-abled persons are entitled to equal treatment. In the case of *Gulshan Kumar v. Institute of Banking Personnel Selection & Ors*², 2025, the Supreme Court held that specially-abled persons have equal rights, and the principle of reasonable accommodation ensures equality to specially-abled persons. And denial of scribed or extra/compensatory time is held to be discrimination against specially-abled persons under the Rights of Persons with Disabilities Act, 2016.

However, it is seen that specially-abled persons are discriminated against based on their disability in access to employment, education, healthcare, redistribution, recognition, participation or representation, **access to justice**, and others. The stereotype of society about them is that they have less or no ability to work than a

¹ Constitution of India, Article 21

² [2025] 2 S.C.R. 313

person who is not specially-abled. They are excluded from getting a job, taking admission in Schools, Colleges, or Universities, etc. They face hindrances in promotion to jobs, discrimination or exclusion in educational institutions, mostly in private institutions. Government educational institutions are facing a lack of a support system for the specially-abled persons. Government institutions in states, like Bihar, Jharkhand, Uttar Pradesh, and others, are facing challenges in providing basic facilities to specially-abled persons, such as special toilets, ramps, lifts, etc., and these are hurdles in getting their right to education. Only 34.4% of Schools in India have CwSN (Children with Special Needs) friendly toilets, and 52.3% of Schools in India have ramps with handrail facilities for CwSN children³. These data cover all Central and State government-aided institutions in India, which shows the poor status of the educational institutions in India for specially-abled persons. These exclusions make a specially-abled person more vulnerable in society, and so for the specially-abled persons who are not very educated or do not have enough resources, like financial resources, *accessing justice is a milestone that cannot be attained with their disability*, even in the case of *Anita Kushawaha etc. etc. v. Pushap Sudan etc. etc.*⁴, 2016, the Court observed that access to justice is a fundamental right under the Constitution of India.

The Constitution of India ensures fundamental rights to every citizen of India, including Specially-abled persons, and these rights guarantee access to justice to the specially-abled persons, but even then, specially-abled persons are unable to access justice due to their physical and mental disability. Those who are disabled in any form face challenges in accessing the courts due to various reasons, such as the courts not fully accessible for persons with special needs, and there is a lack of trained staff in the courts for handling the cases of specially-abled persons, and also, it is a fact that Indian courts are facing overburdening of the cases. According to the India Justice Report 2025, at last of 2024, the courts in India have increased the burden to about 5 crores, and approximately a 20% rise in the pending cases between 2020 to 2024.

³ Government of India, Ministry of Education, Department of School Education and Literacy, *Report on Unified District Information System for Education Plus (UDISE+) 2023–24* (2024).

⁴ [2016] 8 SCC 509

Ironically, the vacancies of the judges are still an important factor that hampers access to justice for specially-abled persons⁵. In these circumstances, Alternative Dispute Resolution (ADR) can play an important role in accessing justice for specially-abled persons. ADR is a mechanism in which a dispute is resolved outside the traditional court, with the consent of the parties, such as mediation, arbitration, conciliation, negotiation, and lok adalat, etc.

Traditional courts may be too slow and inaccessible to persons emotionally and physically disabled, whereas the provisions of the Rights of Persons with Disabilities Act, 2016, guarantee access to justice for persons with disabilities. Section 12 (a) of this act empowers the appropriate government, and it shall ensure the right to access any court, tribunal, authority, commission, or any other body (judicial or quasi-judicial or investigating powers), and the appropriate government shall eliminate discrimination on the basis of their disability⁶. According to the Access to Justice Report for Persons with Disabilities in India, a Data-Informed Report, courts in India are inaccessible for specially-abled persons, and even a lack of basic facilities for them to access the court. Ironically, a lack of sensitised staff in the court plays a negative role in the way of accessing justice⁷. In these circumstances, Alternative Dispute Resolution (ADR) can play an important role in accessing justice for specially-abled persons. In the case of *the Salem Advocate Bar Association, Tamil Nadu v. Union of India*⁸, 2005, the court held a landmark decision, and also encouraged the need for alternative dispute resolution (ADR) for dispute resolution when the traditional courts are facing the challenges of overburdening. And this mechanism can play an important role in accessing justice for specially-abled persons.

