

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper and a black leather watch with a silver dial are also visible. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

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DYNAMICS OF ADR AND MEDIATION IN RESOLUTION OF FAMILY DISPUTES: AN OVERVIEW

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Conceptual Framework of ADR

Alternative Dispute Resolution (ADR) embodies a large range of mechanisms for resolving disputes outside the court system. There is no universally accepted definition of ADR, but many definitions generally refer to procedures where parties seek to resolve disputes in a way that is more informal, quicker and less expensive than with litigation.

Different scholars have defined ADR in different ways. Brown and Marriott define ADR as a series of processes, involving usually a neutral third party that are used instead of formal court or tribunal legal proceedings. Equivalent to the previous statement, O.P. Malhotra defines ADR as a systematic mechanism for settlement of disputes outside courtroom by informal processes. ADR is an essential tool for improving access to justice in the contemporary legal environment and counteracting the burden of courts.¹

The basic principles behind ADR are party autonomy, cooperation, confidentiality, flexibility and voluntary participation. ADR, rather than focusing solely on legal rights and liabilities, is often aimed at identifying practical solutions that can be acceptable to all parties involved. It is for this reason that it works especially well in the context of fights where relationships need to be maintained or salvaged – think family issues, partnership disputes and community disagreements.²

Definition of ADR

An alternative dispute resolution could be described as a manner of resolving disputes without traditional litigation either by the parties negotiating themselves or with the help of an impartial neutral third party. It consists of various tools like mediation, conciliation, negotiation,

¹ Sriram Panchu, *Mediation Practice and Law*

² Brown and Marriott, *ADR Principles and Practice* (Sweet & Maxwell 1999).

arbitration and Lok Adalat.³

Not only does ADR not seek to entirely replace a judicial system, Instead, it acts as a complement to formal courts by providing other channels of resolution. It offers the involved parties faster, cost-effective and non-contentious methods of resolution.⁴

Nature and Objectives of ADR

The objective of ADR are:

- In order to deliver fast and affordable justice.
- To reduce both the complexity and duration of procedures.
- To preserve relationships between parties.
- For confidentiality in disputes of a sensitive nature.
- To decrease the pendency and backlog of the judiciary.
- To encourage mutually acceptable settlements.
- To enhance Citizens' Access to Justice.

This is particularly important in the context of family disputes, where ongoing aggressive litigation may heighten resentment and psychological stress between the parties. Mediation, in particular, helps the parties communicate freely to reach operational settlements.

Historical Development of ADR in India

ADR has its basis in Indian tradition. For most of history people were more likely to settle their disputes in community institutions, by family elders, village councils, trade guilds etc., than in formal adjudication. Different institutions like Kulas (family assemblies), Srenis (guild associations) and Parishads became vital agencies enforcing peace and social harmony.⁵⁶

Also, village Panchayats acted as Informal forums for settlement of disputes at later dates. Traditional systems stressed on compromises, reconciliations and speedy justice⁷.

This was codified under various statutory laws in contemporary India including, the Arbitration and Conciliation Act, 1996, Section 89 of the Civil Procedure Code,1954,⁸ Legal Services Authorities Act,1987 and most recently the Mediation Act 2023. ADR has become a part of the justice delivery system in India today.

³ Avtar Singh, *Law of Arbitration and Conciliation* (12th edn, EBC 2021).

⁴ Brown and Marriott, *ADR Principles and Practice* (Sweet & Maxwell 1999).

⁵ N R Madhava Menon, *Justice, Courts and ADR in India* (2003).

⁶ M P Jain, *Indian Legal History* (LexisNexis 2014).

⁷ *Hussainara Khatoon v State of Bihar* (1980) 1 SCC 81.

⁸ Code of Civil Procedure 1908, s 89.

Types of ADR Methods

Alternative Dispute Resolution is a term that encompasses several ways in which disputes can be settled outside of the court system. The mechanisms are intended to facilitate quick, accessible and economic resolution of disputes. Different ADR mechanisms can be used depending on the type of dispute and the willingness of parties.

Main methods of ADR include negotiation, mediation, conciliation, arbitration, Lok Adalat and some hybrid mechanisms. Out of these methods, mediation appears to be one of the most effective modes in particular, when it comes to family disputes.

