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# **THE EFFECTIVENESS OF MEDIATION IN RESOLVING CHILD CUSTODY AND MAINTENANCE DISPUTES: A COMPARATIVE ANALYSIS OF TANZANIA, THE UNITED KINGDOM AND INDIA**

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## **ABSTRACT**

This paper examines the effectiveness of mediation as a mechanism for resolving child custody and maintenance disputes, with a particular focus on Tanzania, and draws comparative insights from the United Kingdom and India. The study was guided by the objectives of assessing the legal and institutional frameworks governing family mediation, evaluating their effectiveness, and identifying the challenges and prospects of mediation in Tanzania. Using qualitative research methods, the study relied on documentary reviews of statutes, case law, and institutional reports.

The findings indicate that mediation in Tanzania is acknowledged under various legal frameworks, notably the Law of the Child Act R.E 2023.

However, the changes remain significantly underdeveloped and are inconsistently applied across different regions and cases. This inconsistency can be attributed to several factors, most prominently the lack of a dedicated mediation law that would provide clear guidelines and procedures for the practice. Additionally, the Law of the Child (Juvenile Court Procedure) Rules made under S.99(1), whereby Section 16 (m) encourages the parties to use an alternative dispute resolution procedure if appropriate to facilitate the use of such procedure.

Moreover, there is a noticeable deficiency in outlining the procedure to be carried out for mediation, institutional capacity; many organizations that could facilitate mediation lack the necessary resources, training, and expertise to implement effective mediation processes. Furthermore, public awareness about mediation as a viable conflict resolution option is quite low, which limits its use and acceptance within communities.

In plain contrast, both the United Kingdom and India have established comprehensive mediation systems that are bolstered by well-defined legislation, specialized institutions, and supportive public policy

frameworks. These countries have developed robust mechanisms to ensure that mediation is widely accessible to citizens and operates effectively. In the UK, for instance, mediation is not only integrated into civil justice processes but is also supported by various organizations that provide training, resources, and oversight. Similarly, India has made significant strides in institutionalizing mediation, including the establishment of mediation centers and the promotion of mediation as a first resort in conflict resolution through legal mandates. As a result, the mediation landscape in these countries is characterized by a high level of efficiency and effectiveness, which stands in contrast to the current state of mediation practices in Tanzania.

The paper concludes that mediation is an effective mechanism for promoting amicable settlements, reducing court congestion, and safeguarding the best interests of the child. It recommends the enactment of a Family Mediation Act, capacity building for mediators, and the integration of mediation into Tanzania's formal judicial processes.

**Keywords:** Family Dispute resolution, Mediation, Child custody and maintenance, Lok Adalats

## 1.0 Introduction

Child custody and maintenance disputes are among the most emotionally charged and intricate issues encountered in the realm of family law. These disputes frequently emerge during the challenging process of divorce or separation, which can sometimes lead to drawn-out litigation. Such legal battles often impose significant emotional, psychological, and financial burdens on parents and, crucially, on their children. The impact of these disputes extends far beyond the courtroom, potentially affecting the long-term well-being of all involved.<sup>1</sup>

To address these complex issues, mediation has surfaced as a valuable alternative to the traditional adversarial court litigation model. Mediation provides a structured environment for open dialogue, mutual understanding, and compromise. Unlike conventional court disputes, where parties often confront each other in a contentious atmosphere, mediation emphasizes cooperation and respect. This approach empowers parents to engage in productive discussions about child custody and maintenance arrangements, ultimately leading to agreements that

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<sup>1</sup> Bergman, Ann-Sofie & Rejmer, Annika. (2017). Parents in child custody disputes: Why are they disputing?. *Journal of Child Custody*. 14. 1-17. 10.1080/15379418.2017.1365320.

prioritize the best interests of their children and promote healthier post-divorce relationships.<sup>2</sup>

In recent years, the practice of mediation has gained considerable traction as part of a global shift towards restorative and child-centered justice. This movement advocates for methods that foster reconciliation and promote the welfare of children over adversarial confrontations.

