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Role of Alternate Dispute Resolution (ADR) in Resolving Family Disputes

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ABSTRACT

Family disputes are complex and sensitive issues that often require a nuanced approach to resolution. Traditional litigation processes can exacerbate tensions and strain familial relationships, making it imperative to explore alternative avenues for conflict resolution. Alternative Dispute Resolution (ADR) methods have emerged as valuable mechanisms for addressing family conflicts efficiently and preserving familial bonds.

In this paper, Naman Bansal, a fourth year student of law at The NorthCap University (Gurugram) examines the role of ADR in managing family disputes, including mediation, arbitration, and collaborative law. It explores the benefits of ADR, such as confidentiality, flexibility, and the empowerment of parties in decision-making. Moreover, the paper discusses the suitability of ADR techniques for various types of family conflicts, including divorce and child custody. By promoting communication, understanding, and mutually acceptable solutions, ADR offers a constructive framework for resolving family disputes while mitigating the emotional and financial toll associated with adversarial litigation. Through case laws and empirical evidence, this paper highlights the efficacy of ADR in promoting amicable resolutions and fostering post-conflict familial harmony. Ultimately, it underscores the importance of integrating ADR into family law practices to facilitate fair, efficient, and sustainable resolutions to family disputes.

I. INTRODUCTION

The family is regarded to be the fundamental unit of society, and it evolves through a chain of ties. Sociologists define a family as a tightly connected domestic group of individuals who are connected to one another via blood connections, getting married, or legal relationships. The institution of marriages is a crucial foundation for a healthy community. The binding bonds of marriage and familial relationships appeared to be deteriorating with time and becoming more vulnerable to disintegration. Divorce has become a highly common means of ending a marriage in the modern day. Parties involved in the divorce physically and psychologically collapse throughout the prolonged and stressful divorce procedure.

The psychological strain between the husband and wife increases as a result. India's divorce rate

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is rising in the twenty-first century, adding to the already heavy workload of the courts. Although family courts were formed in India to handle family conflict problems following the passage and adoption of the Family Courts Act 1984, it is evident that these courts are overworked. Thus, a new method known as Alternative Dispute Resolution has been introduced into the Indian legal system in an effort to lessen the burden on the courts and the disputing parties. A growing number of people are turning to alternative dispute resolution techniques including conciliation, arbitration, and mediation because they are more effective, affordable, and offer a better way to settle conflicts.

Also, According to the ruling in **Hussainara Khatoon v. State of Bihar**², the right to a speedy trial is an essential component of the fundamental right to life and personal liberty under **Article 21**³ of the Indian Constitution.

II. FAMILY DISPUTE

A family is a collection of individuals connected by closeness, kinship, or shared domicile.

A family disagreement occurs when there are conflicts about personal or property rights that arise in relationships between brothers and sisters or relatives, parents and children, or spouses.

The Family Courts Act explains family disputes⁴ as:

- 1) A suit or proceeding between the parties to a marriage for a nullity marriage decree (declaring the marriage null and invalid or, as the case may be, annulling the marriage), restitution of conjugal rights, judicial separation, or dissolution of marriage;
- 2) A suit or proceeding for declaration of the legitimacy of a marriage or the marital status of any individual.
- 3) A suit or proceeding between the parties to a marriage involving the parties or either of their property;
- 4) A suit or proceeding seeking an order or injunction in the context of a marital relationship;
- 5) A suit or proceeding for the declaration of a person's legitimacy;
- 6) A suit or proceeding for maintenance;

² Hussainara Khatoon (1) v. Home Secretary, State of Bihar, (1980) 1 SCC 81

³ Article 21 is a Fundamental Right that can be directly enforced in the Supreme Court under Article 32 of the Constitution of India. Fundamental Rights, as incorporated in Part III of the Constitution, are different from Constitutional Rights that cannot be directly enforced U/A 32. All Fundamental Rights are Constitutional Rights but not vice-versa.

⁴ Section 7 of the Family courts Act, 1984

- 7) A suit or proceeding involving a person's guardianship, the custody of, or access to, a child.

