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International Perspective on Gender Justice in Family Dispute Resolution: A Comparative Analysis and Lessons for India

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ABSTRACT

This research examines the integration of gender justice principles into family dispute resolution mechanisms through a comparative analysis of international practices and their implications for India. The study's primary objective is to assess how alternative dispute resolution (ADR) processes, particularly mediation and conciliation, can be enhanced to ensure gender equality and women's access to justice in family disputes.

The analysis compares approaches from developed jurisdictions including the United States, Australia, United Kingdom, and Canada with developing nations such as Bangladesh, Pakistan, and Sri Lanka. Key findings reveal that successful gender-sensitive ADR systems incorporate comprehensive domestic violence screening protocols, specialized training for mediators, integrated support services, and robust monitoring mechanisms. Developed jurisdictions demonstrate sophisticated safeguards, including mandatory accreditation requirements and evidence-based practice guidelines, while developing nations face challenges in balancing traditional dispute resolution methods with gender justice imperatives.

The study identifies significant implementation gaps in India's current framework, despite constitutional guarantees and legislative enactments supporting gender equality. The research recommends that India adopt comprehensive legislation specifically addressing gender justice in family ADR, establish specialized institutions with trained personnel, implement mandatory certification programs for family mediators, and develop systematic awareness campaigns. These reforms would strengthen India's family dispute resolution mechanisms while ensuring compliance with international gender justice standards.

I. INTRODUCTION

The incorporation of gender justice principles into family conflict resolution systems has emerged as an important topic of international legal development. Alternative Dispute Resolution (ADR) approaches, particularly mediation and conciliation, have emerged as

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popular means for settling family disagreements due to their claimed benefits in terms of privacy, cost-effectiveness, and relationship maintenance. However, the use of these tools in family disputes raises serious questions about gender equality and women's access to justice.

To address these concerns, the international legal system has changed significantly, with normative norms requiring gender-sensitive approaches to ADR processes. This shift reflects an increasing realization that women confront specific barriers to accessing justice, particularly in family disputes where power imbalances, cultural norms, and socioeconomic inequities frequently harm women.

II. THE BEHAVIOURAL FOUNDATION OF LEGAL CHANGE

A. Evolution of International standards.

The Universal Declaration of Human Rights (UDHR) established the principle of equality before the law, which served as the basis for international gender justice norms in conflict resolution². This fundamental principle has been further refined through successive international instruments that expressly address gender discrimination and women's rights in judicial proceedings.

The adoption of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979 was a turning point in establishing women's legal rights³. Article 15 of CEDAW specifically recognises women's right to equality before the law and equal protection under the law, requiring States Parties to award women "equality with men before the law" and "a legal capacity identical to that of men"⁴. Article 16 expressly addresses equality in marriage and family relations, requiring states to prohibit discrimination against women in all aspects of marriage and family relations⁵.

The Beijing Platform for Action (1995) strengthened women's access to justice by emphasising the need for gender-responsive legal systems⁶. Strategic Objective I.1 is to provide free or low-cost legal services, including legal literacy, for women living in poverty⁷. Strategic Objective I.2 emphasises the need to "review national laws and practices to ensure the effectiveness of all

² Universal Declaration of Human Rights, GA Res 217 A (III), UN Doc A/810 (1948), art. 7.

³ Convention on the Elimination of All Forms of Discrimination Against Women, GA Res 34/180, UN Doc A/34/46 (1979).

⁴ Id., art. 15.

⁵ Id., art. 16.

⁶ Fourth World Conference on Women, Beijing Declaration and Platform for Action, UN Doc A/CONF.177/20 (1995).

⁷ Id., Strategic Objective I.1.

national instruments in eliminating discrimination against women"⁸.

B. CEDAW committee's guidance on ADR

The Committee on the Elimination of Discrimination Against Women's General Recommendations and Concluding Observations offer critical recommendations on gender justice in alternative dispute resolution. General Recommendation No. 33 on Women's Access to Justice (2015) focusses on alternative dispute settlement mechanisms⁹.