Negotiation

It is the easiest, most informal mode of dispute resolution. Here there is an open dialogue between the parties with a view to resolving matters through settlement without going through the court system.

In negotiation, parties are in total control of the result and process. The data ranges in price, it's private and it is fast. They tend to produce settlements and resolutions that are accepted as justified by the parties, since none imposed from above. With regard to family matters, negotiation can help nurture relationships while keeping hostility at a minimum.

Mediation

Mediation is a process in which the parties to a dispute communicate with one another and negotiate their differences, with assistance from a neutral third person (a mediator) as required. The mediator does not rule, but rather mediates dialogue to find a solution proposed by the parties themselves.

Family disagreements often reduce communication to an inability or unwillingness of two parties to cooperate, so mediation is one technique that fits especially well into the family context. It is less bitter, more dignified and appropriate where there will be ongoing future relationships such as between spouses or parents.

Conciliation

Conciliation is, in many ways, a very close cousin to mediation. It uses a neutral conciliator who helps the disputants find common ground and amicably resolve their dispute. Sometimes, in some situations it may be accepted, the conciliator can take more step and offer terms of

settlement.⁹

Contents on Conciliation has a statutory recognition in India and continues to be an important consensual mechanism of dispute resolution.

Arbitration

In Arbitration, the parties submit their dispute to a neutral arbitrator who hears both sides and gives a binding decision called an award. Contrary to mediation, arbitration is similar to a private judging process.¹⁰

It is popular in commercial disputes, although it is less appropriate generally in respect of sensitive family matters where the relationship between parties must still be valued.

Lok Adalat

Lok Adalat is a statutory forum created under the Legal Services Authorities Act, 1987 to settle disputes amicably. It notably also affords quick and cheap justice where matters are amenable to compromise.¹¹

Lok Adalats form a vital component of this restoration system, especially in the Indian context, for expediting case backlogs.

Importance of Mediation Among ADR Methods

ADR may consist for numerous processes, but mediation is the only style appropriate in family disputes as a result of it permits communication, private file perks, voluntary agreement and longer stability in harmony. It also addresses court burden by resolving disputes at the preliminary stage.

ADVANTAGES OF ADR TECHNIQUES

Alternative Dispute Resolution (ADR) has increasingly recognized as an effective alternative to litigation over the past several decades, both nationally and internationally. Judiciaries in countries around the world have recognized that not every dispute needs to be formally adjudicated. In most instances, consensual and flexible mechanisms including mediation, negotiation, conciliation as well as Lok Adalat offer much quicker, less expensive and peaceful results.

⁹ Arbitration and Conciliation Act 1996 pt III.

¹⁰ Arbitration and Conciliation Act 1996 pt I.

¹¹ Legal Services Authorities Act 1987, ss 19–22.

It follows an increasing acceptance of alternative dispute resolution (ADR), which depends on the desire to facilitate access to justice in a timely and less combative manner. ADR is best applied, for example, on family matters or labour disputes or community issues in the case where facing parties want to preserve their relationships.

Below are the key benefits of using ADR techniques:

Party Autonomy

Party autonomy is one of the main features of ADR. Parties are entitled to select the method of dispute resolution, the neutral third person (where applicable), the seat or location of proceedings where it takes place and which rules will be followed. The parties are not similarly bound by strict rules of procedure as they would be in court litigation. It grants them more power over the process as well as the results.

Flexibility

Achieving Resolution and Deriving Solutions (ADR) methods are less restrictive than traditional court actions. The process can be designed in accordance with the needs of the parties and the nature of disputes. Hearings may be scheduled more conveniently, the rules on formal evidence may be softened and negotiations over settlements would take place in a less adversarial atmosphere. This flexibility allows for real solutions that are tailor-made.

Focus on Relationships

While adversarial litigation tends to be more rights and liabilities centric, the key difference with ADR is that often at least one party has an underlying interest driving them. It seeks to find ways to resolve the conflict and maintain relationships whenever you can. This can be an important advantage in family disputes, matrimonial matters, partnerships and business relationships where some future interaction might remain.