(A) Kinds of family disputes

1. **Domestic Dispute:-** Any argument inside a family or between members of the same home, whether or not it involves violence, is typically referred to as a domestic dispute. Children, elderly people, adult men or women, spouses, cohabitants, ex cohabitants, and former spouses are all potential victims of domestic violence. Criminal activity may or may not be a part of it.
2. **Restitution of Conjugal Rights:-** When one spouse leaves the other's association without providing a valid reason, it becomes a form of conflict. The person who feels wronged must go to court. This is the initial phase of a legal remedy that either party may pursue. This solution seeks to restore harmony between the couples while defending the institution of marriage.
3. **Break Down of Marriage:-** There are many scenarios in which a marriage appears to be everything that a marriage should be, yet it is not. The marriage turns into nothing more than a hollow shell with no real content left. When the emotional and other boundaries that are fundamental to marriage have vanished, there is very little use in keeping the marriage as a fade in such situations.
4. **Testamentary and Intestate Property Issues:-** When an individual pass away with a "Will" designating their assets to specific beneficiaries, all of their legitimate heirs will be bound by it, and the assets will be dispersed in accordance with the instructions included in the "Will." The Indian Succession Act, which was passed in 1954, governs Testamentary Succession, a kind of property succession. Conversely, an Intestate Succession occurs when a person passes away without leaving a "Will," and the assets left by the dead pass to their lawful heirs in accordance with his or her particular laws.
5. **Child Care and Custody:-** There is a valid right to child care and custody for the parents and legal guardians. The court adheres to the maxim "Welfare of the child is the supreme lex" in situations where there are disagreements regarding the child's custody between the spouse and other guardians, or when the child has been abandoned or becomes an orphan. In these cases, the child's welfare is given top priority.

III. HISTORY OF ADR IN INDIA

ADR is not a novel technique in India. Since the Vedic era, it has been widely used in India.

'Bhradarnayaka Upnishad' is the oldest known work that describes several kinds of arbitral bodies such as puga, sreni, and kula, which are also known as panchayats and consider disputes of a criminal, contractual, and marital character.

As time went on, ADR began to be used in forums such as panchayats, family councils, king-appointed tribunals, and gathering debates. It was thought to be a simple and affordable method of obtaining justice. ADR was used to settle even small conflicts like those involving property and trade. The elders of the community arbitrated issues at the village level informally through mediation.

Among the earliest pieces of law pertaining to arbitration were the Bengal Resolution Acts of 1772 and 1781. It offered the parties a legally enforceable settlement as long as both sides agreed to it. Simple situations involving debts, partnerships, accounts, breach of contract, etc. A number of additional laws were also enacted, such as Regulation XV of 1795 (pertaining to Madras) and Regulation XXI of 1803 (pertaining to the area of Nawab Wazir).

Schedule 2 of the Code of Civil Procedure, 1908 covered everything else. The Indian Arbitration Act, 1899, was introduced as the first Indian legislation regarding ADR under British Rule. It provided for matters that would be settled by agreement between parties and did not require court supervision. The Arbitration Act of 1940 was the next piece of legislation, and it led to lengthy, difficult, and costly legal battles. As a result, it was overturned, and The Arbitration and Conciliation Act of 1996 was created.

(A) Types of ancient courts

1. **The Kula (Family Councils):-** The family's elders listen to the dispute and provide a resolution. The elderly typically come from families with similar backgrounds.
2. **The Shreni (Trade or Professional Councils):-** An impartial and informed panel of experts, traders, artisans, etc. are selected to serve as arbitrators.
3. **The Gana (Panchayats or Village Assembly):-** A village selects a person, often the most senior member of the community, along with a few more reliable and informed individuals who listen to both parties' concerns and attempt to reach an agreement.
4. **Adhikrita (Courts appointed by Kings):-** These were the tribunals that the monarch recognised, with justices who had studied Smrithis and Shastras.
5. **Sasita (Kings Court):-** The chief justice and a group of justices were selected with the king's approval, and it served as the highest court of law in the nation.

