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ADR in Matrimonial Disputes: A Catalyst for Resolution or an Obstacle to Settlement?

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ABSTRACT

Family disputes are now recognised, in Jana Singer's formulation, as ongoing social and emotional processes rather than discrete legal events. Over the last five decades this shift in perception has altered the way the legal system handles family disputes, moving away from the emotionally overwhelming and time-intensive model of traditional litigation towards Alternative Dispute Resolution (ADR) techniques. ADR has become a cornerstone in resolving family law disputes in India, by replacing the conventional model of adjudication with a more collaborative, interdisciplinary, and forward-thinking family dispute resolution regime. It has also reshaped the practice of family law and fundamentally altered the way in which disputing families interact with the legal system. ADR covers a range of techniques, including conciliation, mediation, arbitration, Lok Adalats and counselling, applied to disputes involving divorce, child custody, alimony and maintenance. For the purposes of this paper, ADR mechanisms are limited to Lok Adalats and mediation, which serve as twin pillars of justice, offering hope and harmony in the chaotic landscape of family disputes. Their effectiveness depends on factors such as the willingness of the parties, the complexity of the dispute and procedural appropriateness. This article examines these critical aspects of ADR and explores potential solutions through judicial interpretation, while critically assessing the achievements and failures of incorporating ADR into family law through both judicial analysis and global comparison. It concludes with innovations and recommendations that blend theory and practice to cast a guiding light on the path ahead.

Keywords: family law, mediation, lok adalats, judicial interpretation

I. INTRODUCTION

The process of resolving legal family disputes has, both literally and metaphorically, moved from confrontation toward collaboration and from the courtroom to the conference room.¹

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¹ Andrew Schepard & Peter Salem, *Foreword to the Special Issue on the Family Law Education Reform Project*, 44 FAM. CT. REV. 513 (2006).

In India, marital conflict has long been a sensitive and complex subject, bound up with emotional, social and legal difficulties. With the rising number of divorce petitions and family disputes, the Indian legal system has struggled to handle the caseload of family law matters. This has led to the growing adoption of Alternative Dispute Resolution (ADR) techniques, such as mediation, conciliation and Lok Adalats, as an alternative to traditional litigation.

Despite the advantages that ADR offers in resolving matrimonial disputes, its usefulness in settling them remains open to question. By examining both the positive and the negative aspects of ADR in matrimonial disputes, this study contributes to a broader understanding of its role in modern family law practice.

II. MATRIMONIAL DISPUTES IN THE INDIAN FAMILY

The fundamental goal of Indian family life is to create a haven of peace and harmony even when life's challenges threaten to shake its foundation, yet it cannot be denied that family life will always involve conflict.² Human beings are social by nature and differ widely in personality and disposition, so it is natural for any individual or group to come into conflict with others.³ Marriage is understood as a long-term companionship of two persons, but it is often observed that India's patriarchal family structure attaches further expectations to it, so that in many cases a marriage is arranged less for lifelong companionship than for the care of the husband's parents or the bearing of children.

Several serious issues contribute to marital discord and divorce, among them domestic violence including physical, emotional and mental abuse, interference from members of the extended family, particularly in a joint family setting, infidelity and the loss of trust, financial stress, addiction, mental health difficulties, and conflicts of lifestyle and compatibility.⁴ When problems become irreconcilable, a resolution must be sought. Traditionally, the fate of marital disputes was left in the hands of family elders or senior members of the household, whose authority was treated as the final word in restoring harmony. In the modern Indian system, family courts and ADR processes are the legal routes for resolving disputes relating to divorce, maintenance, custody and other family matters.

Family courts were established to resolve marital disputes, but they still follow a largely traditional adversarial procedure, which presents difficulties of its own. They carry a heavy backlog, which leads to lengthy trials and to delay even in urgent matters such as child custody

² LEWIS A. COSER, *THE FUNCTIONS OF SOCIAL CONFLICT* 150 (1956).

³ ELLIOT ARONSON & JOSHUA ARONSON, *THE SOCIAL ANIMAL* (12th ed. 2018).

