



ADR in Family Law “ An Effective Approach to Dispute Settlement”

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ABSTRACT :

Life is dynamic in nature , it is changing evolving at a constant rate so are the norms, culture, traditions, and rules. Methods of resolving conflicts have also evolved over the period of time. Even though it can be seen that in today s time we have different names for alternative dispute resolution mechanism in today's scenario. However, similar practices used to exist in India since ancient times. No society is free from conflicts and disputes, but resolving them peacefully is significant of our legal system. In India, people have always valued dispute resolution, and one of the best example that can be given of is panchayat system where disputes were settled by the village chief man or the head¹. The panchayat plays a significant role at that point of time. The Panchayat leaders, or Panches, were regarded with the highest respect, almost like gods. They not only handled disputes related to land, property, and crime but also settled family conflicts.

So ultimately the main goal was to maintain peace and harmony in both society and families. Since the family is the smallest yet most important unit for a nation's growth and development, resolving family disputes in a peaceful manner has always been necessary. Disputes are a common part of family life². When conflicts arise, they can be resolved in two main ways: through the court (litigation) or outside the court (non-litigation). Litigation follows a legal approach where the law is strictly applied to settle the dispute and bring it to an end. Alternative Dispute Resolution (ADR) is often seen as a more practical, affordable, and efficient option compared to litigation. Court cases not only take longer and cost more, but they also don't always guarantee a fair outcome for both the plaintiff and the defendant. Since humans are social beings with different personalities and attitudes, conflicts between individuals or groups are inevitable.

Introduction

Family law deals with personal matters like marriage, divorce, child custody, and inheritance. These issues can be emotionally difficult and often lead to disputes. Traditionally, such disputes have been settled through court cases, which can be long, expensive, and stressful for everyone involved.

In recent years, there has been a growing preference for Alternative Dispute Resolution (ADR) methods. ADR includes mediation, arbitration, collaborative law, and conciliation—processes that help families resolve conflicts in a more cooperative and less confrontational way. These methods are often quicker, more affordable, and emotionally easier, giving people a chance to reach fair solutions without the stress of lengthy legal battles. The use of Alternative Dispute Resolution (ADR) in family law is part of a larger move toward making the legal system more efficient and focused on the needs of the people involved. Unlike traditional court battles, ADR focuses on open discussions and mutual agreements rather than conflict and opposition³.

This shift comes from the understanding that courtroom fights can make family disputes worse, especially when children or sensitive issues are involved. ADR provides a more peaceful way to resolve problems, helping families find fair solutions while reducing emotional stress and financial burdens. One of the biggest advantages of Alternative Dispute Resolution (ADR) in family law is that it helps maintain relationships. Unlike court battles, which often turn people against each other, ADR encourages open communication and teamwork.

For example, in mediation, a neutral person helps both sides talk through their issues and find a fair solution together. This is especially helpful in family matters, where maintaining relationships—like those between parents and children or even between ex-spouses—can be important for the future⁴.

According to Late Smt. Durgabai Deshmukh, a strong advocate for women's rights and justice, visited China in 1953 to study their Family Courts and she made She later discussed her observations with Justice Chagla and Justice Gajendragadkar, and together, they recommended setting up Family Courts in India⁵. The 59th report of the Law Commission of India also emphasized the need for a more refined and sensitive approach in handling

¹ Sonu, "Alternative dispute resolution in family disputes: An analysis of Indian legislative provisions," 2023, 1(200).

² Ibid.

³ Bala, N. (2019). *Mediation in Family Disputes: An Indian Perspective*. Indian Journal of Family Law, 10(2), 15-30.

⁴ Bhargava, M. (2020). *Alternative Dispute Resolution in Family Law Cases: An Overview*. Journal of Law and Social Policy, 5(1), 45-60.

⁵ Supra1

family disputes. The Commission further suggested that courts should make every possible effort to resolve family conflicts at every stage of the case. In 1976, changes were introduced in the Civil Procedure Code to establish a special procedure for family-related matters. After these significant developments, the need for Family Courts became evident to ensure quick and peaceful resolution of family disputes in the public interest.

