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Review Article

From Discord to Harmony: Resolving Healthcare Conflicts through Alternative Dispute Resolution (ADR) in USA and India: Prospects and Challenges

Ankit Anand[a*], Vincent Comraj J[b]
[a]Research Scholar, [b]Professor of Law, Dean (I/C), Law, SRM Institute of Science and Technology, Kattankulathur (KTR), SRM Nagar, Chengalpattu District, Tamil Nadu, India.

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Abstract

Conflicts in healthcare are becoming more common and complex, involving issues like medical malpractice, insurance claims, and ethical dilemmas. This article explores how Alternative Dispute Resolution (ADR) methods, such as mediation and arbitration, can address these conflicts. Focusing on the Indian and American healthcare dispute resolution system, it discusses its unique challenges, including resource limitations and cultural factors. The article argues that ADR offers a collaborative, timely, and cost-effective way to resolve disputes, benefiting providers and patients. This approach could significantly improve conflict resolution in healthcare, offering a more effective alternative to traditional methods.

1. Introduction

With its intricate web of stakeholders and complex dynamics, the healthcare industry is not immune to conflicts. These conflicts can strain relationships between healthcare providers and patients, highlighting the need for effective resolution methods. Traditional litigation is often slow, costly, and adversarial, making it ill-suited for the unique challenges of healthcare conflicts.[1]

This article explores the potential of ADR methods, such as mediation, arbitration, and hybrid approaches, as more effective means of resolving healthcare disputes. ADR offers a collaborative and flexible approach, allowing parties to engage in constructive dialogue, seek mutually agreeable solutions, and maintain confidentiality. It has gained traction as a preferred method in the healthcare sector, mainly due to its ability to reduce the burden on courts and provide timely justice. Examining the healthcare dispute resolution systems in India and the United States, the article delves into the obstacles both face, including cultural variables and limited resources. Integrating ADR in this context requires a tailored approach considering these unique factors. By promoting ADR, India can enhance the efficiency and fairness of dispute resolution in healthcare, ultimately improving the quality of care and maintaining the integrity of the healthcare system. This shift towards ADR reflects a broader recognition of its value in effectively handling complex, sensitive healthcare disputes.

2. Conflicts in Health Care Industry: An Overview

Conflicts in the healthcare industry arise from various sources, including disputes over

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***Corresponding author:** Ankit Anand, Research Scholar, School of Law, SRM Institute of Science and Technology, Kattankulathur (KTR), SRM Nagar, Chengalpattu District, Tamil Nadu, India. 603 203. **Email:** ankitanandcnlu@gmail.com (M): +91-9835617239.

payments, contracts, and patient safety. Common issues include medical necessity, insurance coverage, and billing errors between patients, insurers, and providers. Conflicts also occur in managed care, often involving reimbursement policies, contract terms, and employment contracts, particularly over non-compete clauses.[2] Mergers, acquisitions, and intellectual property transactions can lead to disputes, as can class action lawsuits, usually centred on coverage and payment issues. Additional conflicts include provider networks, billing practices, product distribution, patient safety, and substandard care allegations. Intra-group conflicts and risk management concerns, such as liability and fraud claims, further complicate the landscape.[3]

3. Models of ADR in the Healthcare Sector in USA

The growing number of medical negligence cases and the need for transparency have led healthcare institutions to turn to the ADR mechanism. ADR, including arbitration, mediation, and conciliation, provides a quicker, cost-effective alternative to litigation. Mediators help resolve disputes by facilitating dialogue, while arbitrators make decisions based on the evidence, offering an efficient solution to the growing number of court cases.[4]

3.1 Rush Model

The Rush Model of co-mediation, introduced by Chicago's Rush Medical Centre in 1995, was created to reduce high legal costs and unpredictable jury awards in malpractice cases. The process begins with a mediation agreement and an early exchange of relevant documents, followed by an initial mediation conference where both parties present their positions. The model includes private caucuses for open dialogue and exploring resolutions. Both parties share costs equally, and the process is confidential and binding. The unique aspect of the model is that the plaintiff selects the mediators, typically experienced lawyers for both sides, which encourages active participation.[5] This approach led to slightly fewer lawsuits, demonstrating its effectiveness in resolving healthcare malpractice disputes. The Rush Model provides a quicker, cost-effective alternative to traditional litigation, emphasizing information exchange, balanced perspectives from mediators, and confidentiality. Its success in creating win-win outcomes and saving time and money underscores its value in ADR.[6]