The Committee recognises that while ADR mechanisms can improve women's access to justice, they may also "lead to further violations of their rights and to impunity for perpetrators owing to the fact that such procedures often reflect patriarchal values and thus have a discriminatory impact on women's access to judicial review and remedies."¹⁰.

The Committee suggests certain safeguards while using ADR mechanisms:

- Ensure that ADR procedures do not limit women's access to court remedies and avoid referring instances involving violence against women to such procedures.
- Protecting women's equal rights throughout ADR processes and ensuring proper oversight of the process and outcomes¹¹.

C. Regional human rights instruments

Regional human rights agreements have also helped to establish norms for gender justice in family conflict resolution. The Maputo Protocol to the African Charter on Human and Peoples' Rights focuses on women's rights in marriage and family relations¹². Article 6(j) mandates nations to ensure that "women and men enjoy equal rights in cases of separation, divorce, or annulment of marriage"¹³.

The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará) tackles violence against women in all circumstances, including the family¹⁴. It asks that governments set up "fair and effective legal procedures for women who have been subjected to violence which include, among others,

⁸ Id., Strategic Objective I.2.

⁹ Committee on the Elimination of Discrimination Against Women, General Recommendation No. 33 on Women's Access to Justice, UN Doc CEDAW/C/GC/33 (2015).

¹⁰ Id., para. 58.

¹¹ Id., para. 59.

¹² Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo (2003).

¹³ Id., art. 6(j).

¹⁴ Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), adopted by the General Assembly of the Organization of American States (1994).

protective measures, a timely hearing and effective access to such procedures"¹⁵.

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) contains rules that apply to gender justice in family conflict resolution¹⁶. Article 48 bans any types of violence against women from being resolved through required alternative dispute resolution processes, such as mediation and conciliation.

III. COMPARATIVE ANALYSIS OF GENDER JUSTICE IN FAMILY ADR MODELS

A. Developed Jurisdictions

1. United States

The United States has developed sophisticated approaches to gender justice in family conflict resolution, notably in cases involving domestic abuse. Many states have mandated screening methods to uncover domestic violence before proceeding with mediation¹⁷. California's Family Code, for example, requires mediators to undertake a thorough screening for domestic violence history¹⁸.

The Association of Family and Conciliation Courts (AFCC) has created Model Standards of Practice for Family and Divorce Mediation, which emphasise the necessity of screening for domestic violence and mandates specialised training for mediators in recognising and addressing power imbalances¹⁹. Domestic abuse is particularly addressed in Standard X, which states that "a mediator shall recognise a family situation involving domestic abuse and take appropriate steps to shape the mediation process accordingly"²⁰.

Despite these protections, research has shown that implementation is challenging. According to studies, mediators frequently fail to recognise domestic abuse and do not alter mediation processes appropriately when it is disclosed²¹.

2. Australia

Australia has developed a comprehensive approach to family conflict resolution, including obligatory accreditation for Family conflict Resolution Practitioners (FDRPs)²². The Family

¹⁵ Id., art. 4(f).

¹⁶ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), Council of Europe Treaty Series No. 210 (2011).

¹⁷ Nancy Ver Steegh, "Family Court Reform and the World of Domestic Violence: A Case for Specialized Domestic Violence Courts" 3 William & Mary Journal of Women and the Law 431 (1997).

¹⁸ California Family Code, s. 3181.

¹⁹ Association of Family and Conciliation Courts, Model Standards of Practice for Family and Divorce Mediation (2000).

²⁰ Id., Standard X.

²¹ Joan B. Kelly, "A Decade of Divorce Mediation Research: Some Answers and Questions" 34 Family and Conciliation Courts Review 373 (1996).

²² Family Law Act 1975 (Cth), s. 10A.

Law Act of 1975 requires FDRPs to get specialised training, which includes instruction on identifying and responding to family violence²³.