6. **Nripa (King himself):-** The King was the only person with absolute power in the country when it came to problems of justice.

(B) Forms Of ADR

ADR includes negotiation, conciliation, mediation, and arbitration.

1. Arbitration

Through a private procedure called arbitration (a non- adjudicatory process), disputing parties agree that one or more people will resolve the matter following the receipt of all relevant information and concluding arguments. It serves as a trial substitute and is open to a restricted amount of judicial review. It's said this is one of the finest ways to settle disputes since, in the event of a family dispute, parties can choose a person who specialises in family law, or they can choose a scholar in the subject. It is a simple and affordable way to settle a disagreement.

Arbitration proceedings are held outside of the public judicial system, and the transcripts are not publicly accessible. In certain situations, parties that particularly want the anonymity of their disagreement may find this to be of great value. Because of its restricted right of appeal, there won't be any more trials or waiting around for the issue to be resolved. It is a kind of ADR called adjudicative.

Arbitration is governed by the *Indian Arbitration and Conciliation Act, 1996* and can be used to settle family law disputes including property partition, child custody, and alimony. Nevertheless, in some family law cases, such as those involving domestic abuse or child maltreatment, arbitration cannot be used.

2. Mediation

Through the process of mediation (i.e. also a non- adjudicatory process), an unbiased third party known as a mediator encourages the parties to a dispute to reach a mutual agreement. In order to help the parties come to an agreement, a mediator helps them communicate, fosters understanding, keeps the parties' attention on their goals, and looks for innovative solutions to problems.

The mediator's job is to facilitate negotiation and agreement-making between the parties, not to solve the conflict. The best way to settle disputes about child custody and support has been shown to be through mediation. Through mediation, the parties can swiftly resolve their differences; often, this takes two to three sessions.

There is no break or disturbance of the amicable connections between the parties; their relationship is still in place. In situations when maintaining ties or relationships is crucial, such

as family conflicts or disagreements between business partners, mediation has been used often. Because the parties settle their differences peacefully, mediation is less stressful than the other approaches.

3. Conciliation

Indian family law has been significantly impacted by conciliation. The Indian legal system encourages parties to seek peaceful solutions through conciliation, acknowledging the value of maintaining family relationships. In India, family courts give parties a forum to try to mediate their differences through conciliation with regard to marriage, divorce, child custody, and maintenance.

Before going to court, parties are required by the Hindu Marriage Act of 1955 and the Family Courts Act of 1984 to try to settle their differences through conciliation. This has decreased the quantity of lawsuits that are being filed and contributed to upholding the value of marriage and the family. A court decree may also be enforced under **Section 74** of the **Arbitration and Conciliation Act**⁵.

The Supreme Court noted in the *Gaurav Nagpal v. Sumedha Nagpal*⁶ case that efforts had to be made at mediation and in overcoming communication gaps in order to prevent individuals from rushing to the courts. The method also gives the parties freedom and time regarding the proceedings' format.

4. Lok Adalat

If Lok Adalat is constituted in accordance with Section 19 of the Legal Services Authorities Act, 1987, it is likewise a non-adjudicatory procedure. On the other hand, if Lok Adalat is founded in accordance with Section 22B of the Legal Services Authorities Act, 1987, it is conciliatory and adjudicatory. A third person that is impartial will preside over this situation.

Referring a case to Lok Adalat does not require the parties' permission. Section 21 of the Legal Services Authorities Act, 1987 makes the Lok Adalat award enforceable and considers it to be a civil court decision. The award cannot be challenged. Parties are not actively and directly participating in Lok Adalat negotiations, and the negotiation's scope is constrained. Additionally, confidentiality is not respected.

IV. ADR IN FAMILY DISPUTES

The phrase "alternative dispute resolution" refers to choosing a different approach from the

⁵ Arbitration and Conciliation Act, 1996

⁶ AIR 2009 SC 557

court-trial approach in which the parties resolve their disagreement out of court, either through the mediation process or by direct negotiation between the parties. It consists of negotiation, conciliation, arbitration, and Lok Adalat, which is a hybrid of mediation and arbitration. The three main pillars of this mechanism—arbitration, conciliation, and mediation.

