
ANALYSIS OF THE FUNCTION OF ALTERNATIVE DISPUTE RESOLUTION IN RESTRUCTURING THE SYSTEM FOR RESOLVING MATRIMONIAL CONFLICTS

Shagun Tiwari, B.A.LL.B. (H), Amity University Lucknow Campus

Abhishek Mishra, Assistant Professor, Amity Law School, Amity University Lucknow
Campus

ABSTRACT

In India, the idea of ADR is not new. Resolving conflicts pertaining to family, commerce, and property was part of the traditional conflict settlement process.

Arbitration, mediation, negotiation, conciliation, and other types of ADR are alternatives to litigation. ADR mechanisms are becoming more and more popular because of their special qualities, which include quick disposal, lower costs, and more adaptable processes. In order to settle marital issues, it has emerged as the most popular dispute settlement method. The reason for this is because it keeps family ties intact and fosters friendly interactions. A family is extremely important to the evolution of society. According to Section 89 of the Civil Procedure Code of 1908, the parties must be submitted to an ADR process before the trial begins. The ADR system in India is supported by numerous statutory measures that facilitate the prompt and seamless resolution of disputed matters. Through ADR procedures, the Indian judiciary has also significantly contributed to the improvement and promotion of out-of-court settlement of matrimonial disputes. The Hindu Marriage Act of 1955, the Civil Procedure Code of 1858, the Family Courts Act of 1984, and the Legal Services Authorities Act of 1987 all mention mediation and conciliation in family conflicts and support conciliation as a means of amicably resolving disagreements about marriage, family issues, and other related topics. Through the use of ADR procedures, citizens can obtain the "Speedy Justice" that the Indian Constitution mandates. The right to a timely trial is guaranteed under Article 21, and free legal aid is required by Article 39A. The idea of alternative dispute resolution (ADR) and its function in settling marriage conflicts are examined in this article while taking into consideration the nation's varied cultural landscape as well as the contemporary legal and social landscape. This article also discusses some of the shortcomings of the alternative dispute resolution (ADR) system in settling marriage disputes and sheds light on the role of the judiciary in improving the ADR system.

Keywords: Arbitration, parties, speedy justice, Article 21, disputes

INTRODUCTION

The idea behind alternative dispute resolution systems is captured well by Abraham Lincoln's well-known quote: "discourage lawsuits, encourage your neighbours to compromise whenever you can. Show them how the usual winner often ends up losing in fees, costs, and time." These words reflect a harsh truth. Great leaders like Mahatma Gandhi, Abraham Lincoln, and Nelson Mandela always supported settling differences through peaceful methods. They encouraged people to resolve their conflicts through agreements. The concept of ADR is not new in the Indian system and is needed in today's world. Courts are overloaded, and the rapidly increasing number of cases makes it hard for them to deliver justice for all pending cases. ADR is understood to resolve conflicts outside of a courtroom. In India, resolving cases takes an extremely long time. Delays have become a major problem for justice. In the times before British rule, the panchayat system was common in India and played a key role in solving disputes at the village level. The panchayat, made up of five wise individuals from a specific caste or community, was usually led by the oldest respected elder in the village. The panchas handled all matters related to marriage disputes, torts, property issues, and serious crimes like murder and rape for a long time. The decisions made by the panchayat were final and enforced. Marriage and family are seen as the most sacred and important parts of Indian society. Marriage is viewed as the basis of a stable family and civilised community. When two people marry, they bring different ideas, opinions, interests, and goals into their relationship. Disagreements between them can disrupt this sacred institution of marriage. If conflicts become too severe to resolve, they can lead to grave consequences like divorce and separation, which can disturb family ties. This can lead to matrimonial disputes that, if not resolved peacefully, can have serious outcomes. Using ADR is more favourable for dealing with matrimonial disputes instead of taking the issues to court. The methods used in ADR include mediation, conciliation, arbitration, negotiation, and lok-adalat. These processes help to resolve disputes peacefully while preserving relationships between individuals.