The Australian Family Law Act compels parties to try family conflict mediation before pursuing child-related procedures, with the exception of circumstances involving domestic violence or child abuse²⁴. This approach acknowledges the potential benefits of ADR while also recognising when it may be inappropriate.

The Family Court of Australia and the Federal Circuit Court of Australia established the Family Violence Best Practice Principles document, which gives specific guidance on how to handle family violence issues in family dispute resolution²⁵.

3. United Kingdom

The United Kingdom has adopted a system of Mediation Information and Assessment Meetings (MIAMs) as a requirement for family court proceedings²⁶. MIAMs allow parties to learn about mediation and other types of alternative dispute resolution while mediators determine whether mediation is appropriate in specific instances.

The Family Procedure Rules 2010 provide rules for domestic abuse cases. Practice Direction 12J provides thorough instructions on how to handle instances involving suspected or admitted domestic violence, including deciding if ADR is appropriate²⁷.

The Family Mediation Council (FMC) in the United Kingdom has created accreditation standards for family mediators, which include specialised training in recognising and responding to domestic abuse, as well as completing proper risk assessments²⁸.

4. Canada

Canada has created court-connected mediation systems that include gender justice measures. Ontario's Family Mediation Service offers mediation and specialised screening for domestic abuse and power imbalances²⁹.

The Divorce Act, as modified in 2019, clearly recognises family violence as a consideration in determining children's best interests and evaluating the effectiveness of family conflict

²³ Family Law (Family Dispute Resolution Practitioners) Regulations 2008 (Cth).

²⁴ Family Law Act 1975 (Cth), s. 60I.

²⁵ Family Court of Australia and Federal Circuit Court of Australia, Family Violence Best Practice Principles (4th edn., 2016).

²⁶ Family Procedure Rules 2010 (UK), r. 3.8.

²⁷ Practice Direction 12J – Child Arrangements & Contact Order: Domestic Violence and Harm (2017).

²⁸ Family Mediation Council, Standards Framework for Family Mediation and Training (2018).

²⁹ Ministry of the Attorney General Ontario, Family Mediation Service, available at: <https://www.attorneygeneral.jus.gov.on.ca/english/family/mediation/>

resolution processes³⁰. These reforms indicate Canada's commitment to combating gender-based violence in family law settings.

B. Developing Countries' Approaches

1. Bangladesh

Bangladesh Legal Aid and Assistance Trust (BLAST) provides specialised legal aid assistance to women involved in family disputes³¹. The country's approach to ADR in family problems is informed by its dual legal system that includes official laws and shalish (traditional community-based conflict settlement)³².

The Village Courts Act of 2006 formalised traditional dispute resolution by establishing village courts to handle civil and minor criminal cases, including family disputes³³. Recognising potential gender inequality in conventional systems, Bangladesh has adopted reforms to increase women's involvement in these processes.

2. Pakistan

Pakistan's approach to gender equity in family dispute resolution is based on a complex legal framework that includes formal courts, religious tribunals, and ancient processes such as jirgas and panchayats³⁴. The Family Courts Act of 1964 established specialised family courts for cases such as divorce, support, custody, and guardianship³⁵.

The Act includes provisions for pre-trial reconciliation, highlighting the relevance of alternative dispute resolution procedures in family law³⁶. However, there have been questions made about execution and the impact on women's rights.

3. Sri Lanka

Sri Lanka established Mediation Boards under the Mediation Boards Act No. 72 of 1988 to settle a variety of conflicts, including family matters³⁷. These community-based ADR procedures seek to deliver accessible justice on a local basis.

The country's approach to gender justice in family disputes is complicated by its diverse legal

³⁰ Divorce Act, RSC 1985, c. 3 (2nd Supp), s. 16.

³¹ Bangladesh Legal Aid and Services Trust, Annual Report (2019).

