
ALTERNATIVE DISPUTE RESOLUTION FOR INHERITANCE DISPUTES IN INDIA: A CULTURAL SHIFT?

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ABSTRACT

Alternative Dispute Resolution or the process of solving and settling cases outside the traditional Judicial Process is a fast-emerging alternative to traditional judicial litigation. While the concept itself is in no manner new to Indian Law, its adoption and relevance in various fields of law particularly in Family Law are beginning to break through the mould.

Familial Disputes, notably involving Hindu Marriages have traditionally been complicated and largely judicial affairs. The ability to take this setting and place it in a scenario where the parties can sit, speak with each other or through their advocates and work towards a goal-oriented and amicable solution not only takes away significant burden from the already overworked judiciary but also enables disposal and solving of disputes in record time. Specifically, issues involving the inheritance of land or the devolution of property through will or otherwise are landmark developments that enable ADR as a process to further solidify itself as a contender and an active replacement to the traditional judicial process.

The goal of this paper is to review the recent developments of ADR in Family Law with a focus on inheritance disputes and examine its viability and possible use in multi-generational or multi-party inheritance disputes. Its viability largely depends on the parties involved and is typically considered on a case-by-case basis but legislation and legislative push towards ADR has created a niche but very relevant use case for these developing branches of extra-judicial processes.

1. Introduction

ADR (Alternative Dispute Resolution) provides alternative, more amicable and cost-effective methods of dispute resolution compared to traditional methods. The main pillars of ADR are negotiation, arbitration, conciliation, mediation and Lok Adalat.

This method is slowly gaining more popularity, especially in India and is seen as an up-and-coming alternative to the tedious process of litigation. This research paper talks about the methods covered under ADR that provide alternate ways to litigation and goes into detail about this practise in India while providing recent examples of “out-of-court” settlements. ADR can be used for almost all civil cases¹ but can it be used to resolve inheritance disputes? This research paper elaborates, with the help of landmark judgements on the viability of ADR in solving inheritance disputes. It further goes into detail about using alternative methods to resolve inheritance disputes and makes a case for using it while weighing the pros and cons of the system.

2. ADR Emerging in India: A New Way of Settlement

The introduction of ADR in the Indian legal system can be considered revolutionary. It has gathered a lot of support in the past decade from various renowned individuals of the law. R.C. Lahoti, the former Chief Justice of India has praised the system of ADR for “*saving energy, time and, money of the practitioners, especially in family matters*”.² The current Chief Justice of India, N.V. Ramana has encouraged Courts to “*take an active effort in making negotiation and mediation mandatory, as a part of case management.*”³

Courts and their judges have also been appreciating and recommending the people to choose alternate remedies. In certain scenarios where out-of-court settlements have been challenged on

¹ Except for right in rem cases; they are civil cases but they are not arbitrable according to the judgement and interpretation of the Supreme Court in *Vidya Drolia v Durga Trading Corporation*.

² Patel, *Application of ADR Methods in Family and Matrimonial Disputes*, LEGAL SERVICE INDIA, <https://www.legalserviceindia.com/legal/article-8068-application-of-adr-methods-in-family-and-matrimonial-disputes.html#:~:text=It%20consists%20of%20a%20set,resolve%20disputes%20outside%20the%20courts.&text=Hence%2C%20the%20role%20of%20lawyers,conciliation%2C%20mediation%2C%20and%20negotiation.>

³ Rajitha, *The Impact of Alternate Dispute Resolution on Family Disputes in India*, PRIME LEGAL (Mar. 6), <https://primelegal.in/2023/03/06/the-impact-of-alternate-dispute-resolution-on-family-disputes-in-india/#:~:text=ADR%20has%20had%20a%20positive,litigation%20in%20family%20law%20matters.&text=Hindu%20Marriage%20Act%2C%201955.,Code%20of%20Civil%20Procedure%2C%201908>

varied grounds, the Courts have upheld the validity of such judgements (if deemed fair in nature). Courts have also been encouraging people to participate in out-of-court settlements. One of the most recent cases in the real-world legal scenario was when the Supreme Court upheld and approved of the Gujarat Urja and Adani settlement. A five-judge bench of the Supreme Court upheld the decision made in an out-of-court settlement which ended with Adani foregoing a compensation claim in addition to other compromises as part of the agreement.⁴ This is a result of a notable push towards the general acceptance and use of the various Alternative Dispute Resolution tools made available as part of various Acts by the Indian legislature.