⁵ Tata Trusts Et Al. (Eds.), India Justice Report: Ranking States On The Capacity Of Police, Judiciary, Prisons, And Legal Aid (2025),

https://indiajusticereport.org/files/IJR%204_Full%20Report_English_Low.pdf

⁶ The Rights of Persons with Disabilities Act, 2016, Section 12

⁷ Pacta, Access To Justice For Persons With Disabilities In India: A Data-Informed Report (2025),

https://www.pacta.in/files/ugd/0e1e8f_947ad63929424692bc5eaf13b4af0bcc.pdf

⁸ [2005] SC Cases 344

This study explores the role of ADR in accessing justice for specially-abled persons, where they face challenges in accessing the formal court for achieving access to justice. The Rights of Persons with Disabilities Act, 2016, or the other statutory provisions in India, promote equal access to justice for persons with disabilities, and in this regard, ADR is the mechanism through which they can access justice despite the challenges of systemic barriers like stereotypes of society or social stigma, inaccessible court premises, insensitive staff of the court for specially-abled persons, costly justice, or complex procedure. ADR can play an important and effective role in accessing justice for specially-abled persons.

A. OBJECTIVES OF THE STUDY

Specially-abled persons face challenges in accessing the court with their disability, despite having special abilities like others in society, and they are discriminated against in accessing justice. They face challenges due to stereotypes of society or social stigma, inaccessible court premises, insensitive staff of the court for specially-abled persons, costly justice, or complex procedure. This study explores the role of ADR in accessing justice for specially-abled persons. So that the objectives of the study are as follows:

- To explore the systemic challenges faced by specially-abled persons in accessing justice through the formal court.
- To identify the role of the ADR in accessing justice for the specially-abled persons, where they face systemic challenges in accessing justice through the formal court.

These are the objectives of the study, and these can be fulfilled by the relevant secondary data with a doctrinal approach.

B. METHODOLOGY USED IN THIS STUDY

This study explores the role of the ADR in accessing justice outside the formal court system, and it identifies the challenges faced by specially-abled persons in accessing

the formal court. For fulfilling the objectives of the study, **a doctrinal approach is adopted**, by which this study investigates existing articles of scholars, reports and policies of the government, domestic or international statutory instruments, and judicial precedents of the Supreme Court and High Courts, which give an understanding of what challenges prevail in accessing formal court for specially-abled persons and how the ADR mechanisms can help the specially-abled community in achieving access to justice. This study relies on **secondary data** that exist, and these can help to explore gaps in the police implementation and challenges for specially-abled communities in accessing justice. This approach can help in identifying the present social and systemic challenges of specially-abled persons, and can help in suggesting policy improvements that can bring changes in the status of disadvantaged groups of society, that is, specially-abled persons, through ADR.

C. SCOPE OF THE STUDY

This study explores the role of ADR in access to justice for the specially-abled community is multidimensional and covers social, legal, and institutional challenges faced by them in accessing justice through the formal court system, and the role of ADR in overcoming challenges faced by them in accessing justice through the formal court system. This study ascertains the efficacy of the ADR mechanisms in access to justice outside the formal court for the specially-abled community. This study identifies the challenges faced by specially-abled communities, like social stigma, stereotype, inaccessible court premises, and complex procedures in accessing justice. Majorly, this study is based on secondary data, by which this study tries to examine the role of the ADR in accessing justice for specially-abled persons, and this study can help in policy reforms for ADR mechanisms.

D. LIMITATIONS OF THE STUDY

This study aims to explore the role of ADR in access to justice through the doctrinal approach and secondary data, and this study investigates existing articles of scholars,

reports and policies of the government, domestic or international statutory instruments, and judicial precedents of the Supreme Court and High Courts. So that this study is a limited study of the existing sources.

2. CONCEPTUAL FRAMEWORK: SPECIALLY-ABLED PERSONS, ALTERNATIVE DISPUTE RESOLUTION, AND ACCESS TO JUSTICE

In this part, the study aims to explore the concept of specially-abled persons, access to justice, and alternative dispute resolution, and further covers the legal framework related to this context. Although this study aims to cover the role of the ADR in access to justice for specially-abled persons, accessing justice is difficult for specially-abled persons. ADR is a tool for access to true justice for persons with disabilities outside the traditional courts, and the Constitution of India and the Rights of Persons with disabilities Act, 2016, provide provisions of access to justice.

