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## **SHADOW JUSTICE: ROLE OF INFORMAL ADR IN RESOLVING FAMILY PROPERTY DISPUTES IN INDIA**

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Vedanteshwari Rawal, Kirit P Mehta School of Law

### **ABSTRACT**

In the Indian urban context, family property disputes are being settled outside the formal adjudicatory process by means that cannot be strictly classified as Alternative Dispute Resolution (ADR) mechanisms. Though the Arbitration and Conciliation Act of 1996 and mediation centres attached to the courts provide a formal platform for dispute resolution, a substantial number of family property disputes are being settled outside these formal mechanisms. This includes disputes being settled through mediation by family elders, family settlement agreements arrived at between parties, mediation by community leaders, or even the involvement of religious or social organizations acting as a body for conciliation. This can be termed a “Shadow Justice” scenario. The phenomenon of Shadow Justice is also very evident in urban family property disputes. The emotional involvement and social factors in these disputes prompt the parties to settle the disputes amicably. Though these processes help in resolving disputes in a faster and less costly manner, several critical issues arise in the context of law and morality. The informal processes do not provide a platform for formal ADR mechanisms such as the neutrality and transparency of mediators and representation by a lawyer. This gives a platform for unequal bargaining for the parties. The research paper aims to examine the phenomenon of informal ADR mechanisms in the context of urban family property disputes in India. The paper employs a doctrinal method of research. The study examines the statutory provisions and relevant case laws and socio-legal literature to assess the legitimacy and implications of informal ADR mechanisms. The paper focuses on the impact of informal dispute resolution mechanisms in the context of gender justice and women’s inheritance rights. The study contends that informal ADR cannot be viewed as either regressive or progressive in nature. Instead, it operates as a pragmatic system that is subject to cultural norms, economic factors, and social interactions. While informal ADR plays a vital role in resolving conflicts and sustaining family relationships, there is a possibility that it can perpetuate inequality in family dynamics. The paper concludes that a balanced approach is essential in addressing the importance of informal ADR while incorporating measures that promote equality and the protection of legal rights.

## 1. Introduction

### 1.1 Introduction

Urban India has experienced tremendous economic growth, urbanization, and appreciation in the value of real estate over the past several decades. All these changes have impacted the nature of relationships within the family as well as the nature of ownership of properties. Joint families are gradually replacing the earlier form of living in India. Properties, particularly urban land, are considered the most valuable asset for any family. Therefore, disputes regarding inheritance, succession, partition, and ownership of properties are increasingly on the rise.

Earlier, disputes regarding properties were generally settled within the family. The members of the family would hold a discussion on the matter with the help of elders or respected members of the community. However, with the modernization of society and the growing awareness of the rights of the people, the matter is increasingly being taken to the proper legal institutions for the resolution of the dispute. However, the civil courts are generally flooded with backlogs. This has resulted in a delay in the resolution of the dispute. The matter may take several decades to be resolved.

In order to address these challenges, the Indian legal system has encouraged the use of Alternative Dispute Resolution mechanisms. The Arbitration and Conciliation Act of 1996<sup>1</sup> has provided statutory recognition to arbitration, conciliation, and mediation procedures. Similarly, Section 89 of the Code of Civil Procedure<sup>2</sup> has encouraged the use of ADR procedures like mediation, conciliation, arbitration, or Lok Adalats.

However, a large number of disputes, particularly family property disputes, continue to be resolved through informal mechanisms that are outside the formal legal system. Informal mechanisms include family meetings, negotiations facilitated by elders, and mediation facilitated by religious leaders. Unlike ADR mechanisms, these mechanisms are based on social norms rather than any statutory provisions.

In the urban setting, these informal dispute resolution mechanisms may be at work in subtle

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<sup>1</sup> Arbitration and Conciliation Act of, 1996

<sup>2</sup> Code of Civil Procedure, 1908

yet effective ways. For instance, a property dispute between siblings may be settled through negotiations brokered by relatives or through privately prepared settlement agreements between families. In most instances, these settlements are arrived at in order to maintain family relationships or avoid the emotional or financial consequences of a dispute resolution process. Nevertheless, the trend towards these informal dispute resolution mechanisms raises a number of key issues from a legal and ethical point of view. Even though these mechanisms may be arrived at quickly or amicably, they may be inconsistent with statutory or constitutional provisions. In most instances, women, widows, daughters, or economically dependent individuals in families may be forced into settlements that deny them their fair share in property.