CONSTITUTIONAL MANDATES RELATED TO ADR

The Constitution of India is the fundamental law of the country; it is the highest law of the land. The Preamble to the Indian Constitution talks about social, political, and economic fairness. The legal system is used in society to keep peace among people. To create a fair society, social justice and economic justice should work together. If this balance is upset, a person's legal

rights are also affected. It is the State's duty to make sure everyone can access justice by providing legal and non-legal services to protect their legal and constitutional rights. Legal aid camps, family courts, and mediation centers are parts of the Alternative Dispute Resolution system. The famous American legal scholar *Dean Roscoe Pound* noted that 'law should not be seen as a negative and limiting force; rather, it is an active tool for social change and aims for the improvement of society.' *The Constitution of India has various Articles like 14, 21, 39A, and 51(d) that relate to Alternative Dispute Resolution.* Article 14 of the Constitution ensures the Right to Equality, which is the most basic principle of the Indian Constitution. It states that everyone is equal in the eyes of the law and no one is above the law. Thus, this Article requires the State to provide equality before the law and justice to all its citizens. Article 21 of the Constitution of India guarantees everyone the right to life and personal freedom. The Supreme Court has interpreted this broadly to include the right to marry, the right to a speedy trial, and the right to free legal aid. In the case of **Hussainara Khatoon vs. Home Secretary, State of Bihar**,¹ the Supreme Court recognised the right of a poor accused person to legal aid in a criminal trial, as well as the right to a speedy trial. In another significant case, **Sheela Barse vs. Union of India**², the right to a speedy trial was found to be a fundamental right implied by Article 21 of the Indian Constitution. Article 39(A) of the Directive Principles of State Policy ensures justice for all based on equal opportunity. It creates an obligation for the States to provide free legal help to the poor and needy. In the case of **M.H. Hoskot vs. State of Maharashtra**,³ it was determined that the State must provide free legal aid to people from disadvantaged communities who cannot afford court fees. Article 51(d) of the Indian Constitution gives the State the power to promote the resolution of international disputes through Arbitration. Family Arbitration is a well-developed concept that covers issues related to property, child support, spousal support, parenting time, and decision-making responsibilities regarding children. However, Arbitrators cannot grant a divorce, annul a marriage, or decide if someone is or isn't a parent to a child. Family arbitration matters should be decided with the child's best interest in mind.

Types of Alternative Dispute Resolution Methods:

Alternative Dispute Resolution can be grouped into different types:

¹ AIR1979,SC1369

² JT 1986 136 1986 SCALE(2)230

³ AIR 1978 SCC 1548

- Arbitration
- Conciliation
- Mediation
- Judicial Settlements
- Lok Adalat
- Negotiation

a. Arbitration:

Arbitration is a semi-judicial process where a person called an arbitrator is chosen by a court or by the involved parties to resolve their disagreement. The decision made during arbitration is mandatory for both parties and can only be challenged in limited situations. The process and outcome are guided by the rules of the Arbitration & Conciliation Act, 1996. Arbitration does not require payment of court fees.

b. Conciliation:

Conciliation is a private, voluntary, and flexible process focused on interests, where an expert helps the parties reach an agreement. The parties are not obligated to follow the conciliator's decision. The conciliator plays an active role in discussing issues, negotiating, and facilitating a peaceful agreement.

c. Mediation:

A mediator is a person who helps negotiate between two opposing parties. Mediation is one of the best and most effective ways to resolve disputes peacefully with the help of a neutral third party called a mediator. Mediation is rapidly becoming popular, especially in matrimonial disputes. Successful mediation relies on both parties wanting to resolve their differences and the mediator's ability to guide them to a peaceful solution.

d. Judicial Settlement:

Judicial settlement, as defined by Section 89 of the Civil Procedure Code, 1908, involves a judge trying to help the parties settle their dispute amicably. After noting what each party admits or denies, the court directs the parties to choose one of the settlement methods outside the court mentioned in sub-section (1) of Section 89.

e. Lok Adalat:

Lok Adalat was set up under the Legal Services Authorities Act, 1987. In Lok Adalats, disputes that have not yet reached court can be resolved peacefully. Lok Adalats are known as People's Courts and are based on Gandhian principles. The types of cases they usually handle include minor criminal offences, land acquisition disputes, marital issues, family disagreements, and business disputes.

f. Negotiation:

Negotiation is an Alternative Dispute Resolution method that is non-binding. In negotiation, the parties engage in discussions without a third party's involvement. The main goal of negotiation is to reach a peaceful agreement without going to court. The methods of Alternative Dispute Resolution aim to mend relationships without harming them. ADR helps avoid delays and court costs, providing affordable solutions. It supports privacy and is not open to the public.

The process of Alternative Dispute Resolution is very flexible and informal. The Resolution System is quicker than the court system; it is very cost-effective and is conclusive and binding, just like a court order.