Pendency in the courts is a challenge for the judiciary in accessing justice and ensuring the efficient function of the system of traditional courts. The traditional courts are colonised courts from the very past and should be reformed. And ironically, courts are overloaded with pending cases, the cost of lawyers is high, procedures are lengthy, etc., and traditional courts take much more time in delivering justice. It is a quote that “Justice is delayed, justice denied”, which means justice can be denied by our traditional court system. So, Alternative Dispute Resolution (ADR) can be an alternative to access to justice.

A. SPECIALLY-ABLED PERSONS

Accessing justice is not easy for a Specially-abled person, and the term “Specially-abled persons” is not used in the statute, but in its place, the term “persons with disabilities” is defined and used. The term “specially-abled persons” shows the special abilities of the specially-abled persons, and same time “persons with disabilities”

shows the disabilities of the persons, and may create a stereotype in the mind of society, hiding the special abilities of a person. In the case, *Javed Abidi Foundation v. UOI*⁹, the present Chief Justice of India, Justice D. Y. Chandrachud, had used the word “specially-abled person” for a lawyer and gave a chance to argue in the case with an interpreter, and further Supreme Court Bar Association appreciated this step of the Court¹⁰. According to the Section 2 (s) of the Rights of Persons with Disabilities Act, 2016, the term ‘person with disabilities’ is used in place of specially-abled persons, and it means a person, has a long-term physical, mental, intellectual, or sensory impairment, and due to these obstacles, he cannot fully and effectively participate in society equally with others without disabilities¹¹. With disabilities like these, accessing justice is a cornerstone that may not be possible for specially-abled persons, but access to justice is a fundamental right guaranteed under the Constitution of India.

B. ACCESS TO JUSTICE

The concept of “access to justice” is a transformative concept where a person has the right to access the court to achieve justice against injustice that happens to him. Access to justice is a human rights-based concept, and it states justice for all, especially those who are marginalised or disadvantaged groups of society. In the case of *Rajeeb Kalita v. Union of India & Ors*¹², 2025, the Supreme Court held that access to justice includes a human-centred, healthy, and pleasant environment for everyone, in the Court premises, who is a stakeholder in access to justice. Access to justice is a concept of justice which promises justice for all, including disadvantaged groups of society who cannot access the court due to some reasons, like financial, systemic societal biases, lengthy process of the justice system, pendency of pending cases, etc. In the case of *Priya Indoriya v. State of Karnataka and Ors. etc.*¹³, 2023, the Supreme Court said

⁹ Order (item No. 37), Supreme Court of India, September 23, 2023

¹⁰ Abantika Ghosh, SC Allows Specially-Abled Advocate to Argue with Interpreter, Bar Body Calls Move Welcome Step, INDIAN EXPRESS, Sept. 25, 2023, <https://indianexpress.com/article/india/sc-specially-abled-advocate-interpreter-welcome-bar-body-8957506/>

¹¹ The Rights of Persons with Disabilities Act, 2016, Section 2(s)

¹² [2025] 2 S.C.R. 27

¹³ [2023] 15 S.C.R. 525

that access to justice is a fundamental right and is recognised by the Constitution of India and preserved by the statutory provisions.

Class hierarchy, systemic inequality, over-burden on administration, and power can make the concept of access to justice a crisis of exclusion and inequality¹⁴. Access to justice, particularly for specially-abled persons who are unable to access justice in the formal court system and where pendency of cases in formal courts is a significant issue, is a major challenge for them. For overcoming this challenge for specially-abled persons, ADR can play an important role.

C. ALTERNATIVE DISPUTE RESOLUTION

ADR is a mechanism by which the judicial system provides an alternative to persons involved in a dispute, those who face challenges in accessing justice due to the pendency of the court, lengthy procedure or cost-effective justice¹⁵. ADR provides mechanisms for accessing justice when the traditional courts are overburdened by pending cases. It ensures access to justice for all, including the specially-abled persons who cannot access traditional courts by themselves. It gives an opportunity to resolve disputes outside the traditional courts, and also, articles 14 and 39 A of the Constitution of India, and sections 3 and 12 of the Rights of Persons with Disabilities Act, 2016, ensure rights of equality and access to justice for specially-abled communities.