⁴ *Exploring Reasons and Effects of Divorce in India*, MINDTALK, <https://www.mindtalk.in/blogs/exploring-reasons-and-effects-of-divorce-in-india> (last visited Feb. 14, 2025).

and maintenance, and they suffer from inadequate infrastructure, a shortage of judges and low public awareness.⁵ The adversarial character of litigation intensifies disputes and causes emotional distress to families, particularly to children. The absence of privacy in open court deters parties from speaking candidly about intimate matters. Traditional courts also focus on legal technicality rather than amicable resolution, and their rigid procedure is difficult for a layperson to navigate.⁶ ADR was introduced in light of these difficulties.

III. ALTERNATIVE DISPUTE RESOLUTION (ADR) IN INDIA

A. Historical Background

The modern statutory framework for ADR in India was consolidated by the Arbitration and Conciliation Act, 1996,⁷ which was enacted in part to relieve the backlog of cases in the courts. Statutory ADR is, however, considerably older. The Arbitration Act, 1940 governed arbitration for more than half a century, the Family Courts Act, 1984 placed a settlement duty on family courts, and the Legal Services Authorities Act, 1987 gave Lok Adalats a statutory footing nine years before 1996. The origins of the practice are older still, rooted in traditional dispute resolution through panchayats and community mediation.

Section 89 of the Code of Civil Procedure, 1908, inserted by the Code of Civil Procedure (Amendment) Act, 1999 and brought into force on 1 July 2002, enables a court to refer a dispute for settlement outside the court and enumerates four modes: arbitration, conciliation, judicial settlement including settlement through Lok Adalat, and mediation.⁸ Lok Adalat is therefore a species of judicial settlement within the third limb rather than a free-standing fifth mode.⁹

The key factors behind the establishment of ADR in India are the following.

- The 222nd Report of the Law Commission of India on the need for justice dispensation through ADR, which emphasised the need for and the importance of ADR in India.¹⁰
- The Report of the Arrears Committee (1989-90), chaired by Justice V.S. Malimath, which recommended obligatory reference to arbitration, conciliation, mediation or Lok Adalat for prompt justice. That committee is distinct from the 2003 Committee on

⁵ *Family Courts: Need for Expansion and Reforms*, CIVILSDAILY (Feb. 21, 2023), <https://www.civildaily.com/news/family-courts-expansion-and-reforms/>.

⁶ Pooja Sood & Amandeep Verma, *The Working of Family Courts in India: A Study*, 63 PANJAB U. L. REV. 116 (2024).

⁷ The Arbitration and Conciliation Act, 1996, No. 26 of 1996, INDIA CODE (1996).

⁸ CODE CIV. PROC., 1908, No. 5 of 1908, INDIA CODE (1908), § 89 (inserted by the Code of Civil Procedure (Amendment) Act, 1999, No. 46 of 1999, w.e.f. July 1, 2002).

⁹ *Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. (P) Ltd.*, (2010) 8 SCC 24 (India).

¹⁰ LAW COMM'N OF INDIA, REPORT NO. 222, NEED FOR JUSTICE-DISPENSATION THROUGH ADR ETC. (2009).

Reforms of the Criminal Justice System, which was also chaired by Justice Malimath.¹¹

- Directives of the Chief Justice of India and of the Supreme Court encouraging ADR mechanisms in civil disputes.¹²
- The global influence of ADR, and in particular the UNCITRAL Model Law on International Commercial Arbitration of 1985.¹³

B. Important legislations introducing ADR

Legislation	Year	ADR Mechanism Introduced
Arbitration Act, 1940	1940	Early framework for arbitration in India; repealed by the Arbitration and Conciliation Act, 1996
Arbitration and Conciliation Act, 1996	1996	Comprehensive ADR law based on UNCITRAL Model
Code of Civil Procedure, 1908, Section 89 (inserted by the Amendment Act, 1999)	1999 (in force 2002)	Required courts to formulate terms of settlement and refer cases to arbitration, conciliation, judicial settlement including Lok Adalat, or mediation
Legal Services Authorities Act, 1987	1987	Established Lok Adalats (People's Courts) for dispute resolution
Commercial Courts Act, 2015 (No. 4 of 2016)	2015	Promoted ADR in commercial disputes
Mediation Act, 2023	2023	Consolidated the law on mediation; a mediated settlement agreement is final, binding and enforceable as a judgment or decree (Section 27)

Important legislations introducing ADR in India

IV. ADR IN FAMILY LAW: A POSITIVE APPROACH

ADR refers to the various methods of resolving a dispute without a trial.¹⁴ It has become a bedrock of family law dispute resolution in India, transforming conflict into resolution with speed, sensitivity and harmony. This shift from family court litigation to ADR has gained traction in family law, particularly with the growing acknowledgment of the need to reduce the

¹¹ REPORT OF THE ARREARS COMMITTEE (1989-90) (Malimath Committee) (India).