Confidentiality

ADRs proceedings are generally private and confidential in nature. Other sensitive personal, family or commercial information is not entered into the public record. You gain privacy, protection of your reputation and trade interest along with open discussion between parties.

Cost-Effectiveness

ADR is usually less expensive than lengthy litigation. It saves the parties on court fees,

unnecessary appearances, procedure and cumbersome representation. In addition to direct ones, the number of indirect costs reduces: stress, lost business opportunities, wasted time.

Direct Participation

One of the things about ADR is it encourages the parties to be active in the dispute resolution process. Rather than hands off the whole thing to lawyers, or judges and leave it up to them, the parties interact with each other and directly contribute to settlement. That usually results in more happiness and mutual understanding.

High Compliance Rate

Some parties to ADR prefer it over litigation because an agreement is reached voluntarily, and they believe that voluntary agreements are more value-driven and will be honoured in comparison to adversarial one-sided court-ordered agreements. As the result is negotiated instead of a ruling, compliance rates are typically higher and enforcement controversies are minimized.

Speedy Resolution

ADR mechanisms are typically faster in resolving disputes than traditional litigation. Postponements for procedural motions, reframed terms of licenses and numerous adjournments will as before be passing pitfalls. ADR is therefore particularly well-suited in urgent or sensitive matters.

Reduction of Judicial Burden

Reducing pendency of cases and backlog of the judicial system is one of the most significant advantages of ADR. Through the resolution of disputes in a manner that takes these same disputes outside of traditional court proceedings or by having them resolved through mediation sometimes required by the courts, ADR also allows those processes where serious and genuinely contested matters require more formal adjudication to consume less time within the courts themselves.

Practical and Creative Solutions

Generally, courts are limited to issuing legal recognised sanctions. On the other, ADR offers more wider and realistic solutions driven by parties interests. In family disputes, for example, parties can agree a schedule of child visitation arrangements, counselling, phased settlements

or other arrangements that would not be as easily enforceable through the rigours of litigation.

Benefits in Brief

ADR provides ease of procedure, better control by the parties involved, neutrality and confidentiality, reduced cost, speedy result and adherence. As a result, it has become an integral part of current justice systems.

Even with these benefits, however, ADR is not a total replacement for courts. It is necessary some disputes be adjudicated. But, when settlement can be achieved, ADR still stands tall as one of the most powerful methods in achieving expedient co-existence.

Role of Mediation in Family Disputes

Family disputes can be resolved peacefully and constructively with the help of mediation. Family matters often have emotionally charged personal and ongoing relationships at their core, thus traditional adversarial litigation is often not the best option. In mediation, a neutral mediator assists parties to talk openly and arrive at acceptable solutions. Specifically when it comes to divorce, maintenance, child custody, visitation rights and distribution of matrimonial property disputes. Just the act of human mediation reduces animosity, upholds respect and encourages cooperation. It also protects the best interests of children by reducing conflict and promoting responsible parenting arrangements.

ADR and Reduction of Judicial Backlog

ADR mechanism plays a vital role in judicial decocting as it helps to divert fit disputes from lengthy court process to alternative means. A number of civil and matrimonial cases are pending in the Indian courts for which justice delivery is delayed. Alternative Dispute Resolution (ADR) like mediation, Lok Adalat, arbitration and negotiation settle disputes in a matter of fact, quick and easy manner. Disputes, when settled out of a court, save judicial resources for especially complex and controversial issues which merit adjudication. ADR avoids multiple adjournments and procedural delays as well, This wider use of ADR in the justice system can, therefore, help strengthen and improve timely access to justice for litigants.

Court-Referred Mediation in India

Mediation through court referral has started taking a crucial part in the Indian judicial system.

As per Section 89 of Code of Civil Procedure, 1908¹² or similar provisions in other acts, the courts may refer the dispute to mediation if it appears that there is a possibility of getting settlement. Similarly, the Family Courts also promote mediation in matrimonial dilemmas. Here, parties are directed to professional mediators assigned to courts annex mediation units. Mediation which is referred by courts reduces the pendency of cases, saves litigation costs increase in amicable settlements for parties. It works best in family disputes where remaining relationships are more valuable and reducing hostility is preferable over achieving an adversarial judgement.

