

GENDER PERCPECTIVES IN ADR: WOMEN'S ACCESS TO JUSTICE- Adan Fatima¹**ABSTRACT**

In the heart of India, the joint family system has long stood as a symbol of unity and tradition. Yet, behind the veil of this enduring structure lies a reality shaped by patriarchy. These families, while deeply bonded, often operate under an unspoken rule: the men lead, while the women follow. The roles are as clear as day—men as decision-makers and women as caretakers. This hierarchy, entrenched in age-old beliefs, deems men more powerful, privileged, and superior in every facet of life.

The whispers of change, however, are growing louder. Society has begun to recognize the voices of women who demand equality and dignity. Legal measures have been introduced to combat gender discrimination, dowry practices, violence, and other remnants of a patriarchal mindset. Yet, despite these advances, the shadow of bias lingers, rooted in the collective psyche of a society slow to unlearn centuries of inequality.

In many societal and judicial settings, a man's voice often carries greater weight than a woman's, shaped by long-standing norms that equate financial power and societal standing with authority. Men, as primary providers, are frequently seen as the backbone of the family, their opinions automatically commanding respect and attention.

This imbalance is particularly evident in legal disputes. With access to better financial resources, men can hire skilled legal counsel, build stronger cases, and navigate the system more effectively. Meanwhile, women, constrained by societal expectations and often limited resources, struggle to find equal footing. Even beyond the courtroom, the perception that men are decision-makers and protectors amplify their voices in family and community matters. A man's words are often perceived as rational and authoritative, while a woman's might be dismissed as emotional or secondary. In this dynamic, money and power become not just tools but barriers, silencing women and ensuring that men's voices echo louder and farther.

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Amidst this backdrop of transformation, there exists another story—one of conflict and resolution. The idea of resolving disputes without the long, winding path of courtroom battles is not a modern invention in India; it is a legacy. Since ancient times, Indian communities have practiced methods of resolving disagreements outside formal legal systems. This tradition, now formalized as Alternative Dispute Resolution (ADR), offers a beacon of hope for swift and harmonious justice.

ADR stands as a bridge between the past and the present, blending the wisdom of tradition with the urgency of modernity. As India grapples with the dual challenges of uprooting gender injustice and ensuring swift justice, these stories of change weave together—a tapestry of struggle, resilience, and hope for a fairer future.

KEYWORDS

Gender equality, marital affairs, alternative dispute resolution.

THE INTRODUCTION

1. INTRODUCTION

In a world where traditions often shape the fabric of relationships, marriage is still held as sacred—a lifelong bond where men are seen as the primary decision-makers. From a young age, many of us are taught to believe in the fairy-tale ideal of "forever" and the vow of "until death do us part." This romanticized vision, while beautiful in sentiment, often creates a world where divorce is painted as the villain—a disruptor of the perfect story. But life is rarely a fairy tale. Marriage, at its core, is a union of two individuals, not a forfeiture of their personal rights. When two people choose to tie the knot, it doesn't mean they surrender their right to step away if the relationship becomes untenable.

Imagine a woman trapped in a marriage where her voice is stifled, her dreams dimmed by the shadow of tradition. Society whispers that she must endure, that leaving would tarnish the sacredness of the bond. But does the sacredness of marriage outweigh the sanctity of her own peace and happiness?

Divorce, often misunderstood, is not the enemy. It is not a failure but a recognition of human dignity—a choice to prioritize well-being over societal expectations. It is a reminder that love, and commitment are meaningful only when freely chosen and mutually nurturing. Every individual deserves the right to redefine their story, even if it means choosing to walk away from a chapter that no longer serves them.

Disagreements and conflicts are nevertheless a regrettable part of our society, and they frequently disproportionately affect women through violence, discrimination, and inequity based on gender. A greater emphasis on creative solutions has emerged because of the realization of how urgent it is to address these issues. Online dispute resolution (ODR) and alternative dispute resolution (ADR) have become revolutionary tools in addressing these kinds of problems in recent years.

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Women have access to inclusive, effective, and easily accessible dispute resolution platforms through ADR and ODR. Instead of focusing on combative conflict, these approaches promote cooperation, candid communication, and innovative problem-solving. Both ADR and ODR provide a constructive setting where parties can strive toward just and advantageous resolutions by encouraging dialogue and understanding between them. These procedures not only settle conflicts but also give women more power by guaranteeing their rights and voices is heard.