The concept of ADR is not new for Indians, and the Arbitration and other modes have been prevailing from the Vedic era. Earlier, it was in the form of 'Panchayat' prevalent in India, a type of ADR, which contains a wise group of persons from the village, known as 'Panch', and the decision of 'Panch' was binding upon parties. In the case of *Vytla Sitanna v. Marivada Viranna*¹⁶, 1934, the Privy Council had recognised this

¹⁴ KM Young, KD Martin & S Lageson, Access to Justice at the Intersection of Civil and Criminal Law, 26 PUNISHMENT & SOC'Y 599 (2024), <https://doi.org/10.1177/14624745241240551>

¹⁵ Law Reform Comm'n, Report on Alternative Dispute Resolution: Mediation And Conciliation, Lrc 98-2010 (2010), available at https://www.lawreform.ie/_fileupload/reports/r98adr.pdf

¹⁶ AIR 1934 PC 105

form of ADR. In 2013, the Supreme Court, in the case of *K. Srinivas Rao v. D. A. Deepa*¹⁷, 2013, recognised the necessity of ADR in cases like cruelty under section 498A of the Indian Penal Code, 1860, particularly in family matters. In the present time, it plays a vital role in accessing justice from outside the traditional courts, where the maximum cases are pending. At Present time there are the following types of ADR mechanisms are prevalent in India:

- a.) Arbitration: A type of ADR mechanism in which the parties voluntarily submit a dispute before an arbitrator for getting solution, and according to Section 35 of the Arbitration and Conciliation Act, 1996, the final arbitration award shall be binding upon the parties.
- b.) Mediation: It includes a process in which parties are involved voluntarily, and parties attempt to reach an amicable settlement of the dispute that is submitted by the parties for settlement; and for settlement, the parties take assistance from an independent third person, who is known as a mediator. And a mediator has no authority to impose a settlement of the dispute upon the parties¹⁸.
- c.) Conciliation: It is a voluntary process in which a professional facilitator facilitates disputes to resolve arising between the parties.
- d.) Negotiation: It is a process of negotiation of disputes between parties in which the parties themselves attempt to settle the dispute.
- e.) Lok Adalat: It is known as the people's court. It provides a speedy and effective resolution of disputes outside the court under the provisions of the Legal Services Authority Act, 1987.

These are the forms of ADR by which access to justice for all, including specially-abled persons, is easy outside the traditional court.

3. CHALLENGES FACED BY SPECIALLY-ABLED PERSONS IN ACCESSING JUSTICE

¹⁷ [2013] 2 S.C.R. 126

¹⁸ The Mediation Act, 2023, Section 3 (h)

The Constitution of India promises access to justice for all, including disadvantaged groups of society, like specially-abled persons, and section 12 of the Rights of Persons with Disabilities Act, 2016, empowers the appropriate government, which shall ensure the right to specially-abled persons to access any court, tribunal, authority, commission or any other body for accessing justice. The appropriate government shall take reasonable steps to ensure to exercise of the legal rights of the specially-abled persons who are a disadvantaged group of society. The National Legal Services Authority and the State Legal Services Authority shall make provisions for specially-abled persons to ensure accessibility to any scheme, programme, facility or service¹⁹. In the case *Ravinder v. Govt. of NCT of Delhi & Ors*²⁰, the Delhi High Court said that India is a signatory state of the UN Convention on the Rights of Persons with Disabilities 2008, and so we are required to ensure access to justice for specially-abled persons on the basis of equality to others. In the case of *Anita Kushawaha etc. etc. v. Pushap Sudan etc. etc.*²¹, 2016, the Supreme Court held that the right to access to justice is a basic human right, and any governance or authority cannot deny it to its people.

Access to justice is a fundamental concept that gives a fair chance to the specially-abled persons in accessing justice through effective participation in the judicial process of accessing justice, and Constitutional and other statutory provisions, like the RPwD Act, empower them in effective participation in accessing justice. Despite the strong legal provisions which give a fair chance to access to justice, specially-abled persons face major challenges in accessing justice, like pendency of the cases, social stigma, lack of court infrastructure, cost-effective justice, insensitive court staff and legal professionals, ineffective implementation of the provisions of the RPwD Act, 2016, limited judicial interpretations, etc. The following are the major challenges in accessing justice for specially-abled persons:

a.) **Pendency of the cases:** Pending cases are a systemic challenge in Indian, particularly for specially-abled persons, and it creates a barrier to access to justice for