3.2 The VA Model

In 1987, the Department of Veterans Affairs (VA) launched a unique ADR program at the Lexington, Kentucky, VA Medical Centre to address rising lawsuits and significant awards. This program focused on complete transparency, disclosing all errors and adverse events to patients, even if they were unaware. The goal was to provide a clear account of incidents, including any preventive measures taken, and to offer an apology from the chief of staff, demonstrating full responsibility.[7]

Unlike traditional dispute resolution methods that often use external mediators, the VA program utilized internal staff to negotiate directly with patients, their families, and attorneys until a fair settlement was reached. Compensation could include corrective medical actions, increased disability ratings, and financial reparations. The program emphasized building trust and maintaining a positive relationship with patients by prioritizing openness, apologies, and corrective actions. This approach aimed to resolve disputes more compassionately and effectively, improving communication and trust.[8]

3.3 The University of Michigan Model

In 2001, the University of Michigan Health System introduced a new policy to manage medical malpractice claims, aiming to decrease the frequency and size of such claims. There are three core principles associated with this policy which are as follows:

- **Prompt and Fair Compensation:** The policy aimed to deliver quick and just compensation to patients injured by unreasonable medical care, ensuring timely restitution for harm caused.
- **Defending Staff and the Medical Centre:** It emphasised defending the medical centre and its staff against unjust claims when care was reasonable, and the injury was not their fault.
- **Learning from Mistakes:** The policy focused on learning from errors and patient experiences to improve care and prevent future incidents.
- **Continuous Improvement:** By analysing adverse events, the policy sought to use these insights for growth and enhanced patient safety.[9]

The University of Michigan Health System's policy on medical malpractice claims encourages open and honest communication between staff and patients about errors. Discussions begin promptly, with staff expressing a commitment to helping patients heal and resolving claims outside of court. Patients are encouraged to involve their attorneys for legal advice. This approach promotes transparency, accountability, and trust while resolving claims quickly and fairly, saving time and resources. The

focus is on learning from mistakes to improve patient safety.[10]

3.4 The Pew Mediation and ADR Model

The Pew Demonstration, Mediation, and ADR project, implemented in four Pennsylvania hospitals in 2002, aims to manage adverse events through improved communication, addressing patient concerns, learning from incidents, and achieving fair, cost-effective claim resolutions.

The model recommends several key elements:

- **Communication Skills Training:** Healthcare professionals are trained to engage in open, honest discussions with patients and families after medical errors.
- **Involvement of Process Experts:** Experts guide the planning and execution of disclosure conversations, ensuring sensitivity.
- **Adequate Time for Disclosure:** Sufficient time is allocated for meaningful discussions, preventing rushed interactions.
- **Apology from All Parties:** Apologies from involved parties show empathy and a commitment to improvement.
- **Debriefing and Support:** Support is provided to healthcare professionals to cope with the emotional impact of errors.
- **Mediation for Claim Settlement:** Mediation is used to facilitate fair, collaborative resolutions, avoiding litigation.

The Pew Demonstration, Mediation, and ADR project uses mediation to improve communication and accountability in healthcare. Facilitating open dialogue helps parties understand each other's views after adverse events, promoting healing and learning. Mediators guide discussions to clarify issues, offering solutions like compensation and policy changes. This approach addresses patients' needs and encourages proactive safety improvements, providing a constructive resolution to disputes.[11]

3.5 Internal Neutral Mediator Model

The Internal Neutral Mediator Model, used at the National Naval Medical Centre (NNMC) in Bethesda, Maryland, features an ombudsman who addresses healthcare issues by investigating incidents and developing preventive protocols. This impartial role focuses on understanding root causes and advocating for patients, providers, and the organization. The program offers a confidential space for discussing concerns, mediating disputes, and ensuring fair resolutions, reflecting NNMC's commitment to patient-centred care and continuous improvement.[12] NNMC's program has set a precedent for similar initiatives in healthcare, emphasizing the value of the ombudsman in enhancing patient experiences and communication. The model promotes accountability and learning, highlighting the importance of dedicated advocates in resolving conflicts and improving healthcare outcomes.[13]