Family Dispute Resolution (FDR) is a structured mediation-based approach designed to assist family members in resolving conflicts and disputes in a constructive manner. This process involves the guidance of a qualified and impartial practitioner who facilitates open and effective communication among family members.<sup>3</sup>

During FDR, the practitioner helps participants identify specific issues that are causing disagreement, including but not limited to children's welfare, maintenance obligations, and property distribution. The process encourages each party to express their concerns and perspectives while fostering a respectful dialogue.<sup>4</sup>

As the mediation progresses, the practitioner works with the family to explore a variety of options and solutions that may be acceptable to all parties involved. The goal is to help families reach mutually agreeable outcomes that prioritize the best interests of children and establish a clear understanding of responsibilities and rights.<sup>5</sup>

Ultimately, Family Dispute Resolution provides a supportive environment where family members can work collaboratively towards resolutions that promote healthy relationships and sustainable agreements, reducing the need for more adversarial legal processes.

Lok Adalats, often referred to as People's Courts in India, which are a pioneering alternative dispute resolution (ADR) mechanism that has been established in India. Their primary objective is to promote the quick and amicable settlement of disputes without resorting to the protracted procedures typical of conventional judicial courts. The term "Lok Adalat" is derived

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<sup>2</sup> *ibid*

<sup>3</sup> Popov, V.. (2025). The role of mediation in resolving family disputes: advantages and disadvantages. Uzhhorod National University Herald. Series: Law. 1. 246-251. 10.24144/2307-3322.2025.87.1.36.

<sup>4</sup> *ibid*

<sup>5</sup> Chornopyska, Victoria & Chornopyska, Khrystyna. (2024). Family mediation as a mode of dispute resolution in family legal relations. Visnik Nacional'nogo universitetu «Lvivska politehnika» Seria Uridicni nauki. 11. 391-399. 10.23939/law2024.41.391.

from Hindi, meaning "People's Court," which underscores its foundational principles of justice, equity, and fairness for all individuals.<sup>6</sup>

This system is designed to be particularly advantageous for marginalized and vulnerable populations, who often face significant barriers in accessing the formal judicial system. These barriers may include the high costs associated with litigation, the complexity of legal processes, and the considerable time required for cases to be resolved in traditional courts. By contrast, Lok Adalats provide a more accessible and expeditious means of resolving disputes, ensuring that justice is not delayed and that it reaches those who might otherwise be excluded from the formal legal framework.<sup>7</sup>

Moreover, Lok Adalats aim to foster a spirit of reconciliation and coexistence among disputing parties, encouraging them to come to mutually agreeable solutions. The proceedings are less formal than in traditional courts and are typically presided over by a panel that may include retired judges, legal experts, and community leaders, further contributing to a less intimidating environment for participants. This innovative approach not only alleviates the burden on the formal judiciary but also promotes social harmony by empowering individuals to resolve their differences in a constructive manner.<sup>8</sup>

This paper aims to delve into the effectiveness of mediation in resolving child custody and maintenance disputes specifically in Tanzania. Through this exploration, we will draw valuable lessons from the United Kingdom and India—two jurisdictions that have developed more comprehensive family mediation systems. By examining their practices and outcomes, we hope to identify strategies that can enhance the mediation process in Tanzania, ultimately supporting families in navigating their disputes more peacefully and constructively.

## 2.0 Statement of the Problem

Despite the recognition of mediation within Tanzania's legal framework particularly under the Law of the Child Act<sup>9</sup>Its practical application in resolving child custody and maintenance

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<sup>6</sup> Yadav, Sanjay & Rai, Prof. (2024). Lok Adalat And Alternative Dispute Resolution Mechanisms: Bridging The Gap Between Informal And Formal Justice Systems. ShodhKosh: Journal of Visual and Performing Arts. 5. 10.29121/shodhkosh.v5.i2.2024.3913.

<sup>7</sup> Shackelford, Scott. (2009). In the Name of Efficiency: The Role of Permanent Lok Adalats in the Indian Justice System and Power Infrastructure.

<sup>8</sup> *ibid*

<sup>9</sup> [Cap. 13 R.E. 2023]

disputes remains limited and largely ineffective. The Law of the Child Act <sup>10</sup> provides that *the best interests of the child shall be the primary consideration in all actions concerning the child*. Moreover, the law mandates courts and social welfare officers to promote reconciliation and mediation before resorting to formal adjudication. <sup>11</sup> However, in practice, these provisions are inconsistently implemented, and mediation remains more theoretical than operational in most family dispute cases.