ADR in India

India is a diverse country where different religions follow their own personal laws, reflecting unity in diversity. However, these personal laws have also evolved over time. Family, being a sacred unit, often faces disputes, but litigation is not always the best solution since it is expensive and time-consuming. The most effective way to resolve such conflicts is through Alternative Dispute Resolution (ADR). By using ADR methods, families can maintain harmony and strengthen relationships. These processes help in restoring cordial relations between disputing members, making them the ideal approach for family conflict resolution. ADR methods use various techniques to resolve disputes. The main idea behind ADR is to settle conflicts peacefully. Mediation, one of the key processes, is voluntary and allows both parties to discuss their issues openly and work towards a mutual agreement. Instead of focusing on what they can demand or fight for legally, they collaborate to find a fair solution. Among all ADR techniques, conciliation and mediation are considered the most effective and beneficial methods for dispute resolution⁶.

The Constitution of India is the fundamental authority of law in India. The Constitution gives due recognition to statutes, case-law and customary law consistent with its dispensations. A single unified judicial system is a unique feature of the Indian judiciary system. The Supreme Court at the apex of the entire judicial system is followed by high courts in each state or group of states. Under the high courts exists a hierarchy of civil and criminal subordinate courts. Panchayat courts also function in some states under various names like Nyaya Panchayat, Panchayat Adalat, and Gram Kachheri, to decide civil and criminal disputes of petty and local nature. These are grassroots level petty courts meant to decide small disputes at the lowest levels.

India has a vast legal system with nearly 15,000 courts across the country. It is the judiciary's constitutional duty to uphold public trust in the legal system. This makes it essential to develop new and effective dispute resolution methods. Along with modern alternatives, there is also a strong need to revive and strengthen traditional dispute resolution systems. Various expert reports have repeatedly emphasized the importance of adopting these alternative mechanisms to ensure efficient and accessible justice⁷.

Statutory Provisions of ADR in Indian Legal System

- *Arbitration* – Governed by the *Arbitration and Conciliation Act, 1996*, arbitration provides a formal method of resolving disputes outside the court through an independent arbitrator.
- *Settlement in Civil Cases* – Under *Order XXXIIA of the Civil Procedure Code, 1908*, courts encourage settlement in cases related to family matters.
- *Alternative Dispute Resolution (ADR) in CPC* – *Section 89 of the Civil Procedure Code (CPC)*, along with *Order X, Rules I-A, I-B, and I-C*, promotes resolving disputes outside the court through mediation, conciliation, or arbitration.
- *Lok Adalat* – Established under the *Legal Services Authority Act, 1987*, Lok Adalats focus on mediation, conciliation, and informal settlements for resolving legal disputes quickly and amicably.
- *Reconciliation in Marriage Disputes* – The *Hindu Marriage Act, 1955 (Sections 23(2) & 23(3))* and the *Special Marriage Act, 1954 (Section 34(3))* emphasize reconciliation efforts before granting divorce.
- *Family Court's Role in Settlement* – Under the *Family Courts Act, 1984*, family courts have a duty to make sincere efforts to help disputing parties reach a settlement before proceeding with litigation.

Settlement of Disputes outside of the court

To implement the recommendations of the *129th Report of the Law Commission of India*, courts were required to refer disputes for settlement through *arbitration, conciliation, mediation, judicial settlement, or Lok Adalat* after framing the issues. The idea was that litigation should continue in court *only if these alternative dispute resolution (ADR) methods failed* to resolve the matter. Based on this approach, *Section 89 of the Civil Procedure Code (CPC)* was introduced to promote out-of-court settlements before proceeding with a full trial. Sec 89 of the act states that “ *Where it appears to the court that there exist elements of settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the court may reformulate the terms of a possible settlement and refer the same for arbitration, Conciliation and mediation*”⁸.

Further, sec 9 of family courts act 1984 states that “ *it the duty of Family Courts to actively work towards settling disputes. It grants them significant authority and responsibility to facilitate settlements. The law uses terms like "assist and persuade" to emphasize the court's role in encouraging parties*

⁶ Kumar, V. (2022). Challenges in Implementing ADR Mechanisms in Family Disputes in India. *Journal of Legal Reform*, 7(3), 89-104.

⁷ Ibid.

⁸ Gupta, A., & Kumar, R. (2020). Assessing the Impact of ADR on Family Law Cases in India. *Journal of Indian Law and Society*, 13(2), 99-112

to reach an agreement. Additionally, it allows the court to *pause proceedings* if there is even a slight chance of settlement, promoting mediation as a preferred method for resolving disputes.