¹⁹ The Rights of Persons with Disabilities Act, 2016, Section 12

²⁰ W.P. (CRL) 3317/2017

²¹ [2016] 8 SCC 509

specially-abled persons. At the last of 2024, the courts in India have increased the burden to about 5 crores, and approximately a 20% rise in the pending cases between 2020 to 2024. Ironically, the vacancies of the judges are still an important factor that hampers access to justice for specially-abled persons. The seats of the judges are vacant, and the vacancies are around 21% of the District Court and 33% of the High Court²². This creates a hindrance in the path of speedy and timely delivery of justice. In the case of *Shamsher Singh @ sheru v. State of Punjab*²³, 2024, the court held that the timely delivery of justice is a fundamental right and denied that it is a threat to public confidence in the administration of justice. This burden on the court and the systemic challenge creates a hindrance in the path of accessing justice. Despite the strong statutory provisions, Specially-abled persons face challenges in access to justice.

b.) **Social stigma:** The prevalence of misconceptions and stereotypes against specially-abled persons in society that contain discriminatory beliefs that they are less competent or not competent to work in comparison with others. It is society that promotes stereotypes and discriminatory attitudes towards specially-abled persons, which restricts them from accessing justice and makes them disadvantaged²⁴. In the case of *Nipun Malhotra v. Sony Pictures Films India Private Limited & Ors*²⁵, 2024, the Supreme Court held that words like “cripple” and “spastic” have undervalued the status of specially-abled persons, and made a negative social perception and promote discrimination against specially-abled persons in society. And it is a fact that the staff and officers of the court belong to the same society and are impacted by it. This creates a hindrance in the path of specially-abled persons in accessing justice.

²² Tata Trusts Et Al. (Eds.), India Justice Report: Ranking States On The Capacity Of Police, Judiciary, Prisons, And Legal Aid (2025), https://indiajusticereport.org/files/IJR%204_Full%20Report_English_Low.pdf

²³ *Shamsher Singh @ Sheru v. State of Punjab*, CRM-M-55191-2024, (P&H HC July 17, 2025)

²⁴ Monika Saini & Anup K. Kapoor, Perception, Attitude, and Behaviour Toward Persons with Disabilities in India, 31 INDIAN J. PHYSICAL MED. & REHAB. 35 (2020).

²⁵ [2024] 7 S.C.R. 246

c.) **Lack of Court Infrastructure:** In a press release by the Ministry of Law and Justice, the Government of India, 2022, the scheme for the Court's Halls and Residential Quarters was extended to 2025-2026 with a budgetary value of 9000 crores, and the scheme now includes Lawyer's Halls, Digital Computer Rooms, and Toilet complexes in the lower court and subordinate courts²⁶. Despite this budget by the Government, according to the data published by PACTA (a Bengaluru-based law firm), there is a lack of legal documents in formats such as braille, large print, or easy-to-read language for the specially-abled persons, and sign language interpreters and other communication aids are a challenge to them. A lack of legal aid for the specially-abled persons in accessing justice. The Courts of India are facing challenges of inadequate availability of infrastructure, such as ramps, lifts, and specially-abled-friendly toilets, and other reasonable accommodation²⁷. In the case of *Rajeeb Kalita v. Union of India & Ors*²⁸, 2025, the Supreme Court held that a lack of washrooms and toilet facilities impede access to justice and undervalued equality. Further, in this case, the court directed States, UTs, and High Courts to make available separate toilet facilities for men, women, specially-abled persons, and transgenders, and state and UTs to allocate sufficient funds. These are the challenges which create obstacles in the path of specially-abled persons in accessing justice.

d.) **Cost-effective Justice:** Access to justice is a serious challenge due to the high cost of accessing justice, even though Article 39A of the Constitution of India, the RPwD Act, and the Legal Services Authority Act, 1987, guarantee free legal services for access to justice for specially-abled persons. The National Legal Services Authority had recorded 12 lakh beneficiaries in 2019, and between April 2023 to March 2024, it has recorded 15 lakh beneficiaries, but ironically, this data does not show the number of beneficiaries who are specially-abled persons²⁹. Data which shows access to justice

²⁶ Press Info. Bureau, Lack of Judicial Infrastructure, MINISTRY L. & JUST. (Mar. 31, 2022, 6:05 PM), <https://pib.gov.in/PressReleasePage.aspx?PRID=1811931>

²⁷ Pacta, Access To Justice For Persons With Disabilities In India: A Data-Informed Report (2025), https://www.pacta.in/_files/ugd/0e1e8f_947ad63929424692bc5eaf13b4af0bcc.pdf