The mediation process in Tanzania formal, semi regulated, and dependent on the discretion of individual magistrates or social welfare officers, lacking standardized procedures and institutional coordination. While the Law of the Child Act allows for amicable settlement agreements in matters relating to custody and maintenance<sup>12</sup>, there is no clear framework governing how mediation should be initiated, conducted, documented, or enforced. Consequently, the absence of formal mediation rules has led to inconsistency in practice, reduced public trust, and weak enforcement of mediated agreements.

Similarly, under the Law of Marriage Act <sup>13</sup> provides that courts should attempt reconciliation before granting a decree of divorce. <sup>14</sup> While this provision implicitly acknowledges reconciliation in matrimonial disputes, it remains limited to mediation between spouses and does not extend comprehensively to issues of child custody and maintenance.

Judicial precedents further illustrate this shortfall. In *Alice Mbekenga v. Respicious P. Mtumbala*.<sup>15</sup> The High Court emphasised that although the welfare of the child must guide custody decisions, the absence of structured mediation often leaves courts as the only viable forum for resolution.

Furthermore, the lack of professional training among mediators and social welfare officers undermines the credibility and effectiveness of the process. Many mediators lack skills in negotiation, communication, and child psychology essential for sensitive family matters. Public awareness of mediation as an accessible and cost-effective mechanism for resolving family disputes is also low, causing families to default to litigation. Consequently, family-

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<sup>10</sup> Section 4(2),

<sup>11</sup> Section 95(2)

<sup>12</sup> Section 101(1) o

<sup>13</sup> Law of Marriage Act R.E.2023

<sup>14</sup> Section 66(1)

<sup>15</sup> Civil Appeal No. 68 of 2020 (High Court of Tanzania, Dar es Salaam)

related cases continue to congest the courts, resulting in delayed justice, emotional distress for children, and strained family relationships.

This situation stands in stark contrast to jurisdictions such as the United Kingdom, where the Children and Families Act 2014 mandates attendance at a Mediation Information and Assessment Meeting (MIAM) before filing custody or maintenance proceedings, and India, where the Family Courts Act, 1984, institutionalises mediation through Family Courts and Lok Adalats.

In Tanzania, therefore, the central problem lies in the ineffective institutionalization and underutilization of mediation in child custody and maintenance disputes. The absence of a dedicated Family Mediation Act, standardized procedures, and a monitoring framework undermines the country's commitment to upholding the best interests of the child under Section 4(2) of the Law of the Child Act.

This gap not only hampers amicable settlement opportunities but also places unnecessary strain on the judiciary and prolongs the resolution of family disputes, ultimately compromising the quality of justice and the welfare of children.

### **3.0 Literature Review**

This section provides a comprehensive analysis of the contributions made by several scholars in the field of mediation, particularly focusing on child custody and maintenance disputes. It delves into the theoretical frameworks, methodologies, and key findings presented by these scholars. Additionally, the discussion highlights the existing gaps in the literature that need further exploration, emphasizing the implications for practitioners and policymakers involved in mediation processes. By identifying these gaps, the text aims to underscore the importance of enhancing mediation practices for families navigating the complexities of custody and maintenance issues.

Begg (2011)<sup>16</sup> highlights the inherently collaborative nature of mediation, which serves as a platform for facilitating effective communication and crafting solutions that are tailored to the specific needs and circumstances of the parties involved. In the findings, recommendations are

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<sup>16</sup> Begg, A. (2011). The Government's proposed child maintenance reforms: fifth report of session 2010-12, Vol. 2: Oral and written evidence. London: Stationery Office. On page 60.

made to enhance the training of mediators, ensuring they possess the necessary skills to navigate complex interpersonal dynamics and foster a constructive dialogue between conflicting parties. Additionally, there is an emphasis on the importance of making mediation services more accessible to a broader audience, thereby promoting its use as a viable alternative to litigation.

However, the analysis presents a significant gap by primarily focusing on Western contexts, which may not accurately reflect the diverse practices and preferences in different cultural settings. It notably overlooks a discussion of informal mediation mechanisms that exist in various cultures, along with the nuances that cultural influences bring to the mediation process. Furthermore, there is a lack of examination regarding how these principles and practices can be adapted and applied in developing countries, such as Tanzania, where different social, economic, and cultural factors may significantly impact the effectiveness of mediation. This omission suggests a need for further research that explores these dimensions to provide a more comprehensive understanding of mediation in a global context.