³² Meghna Guhathakurta, "Women and Shalish: The Rhetoric and the Reality" in Meghna Guhathakurta and Hameeda Hossain (eds.), *Speaking for Themselves: Women and Shalish* 45 (Narigrantha Prabartana, Dhaka, 2003).

³³ Village Courts Act 2006 (Bangladesh), s. 5.

³⁴ Rubya Mehdi, "Gender and Property Law in Pakistan" in John Strawson (ed.), *Law After Ground Zero* 234 (Glasshouse Press, London, 2002).

³⁵ Family Courts Act 1964 (Pakistan), s. 5.

³⁶ *Id.*, s. 10.

³⁷ Mediation Boards Act No. 72 of 1988 (Sri Lanka).

system, which includes general law, Kandyan law, Thesavalamai law, and Muslim law³⁸. This legal plurality makes it difficult to ensure that women's rights are protected consistently across communities.

IV. INDIA'S POSITION AND COMPLIANCE WITH INTERNATIONAL STANDARDS

A. Constitution and legal framework

India's constitutional framework lays the groundwork for gender fairness in family conflict resolution. The Constitution guarantees equality under the law (Article 14) and forbids discrimination based on gender (Article 15)³⁹. These constitutional clauses lay the groundwork for India's adherence to international gender justice principles.

India ratified CEDAW in 1993, albeit with declarations on Articles 5(a) and 16(1) concerning modification of social and cultural patterns and equality in marriage and family relations⁴⁰. These declarations illustrate India's approach to combining international standards with its heterogeneous legal system, which recognises various religiously-based personal laws.

The Indian Supreme Court has incorporated international human rights principles, including those pertaining to gender justice, into domestic law through judicial interpretation. In *Vishaka v. State of Rajasthan*⁴¹, the Court used CEDAW to create guidelines for dealing with workplace sexual harassment, demonstrating how international standards can shape local legislation.

B. Legislative implementation

India has passed various laws that are consistent with international gender justice norms, such as the Protection of Women from Domestic Abuse Act 2005, which gives civil remedies to domestic abuse victims⁴². The Act combines elements from international human rights frameworks, such as the right to live in a shared family and the protection against economic abuse.

The Family Courts Act of 1984 established specialised courts for family disputes with the goal of promoting conciliation and ensuring timely conflict resolution⁴³. While the Act predates many international instruments, its emphasis on conciliation reflects an understanding of the relevance of ADR in family disputes.

³⁸ Savitri Goonesekere, "Towards Equality: A Study of the Legal Status of Women in Sri Lanka" 28 *Journal of Legal Pluralism* 89 (1989).

³⁹ The Constitution of India, arts. 14, 15.

⁴⁰ Convention on the Elimination of All Forms of Discrimination Against Women: India's Declarations, UN Doc CEDAW/SP/1993/2.

⁴¹ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

⁴² The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005).

⁴³ The Family Courts Act, 1984 (Act 66 of 1984).

C. Implementation gaps

Despite legislative progress, India still falls short of international standards for gender fairness in family conflict resolution. The CEDAW Committee has voiced concern over entrenched patriarchal attitudes and deeply ingrained prejudices that discriminate against women, particularly in family relationships and conflict resolution⁴⁴.

One key difficulty is the persistent reliance on personal laws that may bias against women in marriage, divorce, and inheritance proceedings⁴⁵. The Supreme Court has addressed some discriminatory practices, including declaring triple talaq unlawful in *Shayara Bano v. Union of India*⁴⁶. Full personal law reform is still difficult.

V. BEST PRACTICES AND LESSONS FOR INDIA

A. Screening protocols for domestic violence

International experience has shown that rigorous screening for domestic abuse is critical for gender-sensitive ADR. India can implement standardised screening processes similar to those used in Australia and Canada, which include direct questions on violent and control experiences, as well as behavioural markers that may indicate abuse⁴⁷.

