

FROM ADVERSARIES TO AGREEMENTS: MEDIATION IN INDIAN FAMILY LAW

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ABSTRACT

This paper explores how Alternative Dispute Resolution (ADR), especially mediation, functions in resolving family disputes in India. It looks at whether ADR can offer a more effective and compassionate approach compared to traditional court processes. The paper assesses the practical success of mediation in handling issues like divorce, custody, and maintenance. The analysis shows that while mediation has helped reduce court burdens and encourages peaceful settlements, its impact is limited by unequal access, lack of trained mediators, and little to no follow-up after mediation. The paper concludes that although ADR shows great potential to improve how family disputes are resolved, stronger infrastructure, better regulation, and long-term support are essential to make it a more reliable and inclusive solution.

INTRODUCTION

Family disputes in India have grown to become emotionally draining and legally overwhelming, irrespective of what the dispute is surrounding. With increasing awareness of personal rights and a considerable rise in legal literacy rates, more people are now turning to courts for resolution of marital disputes, child custody, maintenance, and inheritance issues. As of 2024, India has over 11 lakh pending cases in family courts.¹ This backlog is a mirror reflection of the burden on the judiciary. It further highlights the ineffectiveness of traditional litigation in resolving emotionally sensitive, inter-personal conflicts.

It is a well-known fact that the nature of litigation in itself is such that it often fuels animosity, leading to bitterness that eclipses the judgment. In these scenarios, Alternate Dispute Resolution (ADR) presents a more positive and solution-oriented route. By facilitating mutual understanding and allowing parties to resolve disputes cordially, ADR promotes emotional healing. Mediation and Conciliation especially, often lead to long-term cooperation which is necessary in cases where children or long-term familial relationships are involved.

Section 89(1) of the Code of Civil Procedure, 1908 provides that "*where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties,*"² the Court is mandated to formulate the terms of such a settlement and present them to the parties for their observations. After receiving their feedback, the Court may revise the terms and refer the matter to one of the following Alternative Dispute Resolution (ADR) mechanisms:

- (a) Arbitration
- (b) Conciliation
- (c) Judicial settlement, including settlement through Lok Adalat
- (d) Mediation

Section 9 of the Family Courts Act mandates family courts to make efforts at reconciliation before proceeding with trial.³ This legislative mandate makes ADR not just optional, but

¹ Department of Justice, Government of India, *Family Courts & Cases Dashboard*, https://dashboard.doj.gov.in/family-court-cases/fc_pending (last visited May 20, 2025).

² Code of Civil Procedure § 89(1) (India).

³ Family Courts Act § 9 (India).

integral to family litigation. The Mediation Act of 2023 specifically identifies “matrimonial, custody, guardianship and maintenance matters” as eligible for mediation under Schedule I.⁴

However, despite changes in legislative and judicial recognition of ADR, its role in the Indian family law system is still underutilized, unevenly applied, and under-supported.

WHY FAMILY DISPUTES NEED MORE THAN JUST ADJUDICATION?

At the heart of every family dispute is not just a legal issue, but a story of emotional tear. Traditional litigation is conflicting in nature as it pits one family member against another in a public arena where personal details are scrutinized and frequently misrepresented. The outcome does end up being legally binding, but rarely is it ever emotionally satisfying.

ADR, or mediation in specific, introduces a different approach to this. It focuses on communication, mutual respect, and dignity. For instance, in a custody battle, a judge decides based on the laid down legal principles and rules. On the other hand, in mediation, the parents are themselves involved in the process of making parenting arrangements, visitation schedules, and other plans. This enables more customised outcomes that prioritize the child's best interests rather than the path of law.

Moreover, ADR is a field of law that encourages dialogue rather than punishment. This gives parties to a domestic dispute a chance to be heard without the pressure of legal cross-examination or scrutiny. This can be even more necessary in case of women in patriarchal family structures, provided the mediation is conducted ethically and safely.

Most importantly, mediation isn't about “winning” or “losing”. It's about preserving what remains and moving forward. This is even more relevant in the Indian legal landscape, where familial relationships often extend beyond the nuclear family and involve long-term co-dependence. Thus, in the emotionally fraught terrain of family law, ADR offers not just an alternative, but an important shift in direction.

⁴ The Mediation Act, No. 32 of 2023, Gazette of India, Extraordinary, Sept. 15, 2023 (India).