With the passing of the *Arbitration and the Conciliation Act*⁵ in 1996, lawmakers and the judiciary have taken a stance to actively support the widespread adoption of ADR as a means to dispose of cases and reduce the load on the already laboured Indian Judiciary. They have tried to include the different methods of ADR through provisions under various Acts and amendments. Some significant Acts promoting ADR before beginning the process of litigation are as follows-

2.1 Family Courts Act, 1984- Section 5⁶, Section 6⁷ and Section 9⁸ of this Act encourage the appointment of counsellors, officers, etc. to facilitate the family courts for arriving at settlements. This can be done through a 'Social Welfare Organisation' as well. It also makes it compulsory for the Courts to send the matter for settlement before beginning adjudication further supporting the idea of alternate practises over litigation in family disputes.

2.2 Hindu Marriage Act, 1955- Section 23(2)⁹ encourages reconciliation between the parties in an amicable manner before adjudication. In the landmark judgement of *Jagraj Singh v Birpal Kaur*¹⁰, the Court mandated the referral of matters to the ADR mechanism before adjudication begins.

⁴ Dhananjay Mahapatra, *Supreme Court Approves Gujarat Urja-Adani Settlement*, THE TIMES OF INDIA (Feb. 9, 2022, 07:43 IST), <https://timesofindia.indiatimes.com/business/india-business/supreme-court-approves-gujarat-urja-adani-settlement/articleshow/89442637.cms?from=mdr>

⁵ Arbitration and Conciliation Act, 1996, No. 26, Acts of Parliament, 1996 (India).

⁶ Family Courts Act, 1984, § 5, No. 66, Acts of Parliament, 1984 (India).

⁷ Family Courts Act, 1984, § 6, No. 66, Acts of Parliament, 1984 (India).

⁸ Family Courts Act, 1984, § 9, No. 66, Acts of Parliament, 1984 (India).

⁹ Hindu Marriage Act, 1955, § 23(2), No. 25, Acts of Parliament, 1955 (India).

¹⁰ *Jagraj Singh v Birpal Kaur*, S.L.P. (Civil) No. 9706 of 2006.

2.3 Special Marriage Act, 1954- Section 2¹¹ of the Act prioritises reconciliation among the parties over litigation. Section 34(2)¹² is of note since it mentions reconciliation directly among other measures to solve familial disputes.

2.4 Legal Services Authority, 1987- Section 19(5)¹³ promotes Lok Adalat as a form of ADR for settlement of disputes between parties.

2.5 Code of Civil Procedure, 1908- Section 89¹⁴ gives Courts the power to refer matters to ADR on its discretion if it deems fit.

The prevalence of ADR is growing daily; especially in family matters. Courts and judges often refer matters to mediators or arbitrators before they even reach the stage of adjudication as previously-mentioned.

3. ADR For Family Disputes in India

With the growth of ADR in India, Family Courts were one of the first ones to adopt this new procedure and give it a chance. This can be noted by the numerous acts most important being Family Courts Act, Hindu Marriage Act and Special Marriage Act which adopted and encouraged ADR before litigation. ADR grew over the decade to provide speedier solutions with a more personalised approach than litigation to various familial disputes such as inheritance disputes, custody, maintenance and divorce.

With different scenarios posing different problems, these extra-judicial methods provide various solutions to one problem. In the case of custody, various methods such as mediation, arbitration, collaborative practise and parenting coordination may come in handy. With each method providing a different way of reaching to a solution that both parties are comfortable with, it proves to be less time consuming and less stressful.

In most real-world scenarios, Family Courts often refer divorce and maintenance cases to

¹¹ Special Marriage Act, 1954, § 2, No. 43, Acts of Parliament, 1954 (India).

¹² Special Marriage Act, 1954, § 34(2), No. 43, Acts of Parliament, 1954 (India).

¹³ Legal Services Authority, 1987, § 19(5), Ministry of Law and Justice, 1987 (India).

¹⁴ Code of Civil Procedure, 1908, § 89, No. 5, Acts of Parliament, 1908 (India).

mediation or arbitration centres which are often built inside the Family Courts themselves before they even start adjudication on the matter. The sole reason Family Courts refer cases to ADR is that it is easier to solve issues when both parties are willing to communicate and come to solutions that are best-suited to their needs avoiding litigation and its many stages.

Referring family disputes to ADR and advising the parties to indulge in those methods for family disputes has become the norm. This happens especially in the cases of custody, divorce and maintenance as this paper has established.

4. ADR for Inheritance Disputes in India

With people utilising alternative methods to reach at resolutions for family disputes, the question arises whether inheritance disputes are covered under ADR or not?

Majority of civil suits can be resolved using alternative methods¹⁵. Inheritance disputes were classified as a civil suit in landmark judgement passed by the Supreme Court of India in *Sangramsinh P. Gaekwad and Ors. v Shantadevi P. Gaekwad (Dead) through LRs. And Ors.*¹⁶ In the case of *Gian Singh v State of Punjab and Anr.*¹⁷, the Supreme Court said, “*The offences emerging from business, monetary, mercantile, civil issue, partnership, relating with marriage or dowry are often selected outside of Court settlement.*”¹⁸ Therefore, inheritance disputes can be resolved through alternative methods in India.