ROLE OF ALTERNATIVE DISPUTE RESOLUTION IN MARRIAGE DISPUTES:

In India, marriage has always been seen as a holy bond meant to last forever. However, with changing times, this idea is fading, and the institution of marriage is transforming. Marriage disputes can occur for many reasons, including disagreements between spouse, differences in opinions, and both verbal and physical abuse, leading to divorce. Issues like domestic violence, crimes against marriage such as bigamy or adultery, and the inability to resolve these conflicts can lead to broken relationships. Marriage disputes are a painful experience for both partners and their children. Conflicts in marriage fall under the authority of the Family Court. The confrontational nature of the parties involved, and the harshness of the arguments can make family situations worse. When court is involved, it can harm the relationship, as it is not a good

setting for keeping family connections. To keep family ties and foster a healthy relationship, finding a solution outside of court may be a better way. Legal ways to resolve marriage disputes include Mediation or Conciliation. These alternative dispute resolution methods can be a profound way to solve disputes peacefully without harming the relationships of the parties and their children. The Family Courts Act 1984, Civil Procedure Code 1908, The Hindu Marriage Act 1955, and the Legal Services Authorities Act of 1987 all mention mediation and conciliation in family disputes and promote friendly solutions for marriage and family problems, as well as related issues. A Bloomberg Business-week estimate says, “If the nation’s judges continuously worked on their backlog — without breaks to eat or sleep and handled 100 cases per hour, it would take more than 35 years to get through it.” The non-adversarial approach benefits family law and helps avoid harmful parental conflicts. Indian Courts must promote reconciliation methods in cases of marriage disputes. The methods to resolve marriage disputes include:

The Family Court Act, 1984

The Act allows the creation of Family Courts to promote agreement and ensure quick resolution of conflicts related to family issues. The process is more flexible and less formal than civil court proceedings. **Section 9** of the Family Court Act states that “The family court aims for settlements in disputed marriages: In every case or proceeding, the Family Court should first try to help and convince the parties to reach a settlement regarding the case; and for this purpose, it can follow any process it considers appropriate, according to rules made by the High Court. If, at any point in a case or proceeding, it seems to the Family Court that there is a fair chance of an agreement between the parties, the Family Court can pause the proceedings for a time it thinks is suitable to allow for attempts to reach such an agreement. The power mentioned in point (2) is in addition to, and not instead of, any other power the Family Court must pause the proceedings.” The Family Court now has the power to delay proceedings for a reasonable time to allow for efforts to reach an agreement if there is a fair chance for one. The Alternative Dispute Resolution (ADR) system in Family Court serves the public interest by helping to resolve conflicts quickly.

The Hindu Marriage Act, 1955

Section 13 (b) of the Hindu Marriage Act, 1955 was added in 1976 to allow for divorce by mutual consent. It sets a waiting period of 18 months before a divorce can be filed through

Section 13B(1), after one year of judicial separation. This is followed by an additional six months, seen as a cooling-off period to promote harmony or reconciliation between the divorcing parties. If the parties reconcile during this one-year period, the court will issue a notice to cancel the divorce; otherwise, they can move forward to a final hearing for divorce. In the case of **Amandeep Singh vs. Harveen Kaur**⁴ and **Nikhil Kumar vs. Rupali Kumar**,⁵ the court confirmed that encouraging reconciliation between the parties is the main goal of the Court. In **Bini v. K.V. Sundaran**,⁶ the High Court of Kerala addressed a special issue: whether reconciliation is required after the Family Courts Act, 1984, even for grounds that are not accepted, such as conversion to another religion, giving up worldly life, mental illness, sexually transmitted diseases, and leprosy. The High Court decided that while no reconciliation effort is mandatory under

The Hindu Marriage Act, 1955, in divorce cases based on these grounds... Changing to another religion, or other reasons listed in Section 13 (1) of the Hindu Marriage Act, 1955, or similar reasons under any other law, the Family Court must try to help the parties reconcile and settle after the Family Courts Act, 1984 was put in place. The Family Courts Act of 1984, which is a specific law, brought about this change. According to **Section 23(2)** of the Hindu Marriage Act, 1955, before providing any relief under this Act, the court must do everything possible to encourage reconciliation in every case where it can happen "according to the nature and circumstances of the situation." The 1976 amendment made it the court's duty to try to reconcile the couple. In the case of **Raghunath v. Urmila Devi**,⁷ the court decided that the effort to reconcile should be made by the court from the very beginning of the case and not just after the final hearing before the court gives relief under the Act. It was also noted that the court should not stop trying to reconcile just because it seems unlikely to succeed. Since this matter is very personal for the parties, it is essential for them to appear in person before the court while the court works to help them reconcile. The court must genuinely try to reconcile. In the case of **Jagraj Singh v. Birpal Kaur**,⁸ the court ruled that the ADR process is required under Section 23(2) of the Hindu Marriage Act.