LITERATURE REVIEW: WHAT SCHOLARS AND JURISTS SAY ABOUT ADR IN FAMILY LAW

Samantha Hardy and Olivia Rundle (2012) argue that family mediation is most effective when it integrates psychological aspects with legal safeguards, especially in divorces.⁵ Research from *Ghosh's (2021)* work further supports ADR by demonstrating that in many instances, family disputes, especially those involving mutual consent, are resolved more quickly and satisfactorily through mediation.⁶

In *K. Srinivas Rao v. D.A. Deepa* (2013), the Supreme Court held that mediation should be the first step before proceeding with divorce cases under Section 85 of BNS, except in cases of extreme cruelty.⁷ It also directed mediation centres to set up litigation clinics to help resolve marital disputes outside the courtroom. Through the Law Commission's 129th Report⁸ and subsequent judicial pronouncements like *Salem Bar Association v. Union of India*⁹, the Supreme Court upheld the constitutional validity of Section 89 CPC¹⁰ and emphasized its role in promoting ADR to reduce the burden on courts. The Court also recommended forming a committee to ensure the effective implementation of CPC amendments for faster justice delivery.

In *Afcons Infrastructure v. Cherian Varkey Construction*,¹¹ the Court held that mediation outcomes become binding only when all parties sign a settlement and the court formally records and approves it. *The Future of ADR in Indian Family Law: Opportunities and Challenges* (2022) offers a forward-looking analysis of ADR in Indian family law, stressing on the upcoming trends and possible reforms to strengthen its integration into the legal system¹² while Khan, in *Mediation and Arbitration in Indian Family Law: A Comparative Study* (2019) examines the application of mediation and arbitration in Indian family law,

⁵ Sarah Hardy & Olivia Rundle, *Family Dispute Resolution: Practice and Research* 83 (LexisNexis Butterworths 2012).

⁶ Pritha Ghosh, The Effectiveness of ADR in Resolving Family Disputes, 8 Indian J. of Dispute Resolution 101, 101–15 (2021).

⁷ K. Srinivas Rao vs. D.A. Deepa (22.02.2013 - SC): MANU/SC/0180/2013

⁸ Law Commission of India, *129th Report: Urban Legislation—Mediation as Alternative to Adjudication* (1988)

⁹ Rojer Mathew vs. South Indian Bank Ltd. and Ors. (13.11.2019 - SC): MANU/SC/1563/2019

¹⁰ *Supra* 2

¹¹ Afcons Infrastructure Ltd. vs. Nagpur Metro Rail Corporation Ltd. and Ors. (15.09.2016 - SC) MANU/SC/1003/2016

¹² Yadav, S., The Future of ADR in Indian Family Law: Opportunities and Challenges, 15 J. Indian Legal Prac. 102–18 (2022)

delving into their relative effectiveness and how each method is perceived and utilized in resolving family related conflicts.¹³

STATISTICS AND THEIR ANALYSIS

Empirical data from Indian mediation centres and legal authorities suggest that ADR in family disputes is not just effective, it's transformative. However, this is only true when implemented correctly. Around 60% of marriage-related disputes in India are settled using ADR methods, with Lok Adalats handling about 35% of these cases.¹⁴ A study in Maharashtra also showed that 40% of cases filed in district courts could be more effectively resolved through Lok Adalats.

According to a 2022 report by the Delhi High Court Mediation and Conciliation Centre, more than 62% of matrimonial disputes were successfully resolved through mediation¹⁵. Similar success rates have been observed in Mumbai and Chennai, with some centres reporting resolution rates as high as 70%. From 2011 to 2015 in Bengaluru, 66% of mediated cases reached settlement, but 17% were terminated early. This was mainly due to parties not attending follow-up sessions, which accounted for nearly 45.5% of such cases.¹⁶

However, the data also reveals the large gaps. Rural and semi-urban areas have minimal access to trained mediators. The quality of mediation varies significantly. More concerning is the lack of post-mediation follow-up, raising doubts about compliance, especially in custody and maintenance arrangements.

ROLE OF MEDIATION CENTRES

A mediation centre can be defined as a formal facility, often attached to courts, where trained mediators facilitate structured, confidential discussions between disputing parties to help them reach mutually agreeable solutions without litigation. Mediation centres, especially those attached to family courts in India, have emerged as key institutions that help settle marriage and custody disputes without going to court or creating conflict. Their scope has

¹³ Khan, M.A., Mediation and Arbitration in Indian Family Law: A Comparative Study, 11 *Fam. L. Rev.* 25–40 (2019).

¹⁴ Karnataka Mediation Centre, *Abstract Report: Bangalore Mediation Centre* (Jan. 1, 2007–Dec. 31, 2020), https://nyayadegula.kar.nic.in/abstract_statis.html.

¹⁵ Delhi High Court Mediation and Conciliation Centre, *Annual Report 2022*, <https://delhihighcourt.nic.in> (last visited May 20, 2025).

