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The Effectiveness of Alternative Dispute Resolution in Family Disputes in India

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ABSTRACT

This study critically evaluates the role and effectiveness of Alternative Dispute Resolution (ADR) mechanisms in addressing family law disputes in India. As the formal judicial system struggles with overwhelming case backlogs and prolonged litigation, ADR— particularly mediation and conciliation—emerges as a viable, humane, and efficient alternative, especially suited to the sensitive nature of family conflicts such as divorce, custody, and maintenance. The research explores the legal framework governing ADR in India, including the Family Courts Act, Section 89 of the CPC, and the Hindu Marriage Act, along with the contribution of court-annexed mediation centers, NGOs, and the Mediation Bill, 2023. Through doctrinal analysis, case law review, and secondary empirical data, the dissertation assesses ADR's strengths—like confidentiality, emotional sensitivity, and voluntary compliance—while identifying challenges such as uneven implementation, lack of trained mediators, cultural resistance, and power imbalances. The study also draws insights from international ADR practices and proposes legal and structural reforms to enhance the accessibility, fairness, and effectiveness of ADR mechanisms in the Indian family justice system. Ultimately, the dissertation posits that ADR, when properly institutionalized and sensitively applied, has the potential to transform the resolution of family disputes by prioritizing compassion, dignity, etc.

***Keywords**: Alternative Dispute Resolution, Family Courts, Arbitration, Mediation.*

I. INTRODUCTION

Family disputes are some of the most emotionally charged, sensitive, and complex forms of legal conflicts. Unlike commercial or civil disputes, family matters involve relationships, social norms, and psychological trauma. Litigation, in such cases, often exacerbates the emotional distress of the parties involved, prolongs conflict, and damages relationships further. As India's formal judicial system continues to grapple with mounting case backlogs and procedural delays, Alternative Dispute Resolution (ADR) mechanisms have emerged as a vital method for addressing family disputes more sensitively and effectively.

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India's legal system is overburdened with more than 40 million pending cases across various courts.[1] Family courts are no exception. Disputes related to divorce, child custody, maintenance, and domestic violence have seen a steady rise, with legal proceedings often stretching over years. In this context, the adversarial nature of traditional litigation—structured, formal, and winner-takes-all—has been increasingly criticized as unsuitable for resolving issues rooted in relationships and emotion. ADR mechanisms, by contrast, offer flexible, cost-effective, and conciliatory solutions aimed at preserving the dignity and rights of all parties.

(A) Research Problem

India's justice delivery system has long struggled under the weight of judicial backlog, with family law disputes making up a significant portion of the caseload. Issues such as divorce, child custody, maintenance, domestic violence, and inheritance conflicts are inherently personal, emotional, and socially sensitive. Traditional litigation—structured around adversarial contest and legal formalism—is often ill-suited to such cases. While Alternative Dispute Resolution (ADR) mechanisms have been introduced to provide a more conciliatory and efficient alternative, their application and effectiveness in the context of family disputes in India remain inconsistent and underdeveloped.

Judicial pronouncements have repeatedly emphasized the benefits of mediation and conciliation in family matters. In *K. Srinivas Rao v. D.A. Deepa*,the Supreme Court highlighted the necessity of exploring settlement in matrimonial disputes to avoid the harsh consequences of adversarial divorce proceedings. Yet, despite such recognition, the practical application of ADR remains fragmented. Mediation centers exist in some cities, but their quality, outreach, and success rates vary dramatically. There is no uniform mediator accreditation process specific to family disputes, and cases involving domestic violence or financial dependence often raise concerns about power imbalances during mediation.

(B) Objectives of the Study

The overarching aim of this study is to critically examine the effectiveness of Alternative Dispute Resolution (ADR) mechanisms in the context of family disputes in India. Given the unique emotional and relational nature of family matters, the study seeks to understand whether ADR provides a viable, sensitive, and accessible alternative to formal litigation.

Specific objectives include:

- To assess the legal framework governing ADR in family disputes in India, including provisions under the Family Courts Act, Civil Procedure Code, Hindu Marriage Act, and related statutes.