2. ADR: A Harmonious Solution

2.1 Bound by Matrimony – Women’s Struggle for Justice in Divorce and ADR

The weight of societal expectations often compels individuals to endure unhappy marriages. The pressure to conform to norms and maintain appearances can lead to years of silent suffering. When the decision to divorce is finally made, a daunting legal battle often ensues. The protracted court proceedings, filled with paperwork, hearings, and emotional turmoil, can be overwhelming. As individuals navigate this challenging period, they long for a more efficient and compassionate resolution, one that prioritizes their well-being and allows them to move forward with their lives. It is a well-known fact that the only thing that is constant in this world is change itself. Change is the universal and most basic nature of every society. A social change is a continuous process that involves the change in the structure and functioning of a particular social system and its traditional customs.²

Alternative Dispute Resolution (ADR) offers a promising solution to this problem. By providing a range of options, such as mediation, arbitration, and conciliation, ADR can help couples resolve their differences in a more amicable and efficient manner.³ Through these processes, couples can work together with a neutral third party to reach mutually agreeable solutions, minimizing the stress and conflict associated with traditional litigation. By embracing ADR, individuals can regain control over their lives and focus on healing. They can avoid the emotional toll of public court battles and the financial burden of lengthy legal proceedings.⁴ ADR empowers couples to make informed decisions about their future, fostering a sense of autonomy and closure.

Matrimonial disputes, often marked by lengthy and contentious legal battles, have become a pressing societal issue. Traditional litigation processes can be time-consuming, costly, and emotionally draining, frequently exacerbating the conflict between the parties involved.⁵ Alternative Dispute Resolution (ADR) offers a more efficient and amicable

²Hyde v. Hyde (1866) L I P & D 130.

³Empowering Women with ADR/ODR Mechanisms in Solving Disputes, India, available at, <https://presolv360.com/resources/empowering-women-adr-odr-mechanisms-solving-disputes/> (last visited on November 8, 2024)

⁴ Constance Callahan Ard and Ben N. Ard, *Handbook of Marriage Counseling* (Science and Behavior Books, Palo Alto, 1976).

⁵Charles Craver George Washington University Law School, “Do Alternative Dispute Resolution Procedures Disadvantage Do Alternative Dispute Resolution Procedures Disadvantage Women and Minorities?” (2017)

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approach to resolving such disputes. By employing methods like mediation, conciliation, and counseling, ADR can facilitate mutually agreeable solutions, preserve relationships and minimize the negative consequences associated with traditional litigation. Recognizing the importance of family as the fundamental unit of society, it is imperative to promote ADR as a preferred method for resolving matrimonial disputes. By encouraging couples to adopt ADR, we can foster healthier relationships, reduce societal strain, and strengthen the institution of marriage.⁶

While the inclusion of women in peace processes and community mediation is widely recognized as a critical factor for achieving gender equality and sustainable peace, cultural resistance, particularly in non-Western contexts, presents a significant obstacle. Some argue that women's participation could undermine traditional values and practices, while others fear that it could provoke backlash from conservative elements within society.⁷ Additionally, concerns have been raised about the potential disruption of traditional family structures and the risk of tokenism, where women are included merely for symbolic purposes.

2.2 Restrictive Gender Roles and Female Agency Within Family Structures

The family serves as a fundamental social unit, offering essential support, love, and security. Within a family, mutual respect is paramount, with each member entitled to their rights and privileges. Sharing and caring are foundational principles that underpin family interactions. Families play a crucial role in human capital development and significantly influence individual, household, and community behaviors.⁸ Historically, India has celebrated the extended family structure, characterized by unity and stability. However, the rapid pace of urbanization and industrialization has led to a gradual shift towards nuclear families. This transformation reflects evolving social and cultural norms, influenced by modernization and globalization. Consequently, joint families are becoming less prevalent, with nuclear families now constituting the majority. According to the 2011 census, only one-fifth of Indian families maintain the traditional joint family structure.

Joint families, once a pillar of Indian society, have traditionally offered security, unity, and shared responsibility. However, the rigid expectations and hierarchical nature of these families can often clash with the aspirations of modern individuals, particularly women.⁹ The lack of privacy increased interpersonal conflicts, and potential for abuse within joint families can strain relationships and contribute to marital discord. As a result, the nuclear family model has gained popularity, offering greater autonomy, privacy, and individual choice.¹⁰

⁶Paul R. Amato and Juliana M. Sobolewski (eds.), *The Effects of Divorce and Marital Discord on Adult Children's Psychological Well-Being*. (American Sociological Review, 2001).

⁷Karen K. Klein, "A Judicial Mediator's Perspective: The Impact of Gender on a Judicial Mediator's Perspective: The Impact of Gender on Dispute Resolution: Mediation as a Different Voice Dispute Resolution: Mediation as a Different Voice" 81 *North Dakota Law Review* (2005).

⁸Patricia Uberoi, *Family, Kinship and Marriage in India* (Oxford University Press, 1993).

⁹Roma Mukherjee, *Legal Status and Remedies for Women in India* (Deep & Deep Publications, 1997).

¹⁰M. Desai, *Enhancing the Role of the Family as an Agency for Social and Economic Development* (Tiss, 1994).