¹² *CJI Wants Courts to Promote Alternative Dispute Resolution Tools*, THE HINDU (2022), <https://www.thehindu.com/news/national/cji-wants-courts-to-promote-alternative-dispute-resolution-tools/article65306903.ece>.

¹³ U.N. Comm'n on Int'l Trade Law, *UNCITRAL Model Law on International Commercial Arbitration*, U.N. Doc. A/40/17, Annex I (June 21, 1985) (as amended 2006).

¹⁴ *What Is Alternative Dispute Resolution (ADR)?*, N.Y. STATE UNIFIED COURT SYS., https://ww2.nycourts.gov/ip/adr/What_Is_ADR.shtml (last visited Feb. 14, 2025).

adversarial character of court proceedings in family disputes.¹⁵ The elements that commend ADR over family court litigation are the following.

First, mediation offers a lifeline to families in conflict: it is quick, cost-effective and empowering. Unlike expensive and time-consuming court battles, it cuts through the chaos at lower cost and offers a direct route to settlement.¹⁶

Second, for families with children ADR is not merely a choice but an opportunity to escape prolonged litigation and to find peace on their own terms. Children stand in the middle of these disputes, and parental conflict harms them when custody proceedings are drawn out; the mental state of the child must also be taken into account.¹⁷ Courts should therefore lean towards non-adversarial methods, including mediation and conciliation, rather than traditional litigation. The aim is to help parents resolve conflict amicably and to build a workable co-parenting relationship after divorce.

Third, ADR marks a change in the way family courts understand family disputes, moving away from treating them as discrete legal events and towards treating them as social and emotional processes.¹⁸ Court proceedings take a long time to reach a decision and are conducted in open court, which adds to the emotional strain on the parties. ADR draws on mediators, arbitrators and counsellors, which allows deeper family difficulties to be addressed through interdisciplinary solutions.

Fourth, ADR recognises judges as conflict managers and not only as decision-makers. Courts once focused on assigning blame and on deciding who was right or wrong in a family dispute.¹⁹ Under ADR, mediators and other neutrals manage the conflict and assist more actively, guiding families through the dispute and helping them reorganise their lives after divorce. This approach also supports the emotional well-being of the family.

¹⁵ Jana B. Singer, *Dispute Resolution and the Postdivorce Family: Implications of a Paradigm Shift*, 47 FAM. CT. REV. 363 (2009).

¹⁶ Mritunjai Rai, *The Family Courts Act, 1984*, LAW CORNER (Feb. 16, 2025), <https://lawcorner.in/family-court-act-1984-an-overview/>.

¹⁷ ROBERT E. EMERY, RENEGOTIATING FAMILY RELATIONSHIPS: DIVORCE, CHILD CUSTODY, AND MEDIATION 205 (1994).

¹⁸ Gregory Firestone & Janet Weinstein, *In the Best Interests of Children: A Proposal to Transform the Adversarial System*, 42 FAM. CT. REV. 203 (2004); Clare Huntington, *Rights Myopia in Child Welfare*, 53 UCLA L. REV. 637 (2006); Andrew Schepard, *The Evolving Judicial Role in Child Custody Disputes: From Fault Finder to Conflict Manager to Differential Case Management*, 22 U. ARK. LITTLE ROCK L. REV. 395 (2000).

¹⁹ Schepard, *supra* note 18.