Online Dispute Resolution (ODR) in Matrimonial Matters

Online Dispute Resolution is a relatively new method of ADR where the dispute is settled through Internet devices such as video calls, emails, and online platforms of communication. ODR is particularly helpful in matrimonial matters where parties are situated in different cities or even countries (like NRI marriage disputes). It allows mediation sessions to be conducted without being physically present, thereby saving money for things like travel, delays, and inconveniences. The relevance of ODR increased post-COVID-19 pandemic when there was a spur towards digital mechanisms for delivery of Justice. So, if ODR is done safely and privately, it can be a great mechanism for modern family law practice writ large to resolve maintenance custody and separation disputes.¹³

Why Mediation is Better than Litigation in Family Cases

Family mediation is preferred over litigation because the former promotes cooperation between conflicting parties whereas the latter pits them against one another. Court cases can make for more bitterness, emotional heartache and long-term acridity between the husband and wife. By contrast, parties can privately discuss issues and eventually come to mutually acceptable settlements through mediation. It is more efficient, cheaper and flexible than litigation. Where kids are involved, mediation is especially important because the parents need to draft workable custody and visitations agreements that work for them. Mediation is a human approach since it allows not just an end to separation but also continuity of family relationships. It avoids the loss of dignity and damage that litigation invariably inflicts on everyone involved.¹⁴

¹² Code of Civil Procedure 1908, s 89.

¹³ NITI Aayog, *Designing the Future of Dispute Resolution: ODR Policy Plan for India* (2021).

¹⁴ *Amardeep Singh v Harveen Kaur* (2017) 8 SCC 746.

Online Mediation and Future Scope

Online mediation is the new-age method of mediation done through virtual spaces like video conferencing, secure online portals etc. It provides convenience, speed and accessibility particularly when the parties are not in close physical proximity. Due to increased access to the internet, greater digital awareness and the growing need for speedy justice throughout this vast country: online mediation has tremendous promise ahead of it in India. Family disputes, commercial dealings and moving settlements outside of the court can be one area where mediation is very useful. With effective law in place as a backbone, skilled dispute resolution professionals, and secure communication systems, online mediation can be established as one of the major pillars for future mechanisms for settling disputes and legal reform on both state and federal levels.

The Constitutional Mandate

Punishment for suicide In India, Article 21 of the Constitution guarantees a Fundamental Right that no person shall be deprived of his life or personal liberty except according to procedure established by law. Both the words 'life' and 'personal liberty' have been given an extremely expansive and liberal interpretation by the judiciary. The Supreme Court has always given the meaning of life, the right which is not literally just animal existence; it includes dignity, shelter, nutrition and access to legal remedies.

The recognition of the right to speedy justice as part of fair procedure is one of the most important developments under Article 21¹⁵. The Supreme Court has ruled that delayed justice is burden, uncertainty, mental anguish and effective remedy to people denied. It is therefore a part and parcel of the constitutional guarantee of life and personal liberty that cases must be disposed off more timely.

Quick justice is larger than just the term speedy trial, include institution of proceedings, trial, hearing, appeal revision and realisation of orders done. The delay has particularly dire consequences in family matters, where divorce, maintenance, child custody, domestic violence and residence directly affect the dignity and daily survival of the parties involved.

This constitutional injunction of delivering justice timely has also catalysed the setting up of Alternative Dispute Resolution systems; like mediation, Lok Adalat and negotiated settlement. In appropriate cases, these processes offer faster, less antagonistic and more accessible remedies. Mediation in matrimonial and family matters usually resolves disputes privately,

¹⁵ Constitution of India art 21

meaning less of a pressure on courts while allowing couples to maintain some dignity. Meaning thereby that Article 21 is not just about life and liberty in its narrowest sense but also about an effective and humane justice delivery system. ADR and mediation is a significant indication of the constitutional commitment to provide speedy justice in meaningful form with minimum interference by judicial authority for all citizens of India.