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- To analyze the practical implementation and institutional infrastructure supporting ADR in family law—particularly the role of family courts, mediation centers, and legal aid institutions.
- To evaluate the success rate, efficiency, and qualitative outcomes of mediation and conciliation in resolving family disputes, with a focus on divorce, custody, maintenance, and domestic conflict.
- To identify key challenges in the adoption and enforcement of ADR mechanisms in family matters, including awareness, cultural resistance, and gender-based power imbalances.
- To examine the role of the judiciary in promoting ADR in family law through case law, judicial policy, and directives.
- To compare India's approach with select international jurisdictions to draw useful insights or best practices.
- To propose legal and structural reforms to enhance the effectiveness, accessibility, and fairness of ADR in resolving family disputes in India.

II. EVOLUTION OF ADR IN INDIA

(A) Ancient India:

It was since the ancient India; law of arbitration was very popular and were highly accessible. While dealing with such cases on arbitration, the awards were known as decisions of *Panchayats*, commonly known as Panchayats. The decisions of Panchayats were of binding nature in law in force in those times. The head of a family, the chief of a community or selected inhabitants of a village or town might act as Panchayat.

In words of *Martin, C.J.,* ―arbitration was indeed a striking feature of ordinary Indian life and it prevailed in all ranks of life to a much greater extent than was the case of England. To refer matters to a Panch was one of the natural ways of deciding many disputes in India‖.

The Hindu idea of Panchayats was that a Panchayat was the lowest tribunal and as such its award was subject to appeal. The Bengal Regulation of 1781 imported the idea that it was the tribunal of the parties' own choice, hence in the absence of misconduct the parties were bound by its decision. Accordingly, the only course left open to the aggrieved parties was that they had to impeach the awards on the grounds of misconducts of the Panchayats. The known misconduct was gross corruption or partiality. This caused the respectable persons to be reluctant to become Panches and the Panchayat system fell in disuse or public infancy.

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(B) British Period:

Thereafter, the Civil Procedure Code, 1859; the Indian Contract Act, 1872 and the Specific Relief Act, 1877 mandated that no contract to refer the present or further differences to arbitration could specifically enforce. A party refusing to reform his part of the contract was debarred from bringing a suit on the same subject-matter. The Arbitration Act, 1877 came as a complete code in itself. It made rules as to appeals and the Code of Civil Procedure aforesaid was not applicable to matters covered by the Arbitration Act, or the second schedule to the Code of Civil Procedure. The Code of Civil Procedure, 1859 (VII of 1859), was the first Civil Code of British India. The law relating arbitration was incorporated in Chapter VI of the Code (Sections- 312 to 327). It was, however, not applicable to the Supreme Court or to the Presidency Small Cause Courts or to non- Regulation Provinces. This Act was repealed by Act X of 1877 which consolidation the law of Civil Procedure which was further replaced by Act XIV of 1882. This Code of Civil Procedure also was replaced by the Code of Civil Procedure, 1908 (V of 1908), the present Code. The Second Schedule of the Code comprised the law regarding arbitration.

The law of Arbitration in the British Rule in India was comprised in two enactments. One was the Indian Arbitration Act, 1899, which was based on the English Arbitration Act, 1899. Many sections of the Indian Act were the verbal reproduction of the schedule to the Code of Civil Procedure Code, 1908.

(C) **Modern India:**

The Arbitration Act, 1940 was holding the field for nearly half a century but with the phenomenal growth of commerce and industry the effect of globalization required substantial changes. The Alternative Dispute Redressal mechanism was increasingly attracting serious notice and that led to the enactment of Arbitration and Conciliation Act, 1996 and the incorporation of Section 89 of the Code of Civil Procedure, 1908 i.e. 1st July, 2002 as a part of this mechanism.[45]

The Arbitration Act, 1940 was not meeting the requirements of either the international or domestic standards of resolving disputes. Enormous delays and court intervention frustrated the very purpose of arbitration as a means for expeditious resolution of disputes. The Supreme Court in several cases repeatedly pointed out the need to change the law. The Public Accounts Committee too deprecated the Arbitration Act of 1940. In the conferences of Chief Justices, Chief Ministers and Law Ministers of all the States, it was decided that since the entire burden of justice system cannot be borne by the courts alone, an Alternative Dispute Resolution system

should be adopted. Trade and industry also demanded drastic changes in the 1940 Act. The Government of India thought it necessary to provide a new forum and procedure for resolving international and domestic disputes quickly.