⁴ AIR2017SC 4417

⁵ {2016} 13 SCC 383

⁶ AIR 2008 Kerala 84

⁷ AIR 1973 Allahabad 203, construing Section 23(2) of the Act.

⁸ 2007 (2) SCC 564

The Special Marriage Act, 1954

The Special Marriage Act, 1954 also aims to help the parties reconcile under Section 23(3) of the Act. "Section 23(3) of the Act: To help the court in achieving such reconciliation, the court may, if the parties wish or if the court believes it is fair and appropriate, postpone the proceedings for a reasonable time of no more than fifteen days and refer the matter to any person chosen by the parties for this purpose or to a person appointed by the court if the parties do not name anyone, with instructions to report back to the court on whether a reconciliation can be achieved, and the court will consider this report when making its decision." ⁹

Legal Services Authorities Act, 1987

The Legal Services Act, 1987 was created to fulfill the requirement set out in Article 39 A of the Indian Constitution. This Act states that free legal help is available to assist in peacefully resolving conflicts. Under section 19 of the Legal Services Authority Act, Lok Adalat is formed at the National, State, District, and Taluk Levels. Lok Adalat is founded on Gandhian principles. It is seen as an Alternative Dispute Mechanism that is trustworthy, friendly, and effective for family-related issues. Lok Adalat has the power to reach a settlement and compromise between the parties involved. It can handle cases related to family and marriage matters, division of property, but it cannot take on cases involving non-compoundable offences. Alternative Dispute Resolution can be used for Civil, Commercial, and Family Disputes. Even if the Alternative Dispute Resolution process fails, it is still valuable as it helps the parties understand each other's viewpoints. The role of the Alternative Dispute Resolution system in marriage matters can be best fulfilled through Mediation and Conciliation, as well as Family arbitration.

MEDIATION AS A FIRST STEP TO SETTLE DISPUTES

Mediation is a type of alternative way to settle disagreements. Conflicts are settled with the help of a third person called a mediator. The key points of mediation are that it is neutral, flexible, inexpensive, and quick. Mediation in divorce cases is a useful process. Since there are thousands of cases in courts that have not yet been resolved, using mediation helps reduce the burden on the courts. Therefore, it is a highly effective method. Mediation is an informal legal

⁹ Special Marriage Act, 1954 (as amended by Act 6 of 2019 and 34 of 2019), 2022

process; it does not make decisions but helps couples find solutions to fix their marriage. After mediation is finished, couples can choose either to try their marriage again or to file for divorce in court. According to Section 9 of the Family Courts Act, 1984, the parties must go through mediation before going to court. Specifically, family laws like the Hindu Marriage Act and the Special Marriage Act require the court to first try mediation between the parties. In India, there is an urgent need to address marriage disputes. The ancient Indian thinker Patanjali said, "Progress comes quickly in mediation for those who work the hardest, instead of deciding who is right and who is wrong." Mediation is seen as a great option for solving marriage disputes. According to Bentham, the goal of the law, like life, is to provide the greatest good for the greatest number of people. The Supreme Court in an important ruling in Salem Advocate Bar Association, Tamil Nadu Vs Union of India stated that mediation, conciliation, and arbitration should be used in court cases. Mediation in India comes in two types: Court-referred mediation and private mediation. Courts refer divorce, property, and family cases to mediation. Parties voluntarily settle their disputes, making this process participant-centred and unbiased. The mediator, who is a neutral party, facilitates the process. The mediator acts as a catalyst. One special feature of mediation is that any statements made during the process cannot be used in court against the other party. The process is completely confidential and can be trusted. Mediation has been effectively recognised as a way to resolve marriage disputes.

Suitability of Mediation for Domestic Violence Cases

Domestic violence is addressed in Section 85 BHARTIY NAGRIK SANHITA, 2023 (referred to as "BNS"). According to the BHARTIYA NAGRIK SURAKSHA SANHITA of 2023, domestic violence is a serious crime that cannot be settled easily (referred to as "BNSS"). These are significant offenses that courts cannot reduce. However, courts have taken a different approach.