V. ADR IN FAMILY LAW: A NEGATIVE APPROACH AND THE REASONS IT FAILS

First, power speaks louder than neutrality. ADR is designed to promote equity, but it often tilts the scales in favour of the dominant party. A financially powerful party can steer the negotiation and improve its own position, leaving the weaker party with little practical choice but to accept an unjust agreement.²⁰

Second, ADR faces institutional limitations. Although ADR promises enhanced problem-solving and capacity-building, there is a shortage of trained mediators, arbitrators and conciliators, which prevents parties from having their legal needs properly met.²¹

Third, a mediated settlement was long regarded as a brittle agreement. Mediation was treated as binding only once the settlement had been reduced to writing and recorded or approved by a court, which left room for a party to resile after the mediation. That position has changed. Section 27 of the Mediation Act, 2023 makes a mediated settlement agreement final, binding and enforceable in the same manner as a judgment or decree of a court, and section 28 confines a challenge to narrow grounds to be raised within ninety days.²²

Fourth, there is the role of advocates. Advocates guide their clients through family mediation and ensure that decisions are fair, legally sound and well informed. They assess whether mediation is suitable or whether litigation is the better course, and they prevent clients from being pressed into unreasonable settlements that only generate further litigation. In some cases, however, advocates discourage clients from accepting a settlement that the clients are willing to accept.

ADR in family law offers a powerful path to resolution. Its benefits are considerable, but so are its consequences, and they must be navigated carefully if outcomes are to be fair and lasting.

VI. MEDIATION, CONCILIATION AND LOK ADALATS

Mediation is a voluntary process in which a neutral third party, the mediator, helps the disputing parties negotiate a mutually agreeable resolution. It is especially effective in family law matters such as divorce, child custody, maintenance and the division of property, because it fosters open communication, mutual understanding and the preservation of familial bonds.²³ Mediation

²⁰ Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545 (1991).

²¹ ALOK PRASANNA KUMAR ET AL., VIDHI CTR. FOR LEGAL POLICY, STRENGTHENING MEDIATION IN INDIA: A REPORT ON COURT-CONNECTED MEDIATIONS (2016).

²² The Mediation Act, 2023, No. 32 of 2023, INDIA CODE (2023), §§ 27, 28.

²³ *The Role of Mediation in Resolving Family Disputes in India*, LAW NOTES, <https://lawnotes.co/the-role-of-mediation-in-resolving-family-disputes-in-india/> (last visited Feb. 14, 2025).

proceeds in three stages: the joint session, the separate session and the recording of a binding agreement.²⁴

Lok Adalats, or people's courts, are a further forum for resolving family disputes amicably. An award of a Lok Adalat is deemed to be a decree of a civil court; it is final and binding on all parties and no appeal lies against it.²⁵ No court fee is payable in a Lok Adalat, and where a matter pending before a court is referred and settled there, the court fee already paid is refunded.²⁶ The members of a Lok Adalat act as statutory conciliators rather than as judges, and facilitate settlement without coercion.²⁷ Cases are settled on the basis of mutual compromise between the parties, with the members assisting impartially towards an amicable resolution.²⁸

VII. LEGISLATIVE PROVISIONS

The Family Courts Act, 1984 was enacted to promote conciliation and to secure the speedy settlement of disputes relating to marriage and family affairs, and it builds ADR into the resolution of family disputes.²⁹ Section 9 requires a Family Court, in the first instance, to make every effort to assist and persuade the parties in arriving at a settlement.³⁰ Section 10(3) permits a Family Court to lay down its own procedure with a view to arriving at a settlement, which gives it the flexibility to adopt a less formal and more conciliatory approach.³¹

Under the Hindu Marriage Act, 1955 the court must, before granting relief, make an effort to bring about a reconciliation between the parties.³² For that purpose the court may adjourn the proceedings for a period not exceeding fifteen days. The duty does not extend to a petition founded on the grounds in section 13(1)(ii) to (vii), which the proviso to section 23(2) excepts.³³

Section 34 of the Special Marriage Act, 1954 serves the same function and purpose as section 23 of the Hindu Marriage Act.³⁴ Dissolving a marriage without a prior attempt at reconciliation would accordingly be a lapse on the part of the court.³⁵

²⁴ Himanshu Gupta, *The Role of Mediation in Resolving Family Disputes in India*, 4(2) INDIAN J.L. REV. 924, 924-27 (2024).

²⁵ *Lok Adalat*, NAT'L LEGAL SERVS. AUTH., <https://nalsa.gov.in/lok-adalat> (last visited Feb. 14, 2025).

²⁶ *Id.*

²⁷ *Lok Adalat*, *supra* note 25.

²⁸ Manzoor Laskar, *Lok Adalat System in India* (Nov. 18, 2012) (unpublished working paper, Symbiosis Int'l Univ.), <https://ssrn.com/abstract=2437859>.