Ben K et al. (2020)<sup>17</sup> emphasize the numerous advantages of mediation in resolving disputes, particularly highlighting its inherent flexibility, which allows parties to tailor the process to their specific needs. They note that mediation fosters improved communication between conflicting parties, facilitating a better understanding and potentially leading to more amicable solutions. The authors also underscore the significant role of international instruments that support the resolution of cross-border disputes, providing a framework that can guide parties toward effective mediation outcomes.

However, the study presents a notable gap in its analysis. While it offers an insightful overview of formal international systems, it lacks a comprehensive discussion on the enforcement of mediation agreements, as well as the socio-cultural barriers that can impede the mediation process. Additionally, the authors do not delve into the national legal frameworks in Tanzania, which may significantly influence the practical application of mediation in the country. Addressing these areas would provide a more nuanced understanding of the challenges and opportunities within the realm of international mediation, particularly in diverse cultural and legal contexts.

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<sup>17</sup> Ben K et al (2020). *The Elgar Companion to the Hague Conference on Private International Law*. Texas : Edward Elgar Publishing. Pg 488

Cecilia A. and colleagues (2022) <sup>18</sup>conduct an in-depth analysis of the psychological advantages associated with mediation for children, highlighting significant outcomes such as diminished anxiety levels and enhanced family dynamics. However, the study presents certain limitations, particularly in its failure to address the legal or procedural frameworks that underpin mediation practices.

Additionally, it does not incorporate a specific focus on the relevance of these findings within African or Tanzanian contexts, where cultural and systemic factors may influence mediation outcomes. Furthermore, the research does not explore how mediation functions in low-resource environments, which could provide critical insights into its effectiveness and accessibility in diverse settings.

Roberts (2020) <sup>19</sup>discusses several advantages of mediation in conflict resolution, highlighting its child-centered focus, which prioritizes the needs and well-being of children throughout the mediation process. This approach aims to ensure that children's voices are heard and that their best interests are at the forefront of any agreements made. Additionally, the author notes that mediation can significantly improve communication between parties, fostering a more cooperative atmosphere conducive to problem-solving. This open dialogue can lead to more mutually satisfactory outcomes. Moreover, the flexibility of mediation allows for tailored agreements that suit the unique circumstances of the involved parties, rather than adhering to rigid legal frameworks.

However, a significant gap in Roberts' analysis is the reliance on examples and frameworks from developed legal systems. This perspective does not adequately address the applicability of these mediation advantages within the socio-legal and institutional context of Tanzania. The unique cultural, legal, and social dynamics present in Tanzania may influence how mediation is perceived and practiced, raising questions about its effectiveness and adaptability in such a setting. Exploring these factors is essential for understanding the potential challenges and benefits of implementing mediation approaches in Tanzania.

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<sup>18</sup> Cecilia A. Et al (2022). Anxiety Disorders in Childhood and Adolescence: Psychopathology, Assessment, and Treatment (n.p.): Frontiers Media SA. Pg 105

<sup>19</sup> Roberts, M. (2020). Mediation in Family Disputes: Principles of Practice. Wales : Taylor & Francis Limited (Sales).



Elaine E. (2012)<sup>20</sup> emphasizes the importance of a child-centered approach in mediation, which prioritizes the needs and interests of children during dispute resolution processes. She also points out that successful mediation relies heavily on parental cooperation and the flexibility of the mediators to adapt their methods to fit the unique circumstances of each case.

However, there is a notable gap in her analysis, as it lacks empirical evidence from developing countries. Specifically, the insights provided do not take into account the localized legal, cultural, and institutional factors that may significantly impact mediation practices in Tanzania. This oversight suggests a need for further research that explores how these local elements influence mediation outcomes and processes in different cultural contexts.

Mantle (2019)<sup>21</sup> introduces a child-centered approach to mediation that prioritizes the welfare of children over the disputes between their parents. This method emphasizes the importance of fostering cooperation between parents to create a less adversarial environment for the child, ultimately aiming to reduce emotional stress and conflict. However, a notable gap exists in this research, as it is primarily based on practices observed in the UK. This focus overlooks the unique challenges faced in resource-constrained environments or culturally diverse regions, such as Tanzania, where varying social dynamics and economic limitations could significantly impact the effectiveness of child-centered mediation strategies.