²⁸ [2025] 2 S.C.R. 27

²⁹ Tata Trusts Et Al. (Eds.), India Justice Report: Ranking States On The Capacity Of Police, Judiciary, Prisons, And Legal Aid (2025), https://indiajusticereport.org/files/IJR%204_Full%20Report_English_Low.pdf

through legal aid for the specially-abled persons is insufficient. In the case of *Suhas Chakma v. Union of India & Ors*³⁰, 2024, the Supreme Court elaborated the importance of timely and free legal services for equality of justice. Even a person who is not facing any disability faces challenges in accessing justice. Through this, it can be presumed that a person who is socially or economically vulnerable in society, how much they can face challenges in accessing justice due to a lack of financial resources.

e.) **Insensitive and untrained legal professionals and court staff in handling the cases of specially-abled persons:** It is a significant barrier in accessing justice for specially-abled persons that the legal professionals and staff of the court are less sensitive and have less or no training to handle the cases of specially-abled persons. According to the India Justice Report 2025, most of the legal professionals do not have sufficient training or lack awareness in dealing with the cases of specially-abled persons³¹. Insensitiveness of the legal professionals is rooted in them through the discriminatory practices of society where they belong, and they are impacted by the prevalence of it.

f.) **Ineffective implementation of the provisions of the RPwD Act, 2016:** The RPwD Act is a strong and progressive legislation which ensures equality of access to justice to specially-abled persons. But an ineffective implementation of this act undermines the rights of access to justice guaranteed by the Constitution of India. Section 84 of this act ensures that a special court shall be established for the speedy trial of cases related to offences given under this act. And Section 85 of this act guarantees the special public prosecutor or special advocates for this court, who has a minimum of 7 years of experience. But even in the serious offences against specially-abled persons, the implementation of this provision fails in accessing speedy justice. Section 13 of this act ensures equal rights to the specially-abled persons with others who do not have disabilities, but the prevalence of the stereotype against them

³⁰ [2024] 10 S.C.R. 1769

³¹ Tata Trusts Et Al. (Eds.), India Justice Report: Ranking States On The Capacity Of Police, Judiciary, Prisons, And Legal Aid (2025), https://indiajusticereport.org/files/IJR%204_Full%20Report_English_Low.pdf

obstructs the implementation of this provision for ensuring equality. And Section 12 of this act ensures access to justice, but this provision also fails to ensure access to true justice. In the case of *Seema Grija Lal v. Union of India*³², the Supreme Court in an order directed some state governments to implement the RPwD Act properly.

These are the challenges that specially-abled persons face in accessing justice, and these collectively undermine the right to equality of access to justice for them with others who do not have any disability. In these conditions, the ADR mechanisms can play a significant role in accessing justice for specially-abled persons.

4. ROLE OF ALTERNATIVE DISPUTE RESOLUTION IN ACCESSING JUSTICE FOR SPECIALLY-ABLED PERSONS

The Ministry of Law and Justice, Government of India, has been taking initiative steps to promote Alternative Dispute Resolution (ADR) mechanisms for accessing justice to all outside the traditional or formal courts. In a press release in December 2024, in promoting ADR, including Arbitration and Mediation, the Ministry said that these can provide better alternative mechanisms for resolving disputes in place of the traditional and formal system of court. Time to time, the ministry takes initiative steps to promote ADR mechanisms that provide access to justice for all, including specially-abled persons (a disadvantaged group of society), from outside the traditional court system during the time of pendency of the court³³. And we can see above, the challenges faced by specially-abled persons in accessing justice through the traditional and formal court system. ADR is a less adversarial and effective path of dispute resolution for accessing justice for specially-abled persons, and it plays a significant role in accessing justice. ADR can play a transformative role in accessing justice and bring development to the status of the specially-abled persons. Further, it can eliminate discriminatory attitudes

³² WRIT PETITION (CIVIL) Diary No(s). 29329/2021

³³ Press Info. Bureau, Promotion of Alternative Dispute Resolution (ADR), MINISTRY L. & JUST. (July 18, 2024), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2084219>

of society in accessing justice and promote equality of opportunity in promoting justice.

Specially-abled community is a group of persons who are disadvantaged not only by their disabilities, but also a socially and economically disadvantaged group in society with others, and due to this, they face challenges in accessing justice. And also, it is a fact that getting justice is costly through the traditional court system. ADR is a mechanism which gives a chance to solve disputes outside the formal court system, and it reduces the financial burden of specially-abled persons.