²⁹ The Family Courts Act, 1984, No. 66 of 1984, INDIA CODE (1984).

³⁰ *Id.* § 9.

³¹ *Id.* § 10(3).

³² The Hindu Marriage Act, 1955, No. 25 of 1955, INDIA CODE (1955), § 23(2).

³³ *Id.* § 23(2) proviso, § 23(3).

³⁴ The Special Marriage Act, 1954, No. 43 of 1954, INDIA CODE (1954).

³⁵ *Id.* § 34.

Order XXXII-A, rule 3 of the Code of Civil Procedure, 1908 is consistent with the objects of the Special Marriage Act and the Hindu Marriage Act. It places the court under a duty to make an effort towards a peaceful resolution in family proceedings, and where the court sees a possibility of settlement at any stage it may adjourn the proceedings in order to enable an agreement to be reached.³⁶

Lok Adalats are given special recognition by the Legal Services Authorities Act, 1987.³⁷ They support the judicial system as forums for amicable settlement, principally through persuasive techniques such as conciliation. Under section 20, any case pending before a court, including a family dispute, may be referred to a Lok Adalat for resolution.³⁸ Order XXXII-A of the Code of Civil Procedure, 1908 likewise underlines the obligation of the court to encourage the resolution of family conflict, which aligns with the object of Lok Adalats in family law matters.

VIII. JUDICIAL INTERPRETATION

In the face of rising family disputes the judiciary has acted as a silent architect, guiding parties towards ADR through its judgments. Some of the leading decisions are the following.

In *K. Srinivas Rao v. D.A. Deepa* the Supreme Court directed criminal courts dealing with complaints under section 498-A of the Indian Penal Code to refer the parties to mediation where the judge feels that there exist elements of settlement and both parties are willing, while expressly preserving the rigour, purport and efficacy of section 498-A, and directed Family Courts to make efforts at settlement, including through mediation.³⁹ The Court also directed that all mediation centres set up pre-litigation desks or clinics and give them wide publicity.⁴⁰ It held that where there is a good chance of settlement the Family Court may, in its discretion, always extend the time limit.⁴¹

In *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.* the Supreme Court set out the categories of cases normally suitable for ADR, expressly including all matrimonial, maintenance and child custody disputes and all cases arising from strained or soured relationships, and encouraged courts to refer such cases to conciliation or mediation.⁴² The

³⁶ CODE CIV. PROC., *supra* note 8, Sch. I, Order XXXII-A, r. 3.

³⁷ The Legal Services Authorities Act, 1987, No. 39 of 1987, INDIA CODE (1987).

³⁸ *Id.* § 20.

³⁹ *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226 : AIR 2013 SC 2176 (India).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Afcons Infrastructure Ltd.*, *supra* note 9.

decision also clarified the working of section 89 of the Code of Civil Procedure, 1908 and provided a clearer framework for its implementation.⁴³

In *B.S. Joshi v. State of Haryana* the Supreme Court held that the inherent power of the High Court under section 482 of the Code of Criminal Procedure, 1973 is not circumscribed by section 320 of that Code, and that it may be exercised to quash proceedings under section 498-A of the Indian Penal Code where the spouses have amicably settled their dispute.⁴⁴ The judgment affirms the place of amicable settlement in matrimonial conflict.

In *Bini v. Sundaran* the Kerala High Court examined the role of conciliation in family disputes under the Family Courts Act, 1984, and in particular whether conciliation is an essential condition where the petition is founded on conversion, mental instability, leprosy or venereal disease. The Court held that reconciliation under the Act is mandatory, including on those excepted grounds.⁴⁵

S. Murali v. Assistant Commissioner of Police illustrates the working of Lok Adalats in family matters. M.C. No. 52 of 2008 on the file of the II Additional Family Court, Chennai was taken to the Lok Adalat, where both parties appeared and an amicable settlement was reached on 21 March 2009 providing maintenance of Rs. 2,500 per month.⁴⁶ The Madras High Court observed that the police have no business to enter into the order passed by the Lok Adalat.⁴⁷

These judgments show the effort the judiciary has made to bring ADR and Lok Adalats into matrimonial disputes for the speedy disposal of cases.