Considering that ADR is a blanket term for various methods such as arbitration, mediation, conciliation and negotiation; individuals should carefully choose the method which is best suited for their needs. These methods have different procedures and each has its own merits when it comes to providing a solution for inheritance disputes.

4.1 Arbitration- It is a quasi-judicial adjudication process where an arbitrator is appointed either by the parties or by the Court. This is the only alternate method where the final decision

¹⁵ Supra note 1.

¹⁶ *Sangramsinh P. Gaekwad and Ors. v Shantadevi P. Gaekwad (Dead) through LRs. And Ors.*, (2005) 11 SCC 314.

¹⁷ *Gian Singh v State of Punjab and Anr.*, (2012) 10 SCC 303.

¹⁸ Supra note 15.

is legally binding and can be appealed on few grounds. It is governed by the *Arbitration and Conciliation Act*¹⁹.

4.2 Mediation- It is more of a negotiation than an adjudication. Mediators are often appointed by Courts. They facilitate communication among the parties and help them arrive at a mutually agreed solution. The settlement is considered final and cannot be appealed as per the guidelines of Mediation and Conciliation Project Committee of Supreme Court of India²⁰. *Order XXIII Rule 3*²¹ is often referred for the process of mediation.

4.3 Conciliation- It is a non-adjudicatory process where a conciliator is appointed to facilitate discussion. The settlement is enforceable under *Section 74 of the Arbitration and Conciliation Act, 1996*. It can only be appealed on the grounds of fraud or through writ jurisdiction under *Article 226*²² or *Article 227*²³ as decided by the Supreme Court in the case of *Bhargavi Constructions v Kothakapu Muthyam Reddy*²⁴.

4.4 Negotiation- It resembles mediation however, instead of appointing a facilitator to help with settlement, the parties interact among themselves to achieve a settlement of a binding nature.

These alternative methods can be applied to resolve inheritance disputes and come to a solution that will be beneficial for all, based on the concerns of the parties. One must be careful, circumstantially aware and diligent while selecting a method as it affects the way a settlement is reached. It can also affect the nature of settlement by making it final and legally binding in nature.

Since alternate methods can be used for settlement of inheritance disputes, a lot of individuals in India have started using these instead of the traditional system of litigation. An upwards trend can be seen in the number of inheritance disputes being solved through ADR. Very recently, one of the biggest private empires have been split up by settlement by a father among all his kids. It all

¹⁹ Supra note 4.

²⁰ Mediation and Conciliation Project Committee of Supreme Court of India, <https://main.sci.gov.in/pdf/mediation/Brochure%20-%20MCPC.pdf>

²¹ Code of Civil Procedure, 1908, Order XXIII Rule 3, No. 5, Acts of Parliament, 1908 (India).

²² INDIA CONST. art. 226.

²³ INDIA CONST. art. 227.

²⁴ *Bhargavi Constructions v Kothakapu Muthyam Reddy*, (2018) 13 SCC 480.

started in 2002 when Mr. Dhirubhai Ambani left a huge empire with his two sons without a will. After a long-lasting family feud over inheritance, both the brothers came to a settlement in 2005 and decided to distribute the empire among themselves. Mukesh Ambani, the son of Mr. Dhirubhai Ambani and the elder brother of Anil Ambani grew one of the biggest empires in India, Reliance Industries Ltd.

At an event, Mukesh Ambani announced the distribution of his empire amongst his three children, Akash, Isha and Anant as a form of settlement.²⁵ This is not only a step towards avoiding the mistake made by his father but towards using alternate methods to not only solve but avoid inheritance disputes.

Using such methods to find solutions for inheritance disputes is gaining more traction every day as seen in the above real-world scenario; it also gives rise to the question if pursuing such new alternative methods over the trusted traditional system of litigation even worth it? The next section of the paper argues whether ADR should be used to resolve inheritance disputes or not.

5. Considering ADR for Inheritance Disputes: Is It the Future?

With an increasing number of Courts and law officials recommending alternative methods for resolving inheritance disputes, the following paragraph provides arguments in favour of utilising different ways under ADR for inheritance disputes.

5.1 Confidentiality and Privacy- Disputes related to property, especially for inheritance, are very intimate to a family. Such alternate methods provide a safe place for families to address their inheritance disputes and come to a settlement. Proceedings are of private nature and are held at a place of choice of the parties. They do not carry the risk of hampering an individual's reputation.