Alternative Dispute Resolution is today being increasingly acknowledged in the field of law as well as in the commercial sector. The very reasons for origin of Alternative Dispute Resolution are the tiresome processes of litigation, costs and inadequacy of the court system. It broke through the resistance of the vested interests because of its ability to provide cheap and quick relief. In the last quarter of the previous century, there was the phenomenal growth in science and technology. It made a great impact on commercial life by increasing competition throughout the world. It also generated a concern for consumers for protection of their rights. The legal system did not give any response to the new atmosphere and problems of the commercial world. Thus ADR emerged as a powerful weapon for resolution of disputes at domestic as well as international level. It is developing as a separate and independent branch of legal discipline.

It offers to resolve matters of litigants, whether in business causes or otherwise, who are not able to start any process of negotiation and reach any settlement. Alternative Dispute Resolution has started gaining its ground as against litigation and arbitration. In modern India for the first time where Alternative Dispute Resolution as a method of conciliation has been effectively introduced and recognised by law was in Labour Law, namely Industrial Dispute Act, 1947. Conciliation has been statutorily recognized as an effective method of dispute resolution in relation to disputes between workers and the management. All parties to an industrial dispute who have had the misfortune of going through litigation knew that it is a tedious process and one which could go well beyond the life time of some of the beneficiaries. It is this factor that has contributed greatly to the success of conciliation in industrial relations.

ADR has thus been a vital, vociferous, vocal and vibrant part of our historical past. Undoubtedly, the concept and philosophy of Lok Adalat or ―People‘s Court Verdict‖ has been mothered by the Indian contribution. It has very deep and long roots not only in the recorded history but even in pre-historical period. It has proved to be a very effective alternative to litigation. People‘s Court is one of the fine and familiar fora which has been playing an important role still today in settlement of disputes.

Modern ADR is a voluntary system, according to which the parties enter a structured negotiation or refer their disputes to a third party for evaluation and/or facilitation of resolution. Especially in the light of the facts that the justice system is flooded by disputes of variable importance and complexity, and that the parties are almost invariably intimidated by the atmosphere in the

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courtroom and the litigation process itself. ADR has now become an acceptable and often preferred alternative to judicial settlement and an effective tool for reduction of arrears of case. The alternative modes of dispute resolution include arbitration, negotiation, mediation and conciliation. The ADR system by nature of its process is totally different from Lok Adalat.

III. SALIENT FEATURES OF ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution, as the name suggests, is an alternative to the traditional process of dispute resolution through courts. It refers to a set of practices and techniques to resolve disputes outside the courts. It is mostly a non-judicial means or procedure for the settlement of disputes. In its wider sense, the term refers to everything from facilitated settlement negotiations in which parties are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or mini trials that look and feel very much like a court room process. The need for public adjudication and normative judicial pronouncements on the momentous issues of the day is fundamental to the evolution of the land. ADR is necessary to complement and preserve this function of the courts. It has some instrumental and intrinsic functions; it is instrumental in so far as it enables amicable settlement of disputes through means which are not available generally through courts. It is intrinsic because it enables the parties themselves to settle their disputes.

Our Constitutional goal is to achieve justice- social, economic and political. Access to fast, inexpensive and expeditious justice is a basic human right. Equal access to justice for all segments to society is important to engender respect for law and judicial system. Access to justice would be meaningful, if the judicial system yields result through a fair process and within a prescribed time. Amicable settlement of disputes is very essential for maintenance of social peace and harmony in the society. Our Constitution mandates that the *"state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that the opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."*

(A) Constitutional Background of Alternative Dispute Resolution

It is settled law that free legal aid to the indigent persons who cannot defend themselves in a Court of law is a Constitutional mandate under Article 39-A and 21 of the Indian Constitution. The right to life is guaranteed by Article 21. The law has to help the poor who do not have means i.e. economic means, to fight their causes.

Indian civiisation put at about 6000 years back, at the dawn of civilisation (i.e. the age of the

Vedas), when habitation was growing at river banks, was devoid of urbanisation, where the Creator was presumed to be the head of humanity. With the dawn of industrialisation, man was walking into orderly society, State and nation, dependence on law for orderly conduct gained momentum. Then came on the horizon of social dispute resolution mechanism. With Indian Courts piling up cases for millennium (in the place of indigenous system which was cheap and quick), alternative dispute systems had to be found. Thus this system took birth. Once the dispute was resolved, there was no further challenge.