Arbitration and Conciliation act 1996

Arbitration has become a common practice in India's civil legal system. With courts burdened by a huge backlog of cases, there was an urgent need for faster and more efficient ways to resolve disputes. India's first arbitration law was the Arbitration Act of 1940, followed by the Arbitration (Protocol and Convention) Act of 1937 and the Foreign Awards Act of 1961. However, these laws did not work effectively, as arbitration decisions were often challenged in court, leading to even more legal battles instead of resolving disputes smoothly. To make arbitration more effective in India, the Indian Legislature introduced the Arbitration & Conciliation Act, 1996. This law applies to both domestic and international arbitration and is based on the UNCITRAL Model Law, as recommended by the United Nations General Assembly⁹.

The Act aims to streamline dispute resolution, making it easier for businesses and individuals to settle conflicts outside of court. It also supports International Commercial Arbitration and conciliation. Under this law, an arbitral award can only be challenged in specific ways and on limited grounds, reducing unnecessary legal delays. The Arbitration & Conciliation Act, 1996, ensures that courts have minimal interference in arbitration proceedings, allowing disputes to be resolved more efficiently. India is also a member of the 1958 New York Convention, which helps in recognizing and enforcing foreign arbitration awards.

As the name suggests, the Act also includes conciliation, a process similar to mediation, where a neutral third party helps resolve disputes. Because of its effectiveness, arbitration has become a widely used method for settling civil and commercial disputes, with most business agreements now including an arbitration clause.

Lok Adalat System

The Legal Services Authorities Act, 1987, was created to ensure that everyone, especially the weaker sections of society, has access to free and effective legal help. Its goal is to make sure that no one is denied justice just because they cannot afford it or face other difficulties. The Act also introduced Lok Adalats, which are special courts designed to provide fair and quick justice through mutual settlement, making the legal system more accessible and equal for all. Chapter VI of the Act allows authorities to set up Lok Adalats (Settlement Courts) at different times and places, based on their needs. These courts handle specific types of cases within a defined area¹⁰.

A Lok Adalat is usually made up of serving or retired judges and respected individuals chosen by the government in consultation with the judiciary. Over time, Lok Adalats have become a popular way to settle civil disputes informally, providing a quicker and more cost-effective alternative to traditional court proceedings. Lok Adalat, which means "People's Court," is a system rooted in India's tradition of resolving disputes through community mediation. It builds on this age-old practice and follows Gandhian principles of peaceful conflict resolution.

Unlike regular courts, Lok Adalats follow a non-adversarial approach, meaning they focus on mutual agreement rather than legal battles. These courts are organized from time to time by various legal authorities, including the Supreme Court, High Courts, district authorities, and Taluk Legal Services Committees. They are usually led by retired judges, social activists, or legal professionals. However, Lok Adalats cannot handle cases related to non-compoundable criminal offenses, which are more serious in nature.

Conclusion

Alternative Dispute Resolution (ADR) has become a crucial tool in addressing family law disputes in India. Given the emotional and financial strain of litigation, ADR methods such as mediation, arbitration, conciliation, and Lok Adalats provide a more efficient, cost-effective, and harmonious way of resolving conflicts. These mechanisms prioritize mutual understanding and cooperation over adversarial court battles, ensuring that relationships, especially within families, remain intact even after disputes are settled. Over the years, India has made significant legal advancements in promoting ADR through various legislative measures, including the Arbitration and Conciliation Act, 1996, the Family Courts Act, 1984, and the Legal Services Authorities Act, 1987. These laws have not only streamlined dispute resolution but have also reinforced the importance of peaceful settlements over prolonged litigation.

Looking ahead, the future of ADR in family law appears promising. With increasing awareness and acceptance of ADR methods, courts are actively encouraging alternative resolutions before resorting to litigation. Further reforms, improved access to ADR services, and greater public participation in mediation and Lok Adalats will strengthen India's dispute resolution framework. By integrating ADR more deeply into the legal system, India can ensure a more compassionate, efficient, and just approach to family law disputes, ultimately fostering a culture of reconciliation over confrontation.

⁹ Sharma, N. (2018). *The Evolution of Family Mediation in India*. Indian Journal of Mediation and Arbitration, 9(3), 63-80.

¹⁰ Ibid.