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Traditional family structures often perpetuate a set of rigid gender roles that can significantly constrain female agency and self-expression. These roles are frequently codified within cultural practices and codified expectations. Common examples include societal pressures for women to marry by a certain age and a potential discouragement of pursuing professional careers outside the domestic sphere. Further complicating this dynamic are deeply entrenched gender stereotypes that influence the perception of individual character traits. Men typically enjoy greater flexibility in their behavior, while women are subject to more stringent standards of conduct. This creates a double standard where women face harsher social judgment for actions that might be deemed acceptable for men. Furthermore, the expectation of women to maintain silence and submissiveness, particularly in the presence of elder males, further restricts their agency. Women may be actively discouraged from asserting their opinions, making independent decisions, or pursuing personal freedoms. This enforced double standard is not only disheartening, but also demonstrably suffocating. It limits women's ability to express themselves authentically and ultimately restricts their overall freedom within the family structure.

2.2.1 The Weight of Tradition: Gender and Patriarchy

Traditionally, women were relegated to the domestic sphere, shouldering the burden of childcare and housework. Men, on the other hand, were expected to be the breadwinners. This rigid division of labor, deeply rooted in patriarchal norms, continues to shape the lives of many Indian women. Often, women are transferred from their parental homes to their marital homes, symbolically adopting their husband's surname.¹¹ This transition is accompanied by the expectation that they prioritize domestic duties over their own educational and professional aspirations. The disproportionate burden of unpaid domestic labor further exacerbates gender inequality, perpetuating the patriarchal structure of Indian society.

Marriage has long been regarded as a cornerstone of life—a rite of passage so deeply ingrained that it is often taken for granted. Yet, in recent years, there has been a growing recognition that choosing to remain unmarried is not only valid but also empowering.¹² Despite this shift, singlehood remains cloaked in stigma, frequently met with questioning eyes, unwarranted scrutiny, and even social disapproval. The historical burdens associated with marriage—such as the dowry system, entrenched gender inequality, and the suppression of women's identities—cast a shadow over its relevance in modern society. In a contemporary feminist context, one must ask: does the institution of marriage still serve its purpose? Or are we merely clinging to a system that perpetuates age-old inequities? Rather than attempting to mend a flawed framework, perhaps it is time to reconsider and redefine the very concept of marriage itself. Here's a deeper cause for concern – a recent discovery woven into the narrative. World Bank data reveals a troubling pattern. For Indian women, marriage often comes at the cost of sacrificing their

¹¹R. Riram, "Family Studies in India: Appraisal and New Directions.", in T. S. Saraswati & B. Kaur (ed.), *Human Development and Family Studies in India: An Agenda for Research and Policy* (SAGE Publisher, 1993).

¹² K Davis, *Human Society* (Macmillan Ltd., New York, 1960).

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professional aspirations.¹³After taking the marital vows, their employment rates plummet by a staggering one-third. This phenomenon, aptly termed the "marriage penalty," exposes the deep-rooted gender inequality that plagues our society. The World Bank report paints a sobering picture: Indian women's careers often take a hit after marriage, even if they don't have children. Their employment rates drop by a significant 12 percentage points. Meanwhile, men seem to benefit from marriage, with their employment rates rising by 13 percentage points. This highlights the deep-rooted gender inequality in our society, where women are still expected to prioritize family over career.¹⁴

Marriage, while often romanticized as a union of love and companionship, has historically been a tool to reinforce patriarchal structures and subjugate women. It has been used to control women's bodies, limit their freedoms, and perpetuate harmful gender norms. Even today, the institution of marriage can be a double-edged sword for women.

One of the most insidious aspects of marriage is its potential to normalize sexual violence. In many societies, including India, marital rape remains a largely unrecognized crime.¹⁵The notion that a husband is entitled to his wife's body, regardless of her consent, is a deeply harmful one. This lack of legal protection leaves countless women vulnerable to sexual abuse within the confines of their own homes. Furthermore, marriage often restricts women's reproductive autonomy. Access to contraception and abortion services can be challenging, particularly for women who lack the support of their husbands or other male family members. This lack of agency over their own bodies reinforces gender inequality and can have devastating consequences for women's health and well-being. While societal attitudes towards marriage have evolved, the underlying patriarchal structures that underpin it remain largely intact. Women continue to be expected to prioritize domestic responsibilities over their own careers and aspirations. This gendered division of labor perpetuates inequality and limits women's opportunities for economic independence and personal fulfillment.

2.2.2 Shattering the Stigma: Empowerment of Choosing to End an Unhealthy Marriage

In many families, the pain and suffering caused by toxic relationships remain hidden behind closed doors. Women in such situations often grapple with a critical decision: **How can I address this violence and feel safe?** For some, the idea of seeking justice outside the intimidating walls of a courtroom feels more accessible. **Alternative dispute resolution (ADR)**, such