In her 2024<sup>22</sup> study, Parkinson emphasizes the importance of children's active participation in mediation processes to enhance their overall outcomes in various contexts. However, the research has a notable limitation as it is primarily focused on the UK setting. Additionally, it fails to consider the unique cultural and structural challenges that may impact similar mediation efforts in Tanzania, which could significantly affect the applicability and effectiveness of the findings in a different socio-economic environment. This oversight highlights the need for more comprehensive research that addresses the diverse barriers faced by children in different regions, particularly in low-resource settings like Tanzania.

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<sup>20</sup> Elaine E (2012). *The Future of Child and Family Law: International Predictions* (n.p.): Cambridge University Press. Pg 410

<sup>21</sup> Mantle, G. (2017). *Helping Parents in Dispute: Child-Centred Mediation at County Court*. Alabama : Taylor & Francis.

<sup>22</sup> Parkinson, L. (2024). *Conversations with Young People in Family Mediation*. London: Bloomsbury Academic.

Roberts et al. (2020)<sup>23</sup> conduct a comprehensive examination of the various procedural, ethical, and legal dimensions of mediation practices, specifically highlighting the emergence of technology-assisted methods and the impact of cultural diversity on these processes. However, a notable gap in their analysis is the inadequate attention given to the specific context of Tanzania. This oversight is significant, as the realities in Tanzania encompass unique challenges related to informal justice systems that often prevail in rural and underserved areas. Furthermore, there are pressing issues regarding the enforcement of mediation agreements, which are exacerbated by a lack of trained mediators available to facilitate these processes effectively. Addressing these factors is essential for understanding and improving mediation practices within the Tanzanian judicial landscape.

The body of the article surrounding mediation consistently demonstrates its effectiveness in alleviating conflicts, particularly in family disputes. These studies highlight how mediation fosters solutions that prioritize the well-being of children, promoting outcomes that are more aligned with their needs and interests. Additionally, mediation has been shown to enhance cooperation among parents, facilitating better communication and collaborative problem-solving.

However, it is important to note that there is a significant gap in our understanding of how mediation operates specifically within the context of Tanzania. The current literature lacks comprehensive evidence that reflects the unique socio-cultural dynamics, legal frameworks, and institutional structures present in the country. This underscores the critical need for localized research that takes into account these various factors, allowing for a more accurate assessment of mediation practices and their potential effectiveness in Tanzanian society. Such research could lead to tailored approaches that respect local customs and contribute to more effective conflict resolution strategies.

#### **4.0 Research Methodology**

The study employed a comprehensive qualitative research design, focusing on doctrinal and comparative legal analysis to investigate the intricacies of family law across various jurisdictions. Data collection encompassed both primary and secondary sources to establish a robust analytical framework.

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<sup>23</sup> Roberts, M et al. (2020). Family Mediation: Contemporary Issues. London : Bloomsbury Publishing

Primary sources included critical legal documents such as statutes, case law, and officially recognized policy materials. These comprised the Law of the Child Act (R.E 2023), which establishes a range of rights for children; the Maintenance Act, addressing financial support for dependents; the Family Law Act from the United Kingdom, which outlines various family law matters; the Children Act (UK), dedicated to the welfare of children; and the Family Courts Act of India, governing family court proceedings. Each of these documents played a pivotal role in shaping the legal context of the study.

Secondary sources enriched the analysis through academic articles that critique and evaluate existing laws, reports from recognized legal institutions, and publications by notable international organizations such as UNICEF and UN Women. These resources specifically explore themes related to mediation and family law, offering comprehensive insights into the functioning and outcomes of family law systems globally.

The data collection method involved an exhaustive document review, which enabled a thematic analysis of the gathered information. This approach facilitated the identification of key patterns and themes within the legal frameworks examined.

Additionally, a comparative analysis was conducted focusing on three jurisdictions: Tanzania, the United Kingdom, and India. This comparative element was crucial for recognizing both the similarities and differences in legal practices and frameworks among these regions. The insights derived from this analysis aimed to provide valuable lessons that could inform potential enhancements to the Tanzanian family law system, ultimately improving its effectiveness and responsiveness to the needs of families and children within the country.