4. ADR in Healthcare System: Indian context

4.1 Arbitrability of Healthcare Disputes

In India, the Arbitration and Conciliation Act of 1996 governs arbitration, a process where a neutral arbitrator resolves disputes. The Supreme Court in Booz-Allen and Hamilton Inc v. SBI Finance (2011) 5 SCC 532, clarified that arbitration is suitable for disputes involving personal rights (rights in personam), not public or property rights (rights in rem). In healthcare, arbitration can address issues like treatment decisions, patient consent, and internal disputes, focusing on matters affecting specific individuals or parties.[14]

Contractual disputes, including those related to insurance and employment in healthcare, can also be resolved through arbitration. However, arbitration is only appropriate for minor fraud allegations in medical malpractice cases. In contrast, severe cases, as noted in the Ayyasamy case (2016) 10 SCC 386, should be handled by the courts due to their public importance. Arbitration's advantages, such as flexibility and faster resolution, make it an appealing option, but the nature of the dispute must guide the choice of forum.[15]

4.2 Mediation in Healthcare Sector

Mediation is increasingly preferred in the healthcare sector for resolving disputes, as it promotes open communication and cooperation. Unlike litigation, mediation allows parties to maintain control over the process and fosters a more constructive environment. Justice R V Raveendran highlighted the drawbacks of court proceedings, such as delays, high costs, and a hostile atmosphere, which can strain patient-doctor relationships and increase stress for healthcare providers. Mediation addresses these issues by offering a confidential setting for honest discussions, often resulting in quicker resolutions, typically within 60 days.[16] Mediation is especially beneficial in preserving relationships, which is crucial in healthcare disputes involving employee indemnity insurance. It avoids the animosity of legal battles and encourages cooperative, mutually satisfactory solutions. The process also emphasizes understanding and

communication, as seen in cases like Dr. Laxman Balkrishna Joshi vs. Dr. Trimbak Bapu Godbole (1969) 1 SCR 206, where mediation can lead to additional training and improved patient care. Mediation's focus on efficient, amicable settlements makes it an effective tool for resolving healthcare disputes.[17]

4.3 Lok Adalat for the medical disputes

The Indian judicial system uses Permanent Lok Adalats to relieve court congestion and resolve disputes. According to Section 22A(b) of The Legal Services Authorities Act, 1987, Lok Adalats can handle medical-related disputes, as hospitals and dispensaries are classified as Public Utility Services. This forum allows for settling disputes such as medical negligence and Medi-claims insurance outside the traditional court system, promoting timely and amicable resolutions. Lok Adalats offer a cost-effective and flexible alternative to litigation, helping to address medical disputes and reduce the burden on courts efficiently.[18]

4.4 Significance of ADR in Healthcare Dispute

ADR in healthcare has several implications that can positively impact the healthcare system, patients, and healthcare providers and resolve disputes. Here are some critical implications:

- **Enhanced Communication:** ADR processes like mediation and arbitration foster open, honest communication, improving understanding and empathy among parties and enhancing patient-provider interactions.
- **Faster Resolution:** ADR offers a quicker alternative to litigation, leading to faster dispute resolution and allowing patients and healthcare providers to move forward more swiftly.
- **Cost-Effective:** ADR reduces the costs associated with litigation, such as legal fees and lengthy trials, saving resources that can be redirected toward patient care and system improvements.
- **Patient-Centred Approach:** ADR prioritizes patient involvement, allowing them to express concerns and participate in decision-making, which enhances satisfaction and trust.
- **Relationship Preservation:** ADR promotes dialogue and understanding, helping maintain positive relationships between patients and healthcare providers, which is crucial for ongoing care.
- **Continuous Improvement:** ADR encourages learning from adverse events, leading to changes that improve patient safety and the overall quality of care.[19]

5. Manacle associated with the application of ADR in the Healthcare Industry

ADR faces two main obstacles compared to litigation. We can categorize these obstacles as perspective-related and legal obstacles.

5.1 Perspective-related obstacles

Obstacles to ADR in healthcare include physicians' fears about legal exposure and confidentiality breaches. Hospitals often see ADR as a way to avoid litigation rather than resolving minor issues. Patients may not recognise the value of ADR and prefer court if they have access to funds. Some believe ADR cannot provide satisfactory, legally binding outcomes and suspect hospitals and doctors collude to protect their interests. Lawyers may also push for litigation for financial gain.[20]

5.2 Legal Obstacles

On a legal level, some obstacles to ADR in healthcare include concerns over access to justice. Critics argue that ADR may not adequately protect parties' rights, particularly in compulsory arbitration, which can limit court access. It undermines the value of consent, as patients might need to fully understand or agree to such terms when signing pre-treatment arbitration agreements.