A positive conclusion is not guaranteed in every litigation. It is expensive, both in terms of money and time. Resentment results from its adversarial nature, which does not alter the parties' perspectives. In addition to saving money and time, alternative dispute resolution techniques preserve the parties' relationship by promoting cooperation and communication.

Family issues began to give rise to the procedure from the mid-1970s. The alternative dispute resolution (ADR) approach gained popularity due to its ability to save parties from drawn-out judicial proceedings and its economic suitability as time and the volume of cases increased. Furthermore, mediation is seen as the parties' first choice for resolving conflicts, particularly when it comes to family matters.

In order to encourage ADR in family law issues, the Indian judiciary has made considerable progress. ADR procedures are now available in family court cases because to an amendment made to the **Family Courts Act⁷ in 2005**.

By using a different procedure than standard civil processes, the act calls for the creation of family courts with the goal of promoting conciliation and guaranteeing a prompt resolution of conflicts pertaining to marriage and family problems, as well as subjects linked thereto. The Family Court is tasked with convincing the parties to settle their differences, according to **Section 9** of the **Family Courts Act**.

According to *Section 9(1)*, the Court may facilitate a settlement process in any matter where it is feasible given the facts and circumstances, subject to any guidelines established by the High Court.

In accordance with *Section 9(2)*, the Court can adjourn the proceedings if it thinks a settlement is feasible.

According to *Section 23(2)* of the **Hindu Marriage Act⁸, 1955**, the court must determine that the parties have attempted, in a reasonable manner, to resolve their disputes through alternative dispute resolution (ADR) techniques like mediation or conciliation before issuing a divorce decision. The court may even decide to postpone the hearings so that the parties might try using alternative dispute resolution (ADR) techniques to try to reconcile. In *Jagraj Singh v. Birpal*

⁷ The Family Courts Act 1984

⁸ The Hindu Marriage Act, 1955

Kaur case⁹, the court annexed ADR mechanism is mandatory under section 23(2) of the Hindu marriage act.

The **Section 13(B)** of HMA, 1955 was added in 1976 to allow for divorce by mutual consent, to provide an 18-month waiting period before a divorce decree could be filed, and to allow for the plea of a one-year judicial separation in addition to divorce under Section 13B (1). Under Section 13B (2), there may be an additional six months of cooling off time before obtaining an order to restore harmony or reunite families.

If both parties have chosen reconciliation or if there is agreement between them throughout the allotted year. then a divorce cancellation notice will be issued by the council. The parties may move on with the second motion only in the event that they cannot agree. It is sometimes referred to as the divorce final hearing.

The **Special Marriage Act, 1954's Section 34(2)** likewise aims to facilitate party reconciliation. Furthermore, the Special Marriage Act, 1954, **Section 2(3)**, empowers the court to assist in promoting reconciliation, allowing it to postpone the procedures for any amount of time and, if feasible, to permit efforts at negotiation.

Similar to this, **Section 89 of the CPC**¹⁰, 1908, allows for alternative dispute resolution (ADR) techniques including conciliation and mediation. Family law conflicts are covered by this clause as well. Family courts were formed in India by the Family Courts Act, 1984, which placed a strong emphasis on alternative dispute resolution (ADR) techniques.

The **Legal Services Authorities Act of 1987**¹¹ granted Lok Adalats unique recognition and legitimacy, since they have demonstrated remarkable effectiveness in settling family disputes.

This act's primary goals are to give legal aid to the poor and marginalised groups in society and to have Lok Adalats, which are unique in India and were inspired by Mahatma Gandhi's Gandhian principles.