## 5.0 Findings and Discussion

The findings of the study indicate that Tanzania's legal framework formally recognize mediation as a viable mechanism for resolving family disputes, particularly through the provisions outlined in the Law of the Child Act <sup>24</sup> and the Law of Marriage Act <sup>25</sup>. Despite this legal acknowledgment, the practical implementation of mediation services is fraught with

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<sup>24</sup> [Cap. 13 R.E. 2023]

<sup>25</sup> [Cap. 29 R.E. 2023]

challenges. The study points to a system that is not only weak but also marked by fragmentation and inconsistency in its application across various regions and cases.

In a thorough comparative analysis with the mediation practices in the United Kingdom and India, the study identifies numerous structural and procedural deficiencies that significantly impede the effectiveness of mediation within the family law framework in Tanzania. These disparities include a lack of trained mediators, insufficient public awareness about mediation options, and limited access to mediation services, which collectively contribute to the underutilization of mediation as a conflict resolution method. Furthermore, the analysis suggests that cultural attitudes towards mediation and the legal processes associated with family disputes also play a critical role in shaping the efficacy of these frameworks.

### 5.1 Findings from Tanzania

The analysis revealed significant shortcomings in the utilization of mediation as a primary method for resolving disputes related to child custody and maintenance in Tanzania courts and social welfare offices. Despite the provisions of the Law of the Child Act, which mandates social welfare officers to encourage reconciliation prior to engaging in formal legal proceedings<sup>26</sup>, this directive is not consistently implemented across the board.

One of the critical issues identified is the absence of a comprehensive Mediation Framework or Family Mediation Rules, which has resulted in varied and often inconsistent practices that depend heavily on the personal judgments of individual officers or magistrates.

Similarly, the court's ruling in *Amini Rashid Msabilo vs Rehema Ausi*<sup>27</sup> reiterated the essential principle of prioritizing the best interests of the child. However, it also pointed out a significant gap, many courts operate without a standardized pre-trial mediation process, which often results in prolonged litigation and increased emotional distress for the families involved.

Furthermore, the investigation highlighted a critical deficiency in the training of social welfare officers and local mediators, most of whom lack the necessary professional development to conduct effective mediation sessions. This inadequacy is compounded by limited financial

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<sup>26</sup> Section 95(2)

<sup>27</sup> (1969) HCD n. 5, p. 3.

resources, the absence of standardized forms for mediation processes, and a lack of robust monitoring mechanisms to ensure quality and consistency in mediation practices.

Public awareness regarding mediation as a viable dispute resolution method is alarmingly low, with many individuals primarily viewing the formal court system as the only avenue for resolving legal disputes. Consequently, the potential benefits of mediation, such as reducing case backlog in courts and alleviating emotional stress for families remain largely untapped and unrealized, highlighting an urgent need for reform and education in this area.

## 5.2 Comparative Insights from the United Kingdom and India

In the United Kingdom, the Children and Families Act 2014 introduces a crucial requirement for individuals seeking to resolve child custody or maintenance issues. Before initiating any court application, parties must attend a Mediation Information and Assessment Meeting (MIAM). This meeting serves as an essential first step in the mediation process, where individuals can gain insights into the benefits of mediation, explore potential outcomes, and determine whether this method is suitable for their circumstances.<sup>28</sup>

Additionally, the Family Procedure Rules 2010, specifically outlined in Part 3, establish comprehensive guidelines that govern the mediation process. These rules not only detail the protocols for conducting mediation but also specify the criteria for the accreditation of mediators. This accreditation process is vital as it ensures that mediators possess the necessary qualifications and expertise to facilitate discussions effectively and fairly.<sup>29</sup>

Furthermore, the system emphasizes monitoring outcomes of mediation to ensure that parties achieve equitable resolutions. By enforcing these standards, the UK aims to promote consistency, accountability, and accessibility within the family justice system. The overarching objective of this framework is to alleviate the burden on family courts by encouraging families to resolve disputes through mediation, thus reducing the number of cases that require judicial intervention. This proactive approach not only helps families find amicable solutions but also contributes to a more efficient legal system.<sup>30</sup>

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<sup>28</sup> Kaur, Harleen. (2025). Justice beyond the Bench: The Impact of Mediation Courts on Family Law Disputes- A Study with Special Reference to District Jalandhar, Punjab. Communications on Applied Nonlinear Analysis. 1562-1572. 10.52783/cana.v32.5179.