They have shown no reluctance to use mediation to solve marital issues. In the case of **Mohd. Mushtaq Ahmed vs. State**¹⁰ the wife submitted a divorce request along with a report under Section 85 BNS against the husband. The Karnataka High Court ordered the couple to enter mediation. This situation was resolved, and the wife decided to withdraw the FIR. The High Court mentioned that in suitable cases, the court could dismiss criminal actions, FIRs, or complaints to serve justice. Although the offences are serious, the court concluded in

¹⁰ (2015) 3 AIR Kant R 363.

Gurudath K v State of Karnataka¹¹ that Section 528 BNSS would not prevent the authority to dismiss the FIR. If the parties have come to a mutual agreement, there is no issue.

CONCLUSION AND SUGGESTION

Matrimonial disputes are common, and to restore family connections and maintain peaceful relationships, mediation and conciliation are the best alternative dispute resolution methods. Marriages cannot be quickly ended as they involve not just the disputing individuals but also the future of their children. These are sensitive matters and must be handled carefully by trained mediators or conciliators. This process not only saves time but also helps maintain friendly relationships. The Supreme Court has issued many important rulings, such as in the case of **Sangeeta vs. Sureesh Kumar**¹², recognising the value of reconciliation in marital disputes. It saves time, reduces stress in relationships, and helps create a positive connection between the parties. However, mediation has its downsides. If discussions fail, it can lead to a waste of time, effort, and money. If the mediator lacks skills, the mediation may be incomplete or bias toward one partner. A clever partner may hide assets or income, leaving the less powerful spouse financially vulnerable if hidden financial resources are not found. The agreement may be unfair if one partner is dominant, and the other is passive. Therefore, mediators must be well trained and capable. Without a law governing mediation, processes are carried out according to the rules set by each court. However, the Supreme Court ruled in **Salem Advocate Bar Association v. Union of India**¹³ that there is a need to regulate mediation processes because of the lack of a framework, making Section 89 ineffective. In the recent case of **M.R. KrishnaMurthi v. New India Assurance Co. Ltd**¹⁴ and **Others**, the Supreme Court recommended that the government create an Indian Mediation Act, stating that such law is urgently needed.

The following suggestions can be included:

1. Disputed couples should actively take part in Alternative Dispute Mechanism instead of going to court.

¹¹ Criminal Petition №7258 of 2014

¹² I(2001)DMC398SC, JT2000(8)SC521, AIR ONLINE 2000 SC 307, 2000 (9) SCC 442, (2000) 2 HINDULR 323, (2000) 8 JT 521 (SC), (2001) 1 DMC 398

¹³ AIR 2005 SC 3353

¹⁴ Civil Appeal nos. 2476–2477 of 2019

2. Family Arbitration should be another way for the parties to settle their disagreements.
3. Awareness campaigns such as seminars, conferences, and skit performances should be organized to educate the public about the importance of Alternative Dispute Mechanism for solving Matrimonial Disputes.
4. Law students should receive legal education to raise awareness so they can carry out different campaigns.
5. NGOs, lawyers, judges, law students, and volunteers must join in promoting mediation, conciliation, and arbitration, especially for Matrimonial disputes.

The authors suggest improving citizen participation in ADR methods. Without their involvement, family arbitration cannot be used effectively. Citizens need to start holding back from using traditional litigation. Our constitution guarantees the right to a speedy trial; we should respect this right. There is an urgent need to establish an ADR framework in both urban and rural areas. Spouses, parents, and couples need to see the benefits of arbitration in family disagreements.

REFERENCES

- Family Courts Act, 1984, Lawman's, Kamala Publishers
- <https://www.thelawgurukul.com/post/alternative-dispute-resolution-in-family-disputes>
- <https://www.thelawgurukul.com/post/alternative-dispute-resolution-in-family-disputes>
- Special Marriage Act, 1954 (as amended by Act 6 of 2019 and 34 of 2019), 2022
- A.V. Dicey, Law & Public Opinion In England, 414 (Universal Law Publishing Co. Delhi, 3rd Indian Reprint, 2003).
- https://www.linkedin.com/pulse/role-arbitration-family-dispute-fastrack-legal-solutions/?trk=pulse-article_more-articles_related-content-card
- Dr. J. N. Pandey, Constitutional Law of India, Central Law Agency, 57 editions