These Lok Adalats can handle both civil and criminal cases, including those that are compoundable. They can also resolve disputes in cases that are pending before the courts or any matter that is in the pre-litigation stage. According to the law ministry, in 2023 the 4th National Lok Adalat held across the country resolved around 1.17 crore¹² cases, including 11,98,278 outstanding cases and 1,05,45,187 pre-litigation cases, with the use of technological innovations

⁹ 2007 (2) SCC 564

¹⁰ With effect from 2002 amendment of the CPC

¹¹ Legal Services Authorities Act 1987

¹² Ashish Tripathi, Fourth National Lok Adalat of year resolves 1.17 crore cases, <https://www.deccanherald.com/india/fourth-national-lok-adalat-of-year-resolves-117-crore-cases-2804407>

like E-Lok adalats.

V. CASE LAWS

The Indian judiciary has periodically attempted to emphasise the use of alternative dispute settlement techniques more and more through its rulings. Thus, the following are some notable examples pertaining to this:

- In the case of *Hitesh Narendra Doshi V/s. Jesal Hitesh Doshi*¹³ established that the Hindu Marriage Act's section 13-B (2) requires a minimum six-month waiting period from the date the petition was presented to end the marriage by mutual consent. The court was unable to grant an immediate divorce and was not empowered to waive this requirement.
- In the case of *Mohinder Pal Kaur v. Gurmeet Singh*¹⁴, it was decided that the six-month waiting time might be shortened if there was a prior, unsuccessful attempt at reconciliation and the divorce petition had been pending for longer than six months. Therefore, if in a previous petition on blame or other grounds, the parties have already been litigating for more than six months and reconciliation has proven fruitless, the waiting period cannot be shortened in a newly started petition for divorce by mutual consent.
- In *Bini v. K.V. Sundaran*¹⁵, the Kerala High Court was faced with a unique question: does the Family Courts Act, 1984, require conciliation even in cases where mental instability, leprosy, renunciation of the world, conversion to another religion, or other excluded grounds are present? The High Court decided, referring to the Family Courts Act, 1984 as a unique legislation and its provisions requiring an attempt at reconciliation in the first instance:

The Hindu Marriage Act, 1955 does not require any attempt at reconciliation; however, following the introduction of the Family Courts Act, 1984, the Family Court is required to attempt at reconciliation and settlement in cases involving divorces filed on the grounds of conversion to another religion, other grounds exempted under Section 13 (1) of the Hindu Marriage Act, 1955, or on similar or other grounds available under any other law. It is a necessary prerequisite. This conceptual shift is the result of a specific act known as the Family Courts Act of 1984.

¹³ 2000 (2) Hindu LR (A.P) (D.B) 45: AIR 2000 (A.P) 362

¹⁴ 2002 (1) Hindu LR (Pb & Hry) 537

¹⁵ AIR 2008 Kerala 84

The Court went on to state that "the goal is to maintain and strengthen the holy bond between married parties. A settlement effort may only be conducted in order to reach an agreement on an issue if attempts at reconciliation prove unsuccessful."

- In the case *Baljinder Kaur V/s. Hardeep Singh*¹⁶, The Indian Supreme Court ruled that "the institution of marriage should always be preserved." That is what the law requires. The Family Courts Act, 1984 lists the goals and causes that led to the establishment of Family Courts. In order to resolve family conflicts, the focus is "placed on conciliation and achieving socially desirable results" rather than strictly adhering to the evidence and process standards.

Additionally, the Supreme Court ruled that "the Family Court must now attempt, in the first instance, to effect a reconciliation or settlement between the parties to a family dispute." "The Civil Courts that hear matrimonial cases can maintain awareness of the goals and tenets underlying the constitution of these courts even in situations where the Family Courts are not operating." The Hindu Marriage Act, 1955's Section 23's goals and guiding principles, according to the Supreme Court, apply to all courts hearing marital cases.

- In the case of *Aviral Bhatla v. Bhavana Bhatla*¹⁷, the Supreme Court affirmed the parties' settlement through the Delhi mediation centre, praising the efficient way the Delhi High Court mediation centre assisted the parties in reaching an agreement.

VI. IMPACT OF ALTERNATE DISPUTE RESOLUTION ON FAMILY LAW

1. Rapid Settlement of Conflicts

India's standard judicial system is famous for moving slowly, which has led to a backlog of cases in the courts. A faster settlement of disagreements has been achieved via the employment of alternative dispute resolution techniques including conciliation, arbitration, and mediation. This benefits family law by facilitating speedy resolution of conflicts without the need for drawn-out judicial litigation.