<sup>29</sup> *ibid*

<sup>30</sup> *ibid*

In India, the integration of mediation into the judicial process is notably established by the Family Courts Act <sup>31</sup>. This legislation emphasizes the importance of amicable resolution in family disputes, which mandates that family courts must actively encourage and facilitate efforts for reaching a settlement before moving forward with trial proceedings. <sup>32</sup> This approach underscores the significance of reconciliation and the reduction of conflict, particularly in sensitive family matters such as divorce, child custody, and property disputes.

Furthermore, the concept of Lok Adalats, introduced under the Legal Services Authorities Act of 1987, serves as a significant alternative dispute resolution mechanism. Lok Adalats, or people's courts, are community-based forums designed to provide an accessible platform for resolving disputes outside the formal court system. They aim to resolve cases amicably through negotiation and dialogue, thereby promoting a cooperative spirit among disputing parties. This system is particularly beneficial for those who may find it difficult to navigate the complexities of the legal system due to financial constraints or a lack of legal knowledge.<sup>33</sup>

Together, these mechanisms contribute to a broader understanding of mediation within the Indian justice system, making it not only a legally recognized process but also a socially accepted method of conflict resolution. By fostering a culture of mediation, these initiatives aim to alleviate the backlog of cases in courts and encourage harmonious resolutions that prioritize the welfare of families and communities.

When comparing the UK and India, it becomes evident that both countries have made significant strides in establishing robust systems for family mediation. This includes the development of well-defined institutional frameworks and the professionalization of mediators, which contribute to effective conflict resolution in family matters. These advancements enable parties in disputes to access trained professionals who facilitate constructive dialogue and negotiation.

In contrast, Tanzania faces challenges in this area, as the level of institutionalization and professional standards in family mediation remains largely underdeveloped. This disparity

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<sup>31</sup> ACT NO. 66 OF 1984

<sup>32</sup> Section 9(1),

<sup>33</sup> Yadav, Sanjay & Rai, Prof. (2024). LOK ADALAT AND ALTERNATIVE DISPUTE RESOLUTION MECHANISMS: BRIDGING THE GAP BETWEEN INFORMAL AND FORMAL JUSTICE SYSTEMS. ShodhKosh: Journal of Visual and Performing Arts. 5. 10.29121/shodhkosh. v5.i2.2024.3913.

highlights a crucial gap in the availability of structured support and professional guidance for families in conflict, which can hinder effective resolution processes

## **6.0 Conclusion**

Mediation plays a crucial role in ensuring peaceful resolution of child custody and Maintenance disputes often arise in the context of family law, highlighting the need for innovative approaches that prioritize cooperation and the overall welfare of the child involved. A comparative analysis of existing mediation systems reveals that structured and well-organized mediation practices, particularly those implemented in countries like the United Kingdom and India, have proven to be effective in not only reducing the overwhelming caseloads faced by courts but also in fostering improved relationships among family members.

In these countries, mediation serves as a main tool for conflict resolution, emphasizing open communication and negotiation to arrive at mutually agreeable solutions. This stands in stark contrast to the traditional litigation process, which can be adversarial and damaging to familial ties.

On the other hand, Tanzania has recognized the significance of mediation in resolving family disputes. However, it currently suffers from an inadequate framework that lacks essential institutional and legislative mechanisms necessary for the effective implementation of such mediation processes.

The absence of these structures hampers the potential of mediation to be a viable alternative to litigation. Unless substantial reforms are undertaken to enhance the mediation framework in Tanzania focusing on establishing clear guidelines, training mediators, and legally mandating mediation before court proceedings, family disputes are likely to continue being primarily settled through litigation. This not only exacerbates the strain on the judicial system but also often compromises the welfare of children and the overall unity of families.

## **7.0 Recommendations**

### **Enact a Family Mediation Act**

To create a robust framework for addressing family disputes, it is essential to develop and implement comprehensive legislation that clearly defines the role of mediation, particularly in

cases related to child custody and maintenance. This Act should detail specific procedures for initiating the mediation process, outlining the steps parties must follow to engage in mediation effectively.