ARBITRATION AND CONCILIATION ACT, 1996

It is a landmark legislation that governs Alternative Dispute Resolution in India. It came into force during which the Arbitration and conciliation act, 1996. It came to replace the Arbitration Act, 1940 which had become obsolete and inefficient as a law dealing with arbitration and conciliation. The 1996 Act was largely modelled on the basis of the UNCITRAL Model Law, adopted (by a resolution) by United Nations Commission on International Trade Law (UNCITRAL) and aimed at facilitating fair, effective, and harmonised dispute settlement mechanisms worldwide. The Act outlines a complete legal structure for domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and conciliation process. A fundamental goal of the Act is to limit unnecessary litigation and promote party autonomy in dispute resolution.

An award made pursuant to the provisions of the Act is binding and unequivocally enforceable, save and except for limited grounds for challenge. It encourages finality, efficiency and certainty of the dispute resolution. The Act has undergone various amendments from time to time mainly in the years 2015, 2019 and 2021 for better international institutional arbitration which will lead us to delay free justice and most suitable jurisdiction in India for resolving disputes.

While the Act is commercial in nature, its value lies in commodifying the larger ADR framework across India. This is emblematic of legislative policy to promote alternatives to traditional litigation and conserve judicial resources.

Part III of the Act also contains provisions regarding conciliation. Conciliation is a voluntary way in which the impartial conciliator helps parties to reach an amicable agreement. A settlement agreement arising from conciliation shall have the same status and effect as an arbitral award on agreed terms.

Arbitration, by default, is used for commercial matters only but the principles of conciliation can be handy in the family and interpersonal disputes where consensual settlement has an edge over litigation.

Alternative Dispute Resolution Mechanisms under the Code of Civil Procedure, 1908

Role of Code of Civil Procedure, 1908 in promoting ADR in civil disputes (including family-related matters). Amendments that were introduced in the CPC identified the fact that several disputes can be decided better through settlement instead of extended trial.

Section 89 – Settlement of Disputes Outside the Court

CPC has empowered the courts, in cases where elements of a friendly settlement are there, to refer the dispute for: arbitration, conciliation or judicial settlement or Lok Adalat Under Sec 89. It is a significant move towards formalizing ADR into the mainstream justice system. It reduces pendency and settlement of disputes at amicable stage fetching needs of litigants.

Order X – Examination of Parties by the Court

Pursuant to Order X, the court can examination the parties at opening stage, identify the matters in controversy and even explore settlement. This provision allows judges to evaluate the potential for resolution of the dispute through negotiation or mediation early on.

Order XXXII-A – Suits Relating to Family Matters

Order XXXII-A¹⁶, specifically deals with suits relating to family matters. It obligates courts to make efforts towards settlement and to take a family dispute perspective. The provision acknowledges that, in matters of marriage and family disputes, it is preferable to settle the matter through litigation or adversarial litigation.

Therefore, the Code of Civil Procedure, 1908 lays down an important solid base statutorily to ADR as well as mediation in India in cases where amicable settlement and early justice is preferred.

ESTABLISHMENT OF LEGAL SERVICES AUTHORITY UNDER THE LEGAL SERVICES AUTHORITIES ACT, 1987

Passed into law on 1987, the Legal Services Authorities Act aims at providing free and competent legal services to weaker section of society and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The

¹⁶ Code of Civil Procedure 1908, O XXXII-A

Act implements Article 39A of the Constitution of India¹⁷, which requires the State to secure equal justice and provide free legal aid. This is a significant development for social justice, access to justice and affordable dispute resolution.

It also provides for the setting up of legal services authorities at national state district and taluka level. These bodies organise legal aid programmes, legal awareness initiatives and settlement forums for speedy disposal of disputes.

Authorities Established under the Act

This Act creates the following institutions:

1. National Legal Services Authority (NALSA) – for national policy formulation and monitoring.
2. State Legal Services Authority (SLSA) – working in every State.
3. District Legal Services Authorities (DLSA) – district-wise.
4. The most decentralized are: Taluk or Taluka Legal Services Committees – working at local levels.
5. Supreme Court Legal Services Committee and High Court Legal Services Committees.

They serve key roles in promoting legal literacy, legal aid mediation and Lok Adalats.

Origin of Lok Adalats

Lok Adalat means “People’s Court.” It is based on the traditional culture in India where disputes were resolved amicably with the help of village elders, Panchayats and other community forums. Modern Lok Adalats were a response to the increasing pendency of cases, procedural delay as well as high cost involved in litigation.