2. Economical

Family law cases may be costly, particularly if they are litigated in court. Since they avoid expensive court processes, the employment of alternative conflict resolution techniques like mediation, arbitration, and conciliation is economical. This facilitates the process of seeking justice and resolving conflicts for the general public.

¹⁶ AIR 1998 SC 764

¹⁷ 2009 SCC (3) 448

3. Confidentiality

The parties involved enjoy confidentiality while using alternative conflict resolution procedures including mediation, arbitration, and conciliation. This implies that the specifics of the disagreement and its settlement are kept confidential, which is crucial in family court matters because they contain delicate subjects.

4. Customized Remedies

Customized solutions are offered to the parties concerned by alternative conflict resolution procedures including mediation, arbitration, and conciliation. This implies that instead of the court forcing a solution that fits every situation, the parties might work together to find a solution that suits them best. This is particularly crucial in family law disputes as every party has different demands.

5. Enhanced Interaction

The parties concerned are encouraged to communicate with one another through alternative conflict resolution procedures including mediation, arbitration, and conciliation. This is particularly crucial in family law disputes if there has been a breakdown in communication between the parties. Both the connection between the parties and the dispute's resolution may benefit from improved communication.

VII. CONCLUSION

A family dispute has repercussions that affect the entire community. Although the conduct of arbitration, conciliation, and Lok Adalat is already covered by a number of legislation, the Supreme Court of India has worked to address the need for a framework that would regulate ADR procedures generally and mediation in particular. It has achieved this by incorporating the final versions of the Law Commission of India's Model Rules of ADR and Model Rules of Mediation into its Orders in the *Salem Bar Association v. Union of India*¹⁸ case, with a directive for all high courts to adopt them with any modifications they see fit.

ADR procedures like as conciliation and mediation have the potential to partially preserve the institution of marriage. In the *Sangeetha v. Suresh Kumar*¹⁹ case, the Supreme Court noted the importance of reconciliation in matrimonial disputes and counselled the parties to attempt to resolve the conflict, put their differences behind them, and begin anew in their marriage while keeping their children's welfare and interests in mind.

¹⁸ (2003) (1) SCC 49

¹⁹ JT 2008(8) SC 521

In Indian contexts including family and marriage problems, mediation can prove to be a highly efficient alternative dispute resolution tactic. This tactic is quite helpful as it emphasises a non-coercive and voluntary procedure for parties to settle disagreements. In addition, it saves time and lessens the chance that the parties' choice to go to court may cause animosity or strained relationships.

Whether it occurs before or after litigation, conciliation is also the best alternative for resolving conflicts in family issues. Courts have traditionally supported peaceful resolution of disputes and have noted and said repeatedly that the goal of the law is to preserve the institutions of marriage and family rather than to abolish them. Giving alternative conflict resolution methods a chance to settle family disputes is therefore standard in the Indian legal system, even if it is not required, and it is a practice that should be supported wholeheartedly. ADR is predicated on a scenario in which both parties benefit.

Digital platforms can be used in conjunction with alternative dispute resolution (ADR) procedures. ADR conducted online can be beneficial since it encourages more communication between the parties during the process, which facilitates the resolution of disputes peacefully. Every time there is a family dispute, it not only destroys the family but also has an effect on the courts, the executive branch, and society at large.

More power should be granted to the family courts, which use collective bargaining and mediation to try to settle all family disputes. In addition, more family courts need to be created in order for family courts to be enough for handling all family-related issues and to lessen the workload on the judiciary.

However, the current litigation system in India contains measures to support alternative conflict resolution techniques, but most people are unaware that non-litigation—or resolving disputes outside of court—is also an option. Owing to their ignorance, many believe that the court has the last say when it comes to resolving family conflicts.

Overall, the role of ADR in resolving family disputes is indispensable, offering families a flexible, empowering, and efficient means to navigate conflicts while preserving relationships and promoting mutual understanding and respect.