IX. HAS ADR IN FAMILY LAW NEVER FACED FAILURE? AN ANALYSIS THROUGH INDIAN STATISTICS

Mediation and Lok Adalats are useful settlement procedures in family law disputes, but there are instances in which they do not produce a settlement. Between 2007 and 2014 the Bangalore Mediation Centre took up roughly 30,000 cases, of which more than 20,000 were settled through mediation, a settlement rate of about two thirds.⁴⁸ The residue of roughly 10,000 matters was not settled and is likely to have proceeded through the ordinary court process. The reported figures are for the caseload of the Centre as a whole and not for family disputes alone.

⁴³ *Id.*

⁴⁴ *B.S. Joshi v. State of Haryana*, (2003) 4 SCC 675 : AIR 2003 SC 1386 (India).

⁴⁵ *Bini v. Sundaran*, AIR 2008 Ker. 84 : 2008 (1) KLT 331 (India).

⁴⁶ *S. Murali v. Assistant Comm'r of Police*, CrI. O.P. No. 25566 of 2015 (Mad. H.C. Mar. 24, 2016) (India).

⁴⁷ *Id.*

⁴⁸ Alok Prasanna Kumar et al., *Mediating Matrimonial Disputes in India: Trends from the Bangalore Mediation Centre*, 52(52) ECON. & POL. WKLY. (2017).

Lok Adalats reduce backlog by promoting amicable settlement, but their success depends on the willingness of both parties to compromise, and where no agreement is reached the case returns to the regular court system. The Supreme Court has held that a Lok Adalat constituted under section 20 of the Legal Services Authorities Act, 1987 has no adjudicatory role and that its award is not a compromise decree.⁴⁹ The award is nonetheless deemed by section 21 of the same Act to be a decree of a civil court; what the Court denies is the adjudicatory character of the body, not the enforceability of a settlement genuinely arrived at.⁵⁰

X. GLOBAL COMPARISON

A. ADR Approaches in Canada

Canada's ADR system is often held up as a model of efficiency and fairness. It offers mediation, arbitration, negotiation and expert opinion, which allows the process to be matched to the case.⁵¹ Because ADR in Canada is voluntary and confidential, it fosters open dialogue and trust away from public view.⁵² In some jurisdictions, including British Columbia, private mediation is mandatory once one party serves the other with a notice of intent to mediate, which promotes early settlement and reduces judicial backlog.⁵³ ADR is deeply embedded in the Canadian legal system and is a recognised route to resolution rather than a mere option; it also saves cost and time and offers an escape from prolonged litigation.⁵⁴

Canadian courts have at the same time policed the fairness of privately negotiated family settlements. In *Rick v. Brandsema* the Supreme Court of Canada set aside a separation agreement, holding that the husband's failure to make full and honest financial disclosure, his knowledge that the negotiation was proceeding on erroneous figures and his exploitation of the wife's mental instability rendered the bargain unconscionable, and ordering him to pay the shortfall of CAD 649,680.⁵⁵ The decision is the leading Canadian authority for setting aside a negotiated family agreement where the bargaining process was unfair.

⁴⁹ *New Okhla Indus. Dev. Auth. v. Yunus*, (2022) 6 SCC 483 (India).

⁵⁰ The Legal Services Authorities Act, 1987, *supra* note 37, § 21.

⁵¹ DEP'T OF JUSTICE CAN., *Alternative Approaches*, <https://www.justice.gc.ca/eng/csj-sjc/ccs-ajc/04.html> (last updated Sept. 1, 2021).

⁵² ADR INST. OF CAN., *Frequently Asked Questions*, <https://adric.ca/frequently-asked-questions/> (last visited Feb. 16, 2025).

⁵³ FED. JUD. CTR., *Alternative Dispute Resolution*, JUDICIARIES WORLDWIDE, <https://judiciariesworldwide.fjc.gov/alternative-dispute-resolution> (last visited Feb. 16, 2025).

⁵⁴ Weilers LLP, *An Introduction to Alternative Dispute Resolution (ADR)* (Nov. 19, 2014), <https://weilers.ca/2014/11/19/an-introduction-to-alternative-dispute-resolution-adr/>.

⁵⁵ *Rick v. Brandsema*, 2009 SCC 10, [2009] 1 S.C.R. 295 (Can.).

B. Key differences between Canada and India in terms of ADR system in family law

Canada's ADR system in family law is comparatively effective, accessible and confidential, and it produces decisions that are legally enforceable. The contrast underscores the need for further development of India's ADR infrastructure if it is to meet the demands of contemporary family dispute resolution.