The Constitutional mandate rescue operation began with Justice V.R Krishna Iyer and Justice P.N. Bhagawati's Committees' report; weaker section thus became enabled to approach law courts, right from Munsiff Courts to the Supreme Court. Committee for the Implementation of Legal Aid Services (CILAS) also came on to the scene and initiated methods of solving civil disputes in non-legal for a and non-formal fora.

Advantages:

Alternative Dispute Resolution is based on more direct participation by the disputants rather than being run by lawyers and Judges. This type of involvement is believed to increase people's satisfaction with the outcome as well as their compliance with the settlement reached. Most ADR processes are based on an integrative approach. They are most co-operative and less competitive than adversarial court based methods like litigation. For this reason, ADR tends to generate less escalation and ill-will between parties. This is a key advantage in situations where the parties must continue to interact after settlement is reached, such as in matrimonial cases or labour- management cases. Following are the advantages of ADR:

1. It can be used at any time, even when a case is pending before a Court of Law.
2. It can be used to reduce the number of contentious issues between the parties; and it can be terminated at any stage by any of the disputing parties.
3. It can provide a better solution to dispute more expeditiously and at less cost than regular litigation.
4. It helps in keeping the dispute a private matter and promotes creative and realistic business solutions, since parties are in control of ADR proceedings.
5. The ADR is flexible and not governed by the rigorous of rules or procedures.
6. The freedom of parties to litigation is not affected by ADR proceedings. Even a failed ADR proceeding is never a waste either in terms of money or times spent on it, since it helps parties to appreciate each other's case better.

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7. The ADR can be used with or without a lawyer. A lawyer however, plays a very useful role in identification of contentious issues, position of strong and weak points in a case, rendering advice during negotiations and overall presentation of his client's case.
8. ADR helps in reduction of work load of courts and thereby helps them to focus attention on other cases.
9. The ADR procedure permits to choose neutrals who are specialists in the subject-matter of the dispute.
10. The parties are free to discuss their difference of opinion without any fear of disclosure of facts before a Court of Law.

IV. WHY MEDIATION SUITS FAMILY DISPUTES

Mediation has emerged as the most preferred and effective form of Alternative Dispute Resolution (ADR) in family law. Unlike litigation, which is adversarial, formal, and rigid, mediation offers a collaborative, confidential, and human-centered process. In disputes involving relationships—particularly those concerning marriage, children, financial support, and cohabitation—mediation offers tools not only for resolution but also for emotional closure, dignity, and long-term stability.

1. Focus on Preservation of Relationships

Family disputes are not purely legal issues; they are deeply personal. Even in cases of divorce, parties may remain connected due to shared parenting, joint assets, or ongoing obligations. Mediation recognizes this by aiming to preserve civil communication and cooperation between parties.

In *K. Srinivas Rao v. D.A. Deepa*, the Supreme Court of India observed that mediation plays a critical role in resolving matrimonial disputes, especially when the legal process may deepen hostility between spouses. Mediation provides a space where the emotional and relational elements of a dispute can be acknowledged—something the courtroom rarely allows.

2. Confidential and Private

Litigation proceedings are public and often expose private matters—such as domestic abuse, infidelity, or financial dependency—leading to humiliation and emotional distress. Mediation, by contrast, is conducted in a confidential setting, allowing parties to speak freely without fear of public judgment or legal consequences for candid admissions.

This confidentiality is particularly important in Indian society, where social stigma attached to

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marital breakdown is significant, and public litigation can exacerbate shame, especially for women. Mediation allows disputes to be settled discreetly, which increases party participation and sincerity.

3. Voluntary and Non-Coercive Nature

Mediation is based on voluntary participation. It empowers the parties to take charge of their own resolution, rather than surrendering control to lawyers or judges. This agency is crucial in family matters, where parties may feel powerless due to emotional strain, legal complexity, or social pressure.

Unlike arbitration or court proceedings, a mediator does not impose a decision. The outcome depends entirely on the mutual consent of both parties. As such, mediation tends to yield agreements that are more durable and willingly implemented, since they are based on negotiated understanding rather than imposed orders.