B. Specialized training for mediators

The international community recognises the importance of specialised mediator training in gender issues and domestic violence⁴⁸. India should introduce rigorous training standards for family mediators, similar to those in the United Kingdom and Australia, that encompass domestic violence dynamics, abuse identification, and safety concerns⁴⁹.

C. Integration of support services

International examples show the value of incorporating support services like legal advice and counselling into family dispute resolution⁵⁰. India could embrace Australia's Family Relationship Centre model, which provides numerous services under one roof, including family conflict resolution, counselling, and legal referrals⁵¹.

⁴⁴ Committee on the Elimination of Discrimination Against Women, Concluding Observations on the Fourth and Fifth Periodic Reports of India, UN Doc CEDAW/C/IND/CO/4-5 (2014), para. 13.

⁴⁵ Law Commission of India, "213th Report on Reform of Family Law" (August, 2017).

⁴⁶ *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

⁴⁷ Rae Kaspiw, Matthew Gray, et al., "Evaluation of the 2006 Family Law Reforms" (Australian Institute of Family Studies, 2009).

⁴⁸ Lisa Parkinson, "Family Mediation: Appropriate Dispute Resolution in a New Family Justice System" (2nd edn., Family Law, Bristol, 2014).

⁴⁹ Hugh McIsaac and Gregg Herman, "Best Practices for Family Mediation" 52 Family Court Review 216 (2014).

⁵⁰ Hilary Astor, "Violence and Family Mediation Policy" 32 Australian Journal of Family Law 52 (2018).

⁵¹ Australian Government Department of Social Services, Family Relationship Services Program, available at:

D. Monitoring and evaluation mechanisms

Effective monitoring and assessment of ADR processes and outcomes is critical to achieving gender justice⁵². India should implement a systematic data gathering system for family mediation, comparable to the UK's Family Mediation Information System, to allow for gender-specific analysis of mediation uptake, completion rates, and outcomes⁵³.

VI. RECOMMENDATIONS FOR INDIA

A. Legislative reforms

India should propose comprehensive laws to address gender fairness in family ADR, incorporating worldwide best practices while recognising cultural variety. Such law should include required screening methods, specialised training requirements, and explicit rules for dealing with domestic violence incidents.

B. Institutional capacity building

It is critical to establish specialised family dispute resolution institutions that use gender-sensitive methodologies. These institutions should have trained personnel, adequate infrastructure, and access to support services.

C. Training and certification

Implementing mandated certification programs for family mediators, which include comprehensive training on gender issues, domestic abuse, and cultural sensitivity, would improve the quality and effectiveness of family ADR procedures.

D. Awareness and sensitization

Comprehensive awareness efforts about gender-sensitive ADR choices and women's rights in family disputes would help to break down cultural obstacles and increase access to justice.

cryptocurrency.

VII. CONCLUSION

The international view on gender justice in family conflict resolution shows a clear trend of incorporating gender-sensitive techniques into ADR systems. While tremendous work has been

<https://www.dss.gov.au/families-and-children/programmes-services/family-support-program/family-relationship-services>

⁵² Noel Semple, "The Case for Court-Connected Mediation" 11 *Cardozo Journal of Conflict Resolution* 253 (2010).

⁵³ UK Ministry of Justice, *Family Court Statistics Quarterly: July to September 2023* (2023).

achieved in defining international standards and adopting best practices in many jurisdictions, obstacles still exist in assuring successful implementation and overcoming cultural and structural hurdles.

India's approach to gender equity in family ADR is both progressive and limited. While constitutional guarantees and legislative enactments lay the groundwork for gender equality, implementation gaps and cultural issues remain hurdles to attaining gender justice in practice.

Learning from international best practices, India can enhance its family ADR mechanisms by adopting comprehensive screening protocols, implementing specialized training programs, integrating support services, and establishing robust monitoring and evaluation systems. Such reforms will help to achieve the dual goals of efficient conflict resolution and gender justice, thereby improving access to justice for all parties involved in family disputes.

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