The notion of “Shadow Justice” is a term that embodies the complex reality. Shadow justice is the “informal dispute resolution mechanisms that exist alongside the formal system but are largely unchecked and unregulated.” This has a significant impact on the outcome of family property disputes in urban India. This research aims to look into the impact of the use of informal ADR mechanisms in the resolution of the dispute and its impact on justice, equality, and legal certainty.

## **1.2 Research Problem**

Academic and legal literature on Alternative Dispute Resolution in India generally focuses on institutional forms of Alternative Dispute Resolution, which include arbitration, court annexed mediation, and Lok Adalat’s. Although these forms of Alternative Dispute Resolution have received considerable academic and legal attention as viable options for Alternative Dispute Resolution, not much consideration has been given to informal forms of Alternative Dispute Resolution, which exist outside the legal framework. Family property disputes are common in urban areas, which often involve complex social, economic, and emotional factors. The public nature of Alternative Dispute Resolution can cause family relationships to break down, which may result in social disharmony. Family members may prefer to resolve the Alternative Dispute Resolution outside the public domain for the sake of family relationships. In this context, informal Alternative Dispute Resolution mechanisms are important for the resolution of family property disputes. However, the prevalence of informal Alternative Dispute Resolution mechanisms has given rise to a number of issues. The informal Alternative Dispute Resolution mechanism is not transparent. Unlike formal ADR mechanisms, no specific norms

exist for the principle of neutrality of the mediator, representation of parties, or informed consent.

Therefore, family dynamics play an important role in determining the outcome of any settlement.

The position of women or other economically dependent family members is particularly vulnerable in such cases. Even with legislative changes such as the Hindu Succession (Amendment) Act, 2005, whereby daughters are now entitled to an equal share of coparcenary inheritance, women may be forced to forego their rights to property for the sake of family harmony. The question that is central to the present research is not whether ADR is an effective means for resolving disputes—clearly it is. The question is whether ADR offers any kind of justice that is consonant with constitutional ideals of equality, fairness, and the protection of legal rights.

### 1.3 Literature Review

The role of ADR in increasing access to justice has been studied by a number of authors. Various studies have emphasized the importance of mediation and arbitration in the speedy disposal of cases. The concept of legal pluralism has been studied by a number of authors. This concept states the existence of alternative forms of dispute resolution in society. In this regard, the informal methods of dispute resolution are given priority in the resolution of family disputes. Further, feminist legal theory has been used to explain the issue of gender equality under inheritance laws. In this regard, though the Hindu Succession Amendment Act, 2005, grants coparcenary rights to daughters, they are not coming forward to claim the same due to social pressures.

Judicial decisions also demonstrate a favourable attitude towards family settlements. In the case of **Ram Charan Das v. Girja Nandini Devi (1966)**<sup>3</sup>, it has been held by the Supreme Court that family settlements are to be encouraged as they are conducive to harmony and minimize conflicts. However, family settlements entered into under coercion or fraud are also cautioned against by the courts. In a recent judgment in **Vineeta Sharma v. Rakesh Sharma (2020)**<sup>4</sup>, it has been held by the Supreme Court that daughters have an equal coparcenary

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<sup>3</sup> *Ram Charan Das v. Girja Nandini Devi (1966)*

<sup>4</sup> *Vineeta Sharma v. Rakesh Sharma (2020)*

interest in family property. This is a reflection of the need to ensure women's rights in property.

#### 1.4 Research Questions

The questions which are set out to be answered through research as part of the project are:

1. What forms of informal ADR exist in urban family property disputes?
2. How do informal ADR mechanisms differ from statutory ADR processes?
3. What legal recognition do family settlements receive under Indian law?
4. Do informal ADR mechanisms reinforce social and gender inequalities?
5. Should informal ADR be regulated within the formal legal framework?

#### 1.5 Research Methodology

The present study follows a **doctrinal approach** of legal research. The sources of information used in this study are based on analysis of relevant statutes, precedents, and other literature on ADR and family property law in India. The primary sources of information used in this study are relevant statutes, including the Arbitration and Conciliation Act of 1996<sup>5</sup>, the Code of Civil Procedure of 1908<sup>6</sup>, and the Hindu Succession Act of 1956<sup>7</sup>. The secondary sources of information are relevant articles, books, and socio-legal studies based on ADR practices in India. The reason why this study follows a doctrinal approach is that its purpose is to examine the legal issues related to ADR practices.