Additionally, the legislation should establish standardized practices and qualifications for mediators, including training, accreditation, and ethical guidelines to ensure a fair and impartial mediation environment. It should also specify the qualifications required for mediators to handle sensitive issues related to family dynamics, ensuring they possess the necessary skills and knowledge to guide families through complex emotional landscapes.

Furthermore, the Act should incorporate enforcement mechanisms that provide clear guidelines on how to ensure compliance with mediated agreements. This could include provisions for monitoring adherence to agreements, options for court enforcement when necessary, and pathways for parties to seek modifications to agreements under changing circumstances.

By encompassing these elements, the legislation aims to create a structured, effective, and responsive mediation process that prioritizes the well-being of families and promotes amicable resolutions in family disputes.

### **Institutionalize Mediation Units in Courts**

Establish dedicated mediation units within the judicial system that focus specifically on family-related disputes, with an emphasis on matters such as child custody and maintenance. These specialized units should be staffed by trained and certified mediators who possess expertise in family law and conflict resolution. The mediators will be responsible for facilitating constructive discussions and negotiations between the parties involved, creating an environment that encourages open communication and collaboration.

The goal of these mediation units is to guide families towards amicable resolutions, significantly reducing the emotional and financial burden associated with prolonged litigation. These units should integrate best practices and evidence-based techniques to ensure that all parties feel heard and understood, ultimately fostering a healthier approach to resolving family disputes. Additionally, there should be provisions for ongoing support and follow-up services to assist families in adjusting to their new arrangements and maintaining positive relationships post-mediation.



### **Train and Accredit Professional Mediators**

To effectively manage the complexities of family disputes, it is vital to establish comprehensive training programs for mediators. These programs should cover essential legal knowledge related to family law and equip mediators with psychological skills necessary for facilitating communication and managing emotional dynamics.

Mandatory accreditation is also critical to ensure that mediators possess the necessary qualifications and adhere to professional ethical standards. By implementing these measures, we can enhance the effectiveness of mediators and better assist families in resolving their conflicts constructively.

### **Conduct Public Awareness Campaigns**

To promote mediation as an effective method for resolving family disputes, targeted educational campaigns should be launched to inform the public. These campaigns must address common misconceptions about mediation while showcasing real-life case studies that demonstrate successful resolutions.

Additionally, they should highlight the emotional and financial benefits of choosing mediation over adversarial court processes. By emphasizing how mediation can preserve relationships, alleviate stress, and lower legal costs, these initiatives can encourage families in conflict to view mediation as a constructive first option rather than a last resort.

### **Integrate Customary Mediation Systems**

It is essential to acknowledge and integrate existing customary mediation practices into the formal legal framework. This process should involve a thorough understanding of and respect for cultural traditions and values that guide these practices, ensuring that they are not only preserved but also harmonized with established legal standards. By doing so, we can create a more inclusive and effective approach to dispute resolution that resonates with the diverse communities we serve.

This integration should involve comprehensive consultations with community leaders, legal experts, and practitioners of customary mediation to identify key elements that can complement formal legal procedures. Training sessions may be necessary to equip legal practitioners with

the knowledge and skills to navigate both customary and formal systems effectively. Furthermore, clear guidelines should be developed to outline how these practices can be recognized within the legal process, including mechanisms for enforcement and the resolution of conflicts arising from these integrated approaches.

Ultimately, this alignment between customary mediation and formal legal frameworks will not only enhance accessibility to justice but also foster trust and cooperation within communities, acknowledging their unique histories and practices while promoting a fair and equitable resolution of disputes.

### **Establish Monitoring and Evaluation Frameworks**

Establish comprehensive and systematic processes for evaluating the effectiveness of family mediation practices. This involves defining specific key performance indicators (KPIs) that will allow us to measure the outcomes of mediation sessions effectively. Regular assessments should be conducted to analyze these indicators, ensuring that we are on track and identifying any areas for improvement.

Additionally, it is crucial to actively gather feedback from all participants involved in the mediation process, including families and mediators, to gain insights into their experiences and perceptions. Based on the empirical data collected and the input from stakeholders, we should implement iterative improvements to refine and enhance the mediation process continually. This approach not only fosters accountability but also aims to optimize the support provided to families during mediation.

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