First-ever modern Lok Adalat was convened in Gujarat in 1982. That success opened the door to expand the system nationwide. The unique idea of Lok Adalats became a huge success for offering easy, quick and inexpensive resolution of disputes through compromise with the mutual consent of both parties.

Today, Lok Adalats has become one of the most productive ADR mechanism in India and Key Player in reducing backlog of pending cases.

Nature and Functions of Lok Adalats

Lok Adalats are conciliatory forums that work to resolve disputes with the help of members

¹⁷ Constitution of India art 39A.

who exist solely for this purpose, in mutually agreeable circumstances. Unless ADR providers agree to compromise, they determine disputes on their merits unlike typical courts. Surely their ultimate focus is to have the settlement process as simple and user-friendly as possible!

Lok Adalat commonly deal with:

- Motor accident claims
- Matrimonial and family disputes
- Maintenance matters
- Labour disputes
- Bank recovery cases
- Utility bill disputes
- Compoundable criminal offences
- Civil disputes suitable for settlement

The award made by Lok Adalat is considered as a decree of civil court and the same is final and binding on parties. No appeal normally lies from such award.

Relevance to Family Disputes and Maintenance Matters

Usually family disputes of maintenance, matrimonial settlements, children custody and residence tend to be more constructive where the parties negotiate with each other in a Lok Adalat. They allow parties to avoid excessive litigation, plus incentivize the settlement of issues.

Lok Adalats enable quick rectification to women, children, aged citizens and underprivileged litigants, who would otherwise be exposed to protracted legal expenses. This mechanism can effectively resolve maintenance disputes that have an element of urgency since they require financial help.

Importance in Reducing Judicial Backlog

The significant achievement provided by the Legal Services Authorities Act, 1987 is relieving regular courts. Thousands of disputes are resolved every year through Lok Adalats, pre-litigation settlements, legal counselling and mediation support.

Hence, Legal Services Authorities Act, 1987 has become a linchpin for access to justice and Alternate Dispute Resolution mechanism in India primarily for family and socially sensitive disputes where need of the hour is speedy remedy within affordable means.

Proliferation of Special Mediation Forums: Mahila Adalats in India

Mahila Adalat – Gender-Oriented Innovatory Development (IBS): An important & unique development of India's collectivism in its dispute resolution system, Mahila Adalats also known as women oriented or gender specific forums against the plethora of issues concerning womanhood have emerged as one of the prominent institutions providing for resolution of disputes regarding matrimonial/family marriages and family affairs. These forums were set up with a specific purpose of serving as an accessible, less intimidating space for women who might shy away from formal courts – which tend to be controlled by men and obviously made inaccessible through social stigma, financial capacity or fear of protracted court battles.

Mahila Adalats typically operate on the back of support from State agencies, legal services institutions, non-governmental organisations, women's groups and community cooperatives. While not traditional courts in the technical judicial sense, they function as conciliatory and mediation-based forums to address complaints requiring the calls of domestic violence, maintenance, marital discord, child custody and desertion matters arising out of dowry harassment or other family problems.

Mahila Adalats are set apart by the fact that they are often run by women mediators, counsellors or social workers who have knowledge of the sad realities faced by aggrieved women. Mediators are often the best people to help, but in myriad cases have a similar cultural or community context from which to communicate better and perhaps develop a better level of trust.

Significance of Mahila Adalats: Promoting mediation in sensitive family disputes. For many women in Indian society, publicity, family backlash and deterioration of relationships lead them not to go for formal litigation. Family intervention through informal means might be biased or rather useless. Mahila Adalats provide an alternative platform that is less adversarial and more indirect in terms of its focus on dialogue, settlement, and pragmatic solutions.

These forums also assist in maintenance issues by promoting prompt arrangements regarding financial support, appreciation of the home, child expenses and other obligations. Timely resolution of such disputes alleviates distress for women and children.

On the whole, Mahila Adalats promote access to justice and lessen pressure on traditional courts by settling disputes locally. It also shows how sectoral mediation platforms can enhance family justice and safeguard the rights of women, while enabling efficient dispute resolution in India.