¹⁶ Bangalore Mediation Centre, *Annual Statistics Report 2021*, High Court of Karnataka, available at <https://karnatakajudiciary.kar.nic.in> (last visited May 24, 2025).

widened to a large extent following recent judicial support and the enactment of the Mediation Act, 2023.¹⁷ These centres function under the supervision of the respective High Courts and District Legal Services Authorities (DLSAs), providing court-referred parties with access to trained mediators and a structured mediation process.

What distinguishes these centres from traditional courts or informal negotiation is the presence of trained mediators, many of whom are advocates or former judges. Some of them are trained in family psychology and negotiation techniques. Mediation centres also follow a strict procedure involving interviews, caucus sessions, and structured settlement documentation. This creates a good balance between formality and flexibility within a non-court setting.

However, regional disparities remain the biggest concern. While metropolitan areas have well-established mediation centres, Tier-II cities and rural areas lack full-time centres, experienced mediators, or even consistent referral systems. For instance, a 2022 study by the Vidhi Centre for Legal Policy noted that several district courts in Bihar, Odisha, and Madhya Pradesh refer fewer than 10% of family cases to mediation, often due to the absence of trained personnel or basic facilities.¹⁸ We must realise that the mere existence of mediation centres is not sufficient. Their potential can only be fully realized through investment in infrastructure, training, and support services.

STRUCTURAL GAPS BETWEEN LEGISLATIVE INTENT AND GROUND REALITY

Despite growing recognition, the ADR framework in Indian family law suffers from several structural deficiencies. These deficiencies have rendered the mechanism less accessible and complicated. Firstly, although the Mediation Act, 2023 was a major step forward, it does not mandate pre-litigation mediation in family matters. This leaves it completely up to judicial discretion, which often results in inconsistency and beats the very purpose of implementing such an Act. In contrast, countries like Australia mandate a Family Dispute Resolution Certificate before allowing courts to begin with proceedings in most familial matters.

¹⁷ *Supra* 4

¹⁸ Vidhi Centre for Legal Policy, *Model Code on Indian Family Law: A Comprehensive, Gender-Just, and Inclusive Family Law Regime* (2023), https://vidhilegalpolicy.in/wp-content/uploads/2023/07/Vidhi_Model_Family_Law_Reforms_Code_2023.pdf (last visited May 21, 2025).

Secondly, India lacks a clear and established national accreditation system for mediators. As a result of this, mediators across different regions vary widely in the training, experience, and sensitivity that they possess. A uniformity in deciding of such matter is highly essential, especially in areas like gender justice, child psychology, or financial autonomy.

Third, there is an evident lack of infrastructure in rural and Tier II areas. Many Districts Legal Services Authorities are often understaffed and the lack of legal education among the people regarding ADR mechanisms renders it useless.

Finally, post-mediation support is nearly non-existent. Post-mediation support refers to the services and mechanisms provided after a mediation process concludes, especially when a settlement has been reached. This is done so as to ensure that the agreement is followed, relationships are maintained, and any chances of future conflicts are minimized. There are no state-funded programs for co-parenting counselling, regular reviews of compliance, or any recourse in case mediated settlements are breached by either party. This is a serious lacuna, especially where ongoing cooperation is necessary; as in cases of child custody or maintenance.

Thus, while the legislations are strong, implementation still lags due to underfunding, lack of monitoring, and systemic neglect. ADR, or more specifically mediation, is not just a procedural tool, it is a philosophical shift in how family disputes should be resolved.

It fits the emotional and practical needs of family problems better than going to court. But for it to really work in India, we need more than just recognition; we need real changes like better facilities, clear rules for mediators, required mediation before filing cases, and support after settlements. Only then can ADR move from being a judicial suggestion to a justice delivery standard, offering not just remedies, but reconciliation.

CONCLUSION

This paper aimed at examining the effectiveness of Alternative Dispute Resolution (ADR), especially mediation, in resolving family disputes in India. The objective was to determine whether ADR merely acts as a procedural alternative or whether it meaningfully addresses the emotional issues inherent in familial conflicts. Through this research, the paper sought to bridge the gap between legislative intent and practical outcomes.

The findings reveal that while the theoretical and legislative foundation for ADR in family law is well-established, its real-world implementation is still held back by inconsistency, lack of infrastructure, and uneven access. On one hand, statistical data supports the claim that mediation has been effective in reducing case backlog while on the other, issues such as absence of a national mediator accreditation system, limited pre-litigation mechanisms, and non-existent post-mediation support tend to weaken its long-term impact.

The paper's objective was to evaluate ADR as more than a legal reform and this objective has been met. It concludes that ADR does hold a lot of potential, but it can only bring in a transformation to the system when it is fully integrated, both structurally and culturally, into India's justice system. Mediation must evolve from being a collateral process to an important component of family law. It should be one that prioritises healing over hierarchy and resolution over retribution. In doing so, it may truly become a tool of reconciliation, rather than just remedy.