ADR is a voluntary process in which the consent of the parties is mandatory, and it gives a coercion-free chance to access to justice. Section 13 of the RPwD Act provides equal legal capacity to the specially-abled persons, and gives individual autonomy in making decisions in what way they want to access justice. In the case of *Oil and Natural Gas Corporation Ltd. v. Afcons Gunansua JV*,³⁴ 2022, in this case, the Supreme Court held that party autonomy is an integral part of the ADR process, and in deciding the fees of the Arbitrator shall decide by consent of the parties. ADR can ensure autonomy of the individual, particularly for specially-abled persons, by giving chances for voluntary participation in accessing justice. And it will promote equality of opportunity by giving autonomy in access to justice for persons with disabilities, with others who do not have disabilities. In this way, it can eliminate the discriminatory attitudes of society by giving equal chance in access to justice outside the traditional court system. And Section 3 of the RPwD Act ensures the right of equality, dignity, respect, and integrity with others in society. Through ADR mechanisms, the appropriate government can ensure equal right of access to justice.

ADR can provide timely and speedy access to justice, and Section 84 of the RPwD Act promises speedy justice for specially-abled persons. Also, it is a fact that “justice is delayed, justice denied”. But the ADR promises speedy and timely delivery of justice through alternative dispute resolution during the pendency of cases in the

³⁴ 2022 SCC Online SC 1122

traditional courts in India. ADR has a few stages in which ADR professionals have to resolve the dispute in a limited time. In the case of *K. A. Abdul Jalees v. T. A. Sahida*³⁵, 2003, in resolving family disputes, the court promoted conciliation for securing speedy settlement of disputes. In the case of *Anita Kushawaha etc. etc. v. Pushap Sudan etc. etc.*³⁶, access to justice is a fundamental right, and it promises timely access to justice. And ADR mechanism can fulfil these promises.

Lack of trained legal professionals is a challenge for the specially-abled persons in accessing justice through traditional courts, but in the case of ADR, the parties have autonomy to choose trained, professional and emotionally intelligent persons as mediators, conciliators, or arbitrators who can understand the matter of specially-abled persons very intelligently and resolve their disputes in as effective manner that fully satisfies the parties. An emotionally intelligent person has an attitude of self-awareness, empathy and interpersonal skills that are essential for understanding the needs of specially-abled persons, not only in resolving disputes but also accessing true access to justice. An emotionally intelligent person can understand the pressure on the parties and can detect the issues behind that pressure, such as social stereotypes, and voluntariness of the parties, etc. And an emotionally intelligent person can reduce that pressure, and in this way, the parties can achieve true access to justice.

Overall, the ADR mechanism serves easy and satisfactory access to justice for the specially-abled community in society, who are a disadvantaged group in society. It provides justice at a lower cost and reduces the financial burden of specially-abled persons within a timeframe.

³⁵ [2003] 4 SCC 166

³⁶ [2016] 8 SCC 509

5. CONCLUSIONS

Specially-abled community is a more disadvantaged group in society that faces more challenges in access to justice than others in society. Even though Article 14 of the Constitution of India and Section 3 of the RPwD Act promise equal rights to specially-abled persons. Recently, in the case of *Gulshan Kumar v. Institute of Banking Personnel Selection & Ors*³⁷, 2025, the Supreme Court held that specially-abled persons have the same equal rights of specially-abled persons as others. Ironically, specially-abled persons face challenges in accessing justice, due to various reasons such as pendency of cases in the traditional courts, social stigma, lack of court infrastructure, cost-effective justice, and insensitive and untrained legal professionals etc. In such conditions as these, where specially-abled persons faced challenges in access to justice, ADR can play a significant role in accessing justice for specially-abled persons. In the case of *Anita Kushawaha etc. etc. v. Pushap Sudan etc. etc.*³⁸, access to justice is a fundamental right, and it promises timely access to justice. And ADR mechanism can fulfil these promises. ADR mechanism can reduce financial burden of specially-abled persons, and deliver timely and effective justice. ADR provides emotionally intelligent mediators, conciliators, and arbitrators, who can easily understand the situation of disputes and parties, who are disabled and have a need for utmost due care in solving disputes. ADR plays a significant role in true and satisfactory access to justice for specially-abled persons.

³⁷ [2025] 2 S.C.R. 313

³⁸ [2016] 8 SCC 509