## 2. Analysis

### 2.1 Informal ADR in Urban Family Property Disputes

Informal ADR refers to a system of dispute resolution that does not follow a formal legal framework. In informal ADR, negotiation, persuasion, and social power are dominant features. In urban family property disputes, informal ADR may include family meetings, intervention

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<sup>5</sup> *Supra* Note 1

<sup>6</sup> *Supra* Note 2

<sup>7</sup> Hindu Succession Act of 1956

by elder people, involvement of religious authorities, and settlement negotiations between parties. In these cases, more importance may be given to reconciliation than enforcement of legal rights. Indian courts generally encourage such settlements. In the case of **Kale v. Deputy Director of Consolidation (1976)**<sup>8</sup>, the Supreme Court has upheld the settlement of family disputes on the grounds that they are voluntary and for the peaceful settlement of disputes. The Supreme Court has observed that the settlement of disputes is for the maintenance of harmony in the family. Similarly, in the case of **Ram Charan Das v. Girja Nandini Devi (1966)**,<sup>9</sup> the Supreme Court has observed that the settlement of family disputes is based on the principles of equity.

## 2.2 Advantages of Informal ADR

There are a number of advantages that can be attributed to informal forms of ADR. First, informal forms of ADR ensure a quicker resolution of disputes as compared to the use of the courts. In the courts, property disputes can take a very long time to resolve, whereas informal negotiations can result in a settlement within a short period of time.

Second, informal forms of dispute resolution promote the preservation of family relationships. In the courts, family members develop a sense of hostility, whereas informal forms of settlement promote the concept of compromise.

Third, informal forms of dispute resolution promote privacy. The courts are public, whereas family settlements are private.

## 2.3 Risks and Criticisms

However, even with all these advantages, there are certain risks associated with ADR. The first risk is the presence of power imbalances between family members. The decisions made may be based on the dominant family member's decisions, thereby favouring one party over another.

The issue of gender inequality is also an important one. Even though daughters have an equal right to family property under the Hindu Succession Act, societal pressures may not encourage them to take up their rights. The Supreme Court in **Vineeta Sharma v. Rakesh Sharma**

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<sup>8</sup> Kale v. Deputy Director of Consolidation (1976)

<sup>9</sup> *Supra* Note 3

(2020)<sup>10</sup> upheld the judgment that daughters are coparceners by birth and have an equal right to family property. The ADR process that denies women their rights is not in line with the law.

The second risk is the absence of procedural protections. The ADR process does not ensure legal representation or informed consent. The weaker party may be forced to agree to an unfair legal outcome.

### **3. Conclusion and Suggestions**

The role of informal ADR processes in family property disputes in urban India is significant. These processes are advantageous in that they are expeditious, cost-effective, confidential, and maintain family relationships. In addition, they decongest the docket of the formal legal system by preventing disputes from escalating into litigation. The lack of procedural rules and social power imbalances are of major concern when considering fairness, justice, and ADR processes.

The process is disadvantageous to women and other economically dependent family members who are coerced into accepting settlements that are not in line with their legal rights.

A balance, therefore, seems to be necessary. The informal forms of ADR processes cannot be eliminated, as they are socially useful. However, measures can be put in place to ensure that the informal processes are voluntary and consistent with the rights of the parties involved. This can be achieved, for instance, by promoting legal awareness, registration of the settlement agreements, and the integration of informal dispute resolution with the formal mediation systems. The question, however, seems to be how to ensure that the informal forms of ADR, as well as the formal legal processes, are consistent with the principles of equality, fairness, and justice.

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<sup>10</sup> *Supra* Note 4

## **REFERENCES**

### **Primary Sources**

Arbitration and Conciliation 1996

Code of Civil Procedure 1908

Hindu Succession Act, 1956

Hindu Succession (Amendment) Act, 2005

### **Secondary Sources**

#### **Books**

Avtar Singh, **Law of Arbitration and Conciliation**, Eastern Book Company. S.C.

Sarkar, **Law of Civil Procedure**, LexisNexis.

#### **Journal Articles**

Ashutosh Mishra, "Alternative Dispute Resolution in India: A Critical Analysis," *Indian Journal of Arbitration Law*.

Anita Rao, "Gender Justice and Property Rights in India," *Journal of Legal Studies*.