ADR methods are intended to complement the court system, yet there are operational and legislative challenges. These include practical and logistical issues and existing laws that may hinder ADR's broader adoption in healthcare. Ensuring access to justice is fundamental in bridging inequalities and ensuring fair treatment in legal processes, which ADR must also support.[21]

5.3 The operational Premise:

In the operational Premise, ADR is most effective when parties voluntarily choose it, as they are more likely to understand and work towards resolving their disputes. However, issues can arise when ADR is institutionally enforced, leading to consistency in methods, application, and outcomes. Several reasons contribute to these discrepancies:

- **Healthcare Institutions Approach:** Some healthcare institutions use ADR to deter litigation, which may prioritize institutional interests over fair dispute resolution.
- **Handling Complaints and Claims:** The success of ADR depends on fair and transparent handling of complaints and claims. A lack of confidence in the process can arise if these issues are not adequately addressed.

- **Pre-treatment Clauses:** Pre-treatment arbitration or mediation clauses often favour institutions and may limit the weaker party's understanding or agreement, creating an imbalance in power and potentially undermining ADR's effectiveness.

5.4 The legislative Premise:

On the legislative Premise, there are several obstacles related to ADR that stem from legal frameworks. These obstacles include:

- **Public Order Limitations:** Some legal systems, like India's, consider health a public policy issue, often referring medical disputes to courts rather than ADR.
- **Caps on Compensation:** Countries like India may limit economic and non-economic compensation in malpractice claims, potentially reducing ADR's fairness and effectiveness.
- **Pre-screening for Merit:** Pre-screening cases in institutionalized ADR can cause delays and create barriers, affecting the process's efficiency.
- **Unified Legal Framework:** In quasi-federal countries, the need for unified laws can hinder consistent and harmonized ADR practices, posing challenges in implementation.

6. Drawbacks of ADR in Healthcare Dispute

While ADR methods like mediation and arbitration can save time and costs in healthcare disputes, they have drawbacks. The potential drawbacks of ADR in healthcare are as follows:

- **Lack of Formal Procedures:** ADR may need more formal legal procedures and standards of traditional litigation, raising concerns about fairness and predictability. It is useful to expedite the cases in pandemics.[22]
- **Limited Legal Protections:** ADR participants may need more discovery access, appeal rights, and fewer opportunities to present their cases fully.
- **Power Imbalances:** In healthcare disputes, power imbalances can affect negotiation dynamics, often disadvantaging patients.
- **Confidentiality Concerns:** While ADR emphasizes confidentiality, public disclosure may be necessary for patient safety and accountability.
- **Limited Precedential Value:** ADR decisions typically do not create binding legal precedents, complicating the establishment of consistent legal principles.
- **Lack of Expertise:** ADR practitioners may need more expertise in complex healthcare issues, potentially affecting case evaluations.
- **Enforcement Challenges:** Enforcing arbitral award/ mediation settlement agreement can be more challenging than enforcing court judgments, complicating compliance.

ADR effectiveness in healthcare varies with the situation, parties' good faith, and the process's quality. Each case should be assessed individually to choose the best dispute resolution method.[23]

7. Conclusion

U.S. President Jimmy Carter's quote underscores the need for mutually beneficial outcomes in dispute resolution, emphasizing that both parties must "win" for agreements to last. This principle is relevant to ADR in healthcare, where arbitration/mediation protect the interests of all parties. The Indian Supreme Court has endorsed ADR, as seen in Food Corporation of India v. Joginder Mohindarpal Case 1989 SCC (2) 347, and Afcons Infrastructure v. Cherian Varkey Construction 2010 (8) SCC 24, recognizing it as a viable alternative to litigation, especially for commercial disputes.

Implementing ADR in India's healthcare sector faces challenges due to cultural diversity, power imbalances, and varied stakeholder interests. A successful transition requires addressing these issues to ensure fair and effective ADR practices. Developing an Indian-specific ADR model that aligns with societal values can foster open communication, timely resolutions, and transparency. ADR can make dispute resolution faster and more cost-effective and improve patient safety by encouraging hospitals to adopt ADR agreements with patients.

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