Aspect	Canada	India
Legal Framework	ADR in family law is well-developed, governed by provincial laws and court rules (e.g., Family Law Act in Ontario, Family Relations Act in British Columbia). Courts encourage ADR before litigation.	ADR in family law is monitored by the Family Courts Act, 1984, which encourages settlement through mediation and conciliation. Lok Adalats and mediation centers play a major role.
Mediation	Many provinces in Canada are having mandatory mediation, such as Ontario and British Columbia, for divorce, child custody, and spousal support disputes.	Mediation is voluntary in India, except in certain states where family courts encourage it. The Commercial Courts Act, 2015, made pre-litigation mediation compulsory for commercial disputes, but not for marital disputes.
Arbitration in Family Law	Family arbitration is recognized, but parties should follow provincial laws and can only use arbitration for financial matters (not for child custody or support).	Arbitration is not commonly practiced in family law, as courts have overriding authority in matters of marriage, divorce, and child custody.
Confidentiality	Mediation and arbitration proceedings are strictly confidential, protecting family privacy and giving value to the emotions.	Mediation is confidential, whereas Lok Adalat proceedings are public, reducing privacy in settlements.
Enforceability of Agreements	Arbitration awards and mediation settlements are legally binding if approved by courts. Judicial review is limited to procedural fairness.	Settlements must be recorded and, where a case is pending, taken on record by the family court; under the Mediation Act, 2023 a mediated settlement agreement is enforceable as a judgment or decree, while arbitral awards can be challenged more easily, which can lead to delay.
Use of Collaborative Law	Collaborative law is widely used, in which lawyers work with families to reach settlements without having litigation.	Collaborative law is not widely practiced in marital disputes, though some lawyers adopt conciliation-based approaches.
Support Services	Family ADR is supported by legal aid, counseling, and parenting coordination services.	Family courts offer mediation services, but access to trained mediators and legal aid is limited.
Cost and Accessibility	Mediation is affordable and often subsidized by the government to encourage family dispute resolution outside court.	Mediation is cost-effective, but lack of awareness and infrastructure limits its widespread use.

XI. CONCLUSION

Alternative Dispute Resolution has become an essential tool in addressing matrimonial disputes in India, providing a sensitive, quick and cost-effective means of resolving family problems. Where traditional litigation has frequently proved adversarial, emotionally draining and slow, mediation, conciliation and Lok Adalats have emerged as alternatives that emphasise cooperation over conflict. These methods give families the chance to settle disputes in a more amicable, private and less stressful manner, particularly where the welfare of children and the preservation of family ties are at stake.

While ADR mechanisms have demonstrated significant potential, challenges remain, among them power imbalances between the parties, institutional limitations and the fragility of agreements. These difficulties suggest that ADR is not a one-size-fits-all solution and must be approached with careful consideration of the circumstances of each case.

ADR in family law disputes in India offers a promising way forward, but its effectiveness will depend on continued refinement, greater awareness and systemic support, so that it serves as a catalyst for resolution rather than an obstacle to settlement.

XII. SUGGESTIVE RECOMMENDATIONS

India can draw valuable insights from Canada's family law ADR system in order to strengthen its own dispute resolution framework.

- Introducing compulsory mediation in child custody and divorce cases, which may promote peaceful settlement and lessen the backlog in the judicial system.
- Formalising arbitration for financial matters, which may provide a quicker resolution of disputes without prolonged litigation.
- Strengthening the confidentiality of mediation, which might build confidence in the procedure and encourage more families to choose ADR.
- Expanding collaborative law by training legal professionals in non-adversarial dispute resolution techniques, which should result in more constructive family settlements.
- Establishing government-funded ADR support services, including parenting coordination programmes and mediation centres, to improve accessibility and efficiency.

- Training advocates in ADR, including compliance with court rules and the ethical considerations that arise in mediation.
- Introducing mandatory ADR education for family law practitioners and law students.
- Ensuring better infrastructure and training for mediators, which will contribute to the overall quality of ADR proceedings.
- Securing judicial support for ADR methods, which will lead to a systematic way of settling family conflict out of court.
- Promoting awareness campaigns on the advantages of ADR, which could help more individuals consider mediation as a practical option.