4. Emotional Support and Therapeutic Process

Mediation enables parties to express emotions, clarify misunderstandings, and reframe conflict. While not therapy, the process often has therapeutic benefits. It helps de- escalate anger, provides emotional validation, and encourages reflection. This is especially valuable when children are involved, or when long-standing familial resentment needs to be addressed.

Mediators trained in empathic communication, active listening, and cultural sensitivity can facilitate not only resolution but emotional healing. In contrast, litigation rarely addresses emotional harm, instead turning disputes into legal questions of rights and evidence.

5. Flexibility and Customization

Court orders are constrained by statute and precedent. Mediation allows parties to design creative, flexible, and context-specific solutions. For instance:

- Parenting plans can be customized around school schedules, festivals, and relocation issues.
- Maintenance can be structured to suit earning capacity, future prospects, or shared responsibility.
- Disputes involving elder care, property sharing, or second marriages can be resolved in ways litigation cannot accommodate.

This problem-solving orientation of mediation is essential in family contexts, where legal rights may not align with emotional or practical needs.

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6. Cost-Effective and Time-Saving

Mediation is far less expensive than litigation, both in financial and emotional terms. Court battles often stretch over years, consuming time, legal fees, and psychological energy. In contrast, mediation in family courts typically concludes within 3 to 6 sessions, and costs are minimal—particularly in court-annexed mediation centers.

According to data from the Delhi High Court Mediation Centre, over 60% of referred family disputes are resolved through mediation, saving significant judicial time and public resources. Parties also report higher satisfaction levels due to reduced stress and increased sense of control over outcomes.

7. Best Interests of Children

Mediation prioritizes the well-being of children, a factor often obscured in adversarial litigation. Custody battles fought in court can alienate children, traumatize them, and harm their long-term mental health. Mediation fosters cooperative parenting and encourages joint decision-making focused on the child‘s emotional needs rather than legal rights alone.

V. CONCLUSION

Family disputes are among the most personal and emotionally charged conflicts that come before the Indian legal system. Unlike commercial or civil litigation, these disputes—whether about divorce, custody, maintenance, or property—have long-term psychological and social consequences, not just for the parties involved but also for children and extended families. The adversarial model of litigation, which is built on confrontation and legal competition, often fails to address the relational and emotional aspects of such conflicts. In this context, Alternative Dispute Resolution (ADR)— particularly mediation and conciliation—has emerged as a much-needed mechanism to bridge the gap between legal rights and emotional healing.

The central aim of this study was to assess whether ADR mechanisms are effective in resolving family disputes in India, and whether they provide a viable, fair, and sustainable alternative to traditional litigation. The research shows that mediation is not just effective in theory but, when applied properly, has demonstrated considerable success in practice—especially in urban court-annexed mediation centers where institutional frameworks are in place.

One of the most compelling reasons mediation suits family law is its collaborative, non-adversarial structure. It enables parties to sit together—often for the first time after a breakdown in communication—and discuss grievances, needs, and solutions in a confidential setting. This is particularly important in family disputes where emotions such as anger, betrayal, guilt, and

grief are prevalent. The flexibility of mediation allows for outcomes tailored to specific family dynamics, unlike the rigid frameworks of court decrees which often fail to consider emotional or practical nuances.

Judicial recognition of ADR has been both encouraging and instrumental in mainstreaming mediation in family law. Landmark judgments such as *K. Srinivas Rao v. D.A. Deepa*, *Afcons Infrastructure v. Cherian Varkey*, and *B.S. Joshi v. State of Haryana* have not only endorsed the use of mediation in family disputes but also directed courts to actively promote reconciliation and mutual settlement, wherever feasible. These cases reflect the judiciary's increasing awareness of the human cost of adversarial litigation in family matters and its willingness to innovate within the bounds of legal procedure.

Furthermore, statutory provisions such as Section 9 of the Family Courts Act, 1984, Section 23(2) of the Hindu Marriage Act, 1955, and Section 89 of the Civil Procedure Code, 1908 mandate or encourage courts to make every effort toward amicable settlement before proceeding with litigation. These laws, read together with the Mediation Act, 2023, form a solid legal foundation for mediation in family law and demonstrate the state‘s commitment to restorative justice.

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