5.2 Speedier Solution- Inheritance disputes can go on for decades if parties often rely on litigation. This leads to more issues such as prices of property getting affected, worsened

²⁵ Andy Mukherjee, *How Mukesh Ambani Will Split His Empire to Avoid His Father's Folly*, THE ECONOMIC TIMES (Jun. 30, 2022, 08:07 AM), <https://economictimes.indiatimes.com/news/company/corporate-trends/how-mukesh-ambani-will-split-his-empire-to-avoid-his-fathers-folly/articleshow/92558888.cms>

family relations, etc. Pursuing alternative methods reduces the burden on Courts and leads to speedier solutions.

5.3 Amicable Proceedings- In India, inheritance is a huge cause for family disputes. Litigation in inheritance disputes might lead to sour relations in a family. Using alternative methods such as mediation, arbitration or conciliation might lead to effective communication and less strain on family dynamics along with speedier and more beneficial solutions.

5.4 Reduced Costs- Litigation is not only a very long and time-consuming process but it is also very expensive. Pursuing alternate methods covered under ADR can prove to be cost-effective and efficient.

The growing appeal for choosing alternative methods over the traditional method is undeniable however, all that glitters is not gold. The following paragraph provides drawbacks of opting for alternative methods for dispute resolution.

5.5 Decisions Cannot be Appealed- The final decision in this method, either cannot be appealed or is appealable on very specific and limited grounds such as fraud. However, a decision can be appealed multiple times on various grounds in litigation. Since an inheritance dispute not only involves assets but also emotions, there is a fair chance that parties might not be happy with the final decision. Choosing alternative methods over litigation will rob them of the opportunity to appeal such a decision.

5.6 Undisclosed Facts by the Parties- Disclosure of facts is appreciated, however, not necessary; due to which some parties may not disclose full information. This may lead to wrong decision-making. Even though decisions taken under such a situation can be appealed on the grounds of fraud, it is not always necessary that the other party may come to know about the existence of such a situation in the first place.

5.7 Unsuitability in Some Conditions- The methods under ADR are the most suitable for providing an alternative mechanism for finding a solution however, injunctions cannot be issued to parties in majority of these proceedings. In the case of arbitration, an injunction can be granted by the arbitrator as they have the same powers as a High Court Judge according to

the *Arbitration and Reconciliation Act* however, in other cases, parties may have to go out of their way and apply for an injunction in a Court itself. In some scenarios, this defeats the purpose of alternative remedies as an individual has to approach a Court for instant remedy. In many cases of an inheritance dispute, either party might want an injunction on a certain property of the inheritance to save further trouble such as sale of disputed property, etc. However, injunctions can only be granted during litigation and not by using alternative methods to it.

Even though methods under ADR have their own demerits, they are outweighed by the merits. Using ADR for solving inheritance disputes can not only be time and cost-efficient but they also have more success rate at reaching settlements which are beneficial for all parties. Oftentimes, the parties are comfortable with the settlement reached and therefore, are more cooperative towards its enforcement. This also results in better family relations and fair solutions. *A study by the National Law School of India University, Bangalore, found that mediation had a success rate of 72% in resolving family disputes.*²⁶ Such an astounding success rate shows why ADR should be considered for solving inheritance disputes instead of litigation. Switching to alternative methods for resolutions is the future of a growing India.

6. Conclusion

This paper provided an insight on ADR and the methods that are covered under it. It talked about using ADR for resolving disputes and whether it can replace the traditional method of adjudication in India. It went into deep lengths to talk about the future of using alternative methods for coming to settlements in inheritance disputes and made a case for the same using landmark Supreme Court judgements and data.

This paper concludes that ADR is the way forward for resolving inheritance disputes in India and claimed that such methods are a game changer. Even though it cannot completely replace the traditional system of litigation, it is essential to take both hand-in-hand as they are complementary. The 129th report of the Law Commission of India and the Malimath Committee mandated for issues to be directed to mediation, conciliation, arbitration or

²⁶ National Law School of India University, Bangalore, *Mediation in Family Disputes: An Empirical Study* (2012).

negotiation before beginning the process of adjudication. This shows that law-enforcers themselves have been encouraging and relying on processes under ADR for resolving inheritance disputes.

ADR is undoubtedly the way forward and a new way of settlement for inheritance disputes in India. For ADR to become more widespread, awareness for such alternate methods should be spread while training more personnels to participate in such processes as facilitators. It is also essential that Judges take steps towards referring cases to alternative methods when and where they deem fit. Law firms must provide their clients with the information about such alternate remedies and motivate them to participate in the same if they are beneficial for their case. It will not only be beneficial on an individual level but will also strengthen the Indian legal system. ADR will have a positive impact and will revolutionise the way inheritance disputes are usually solved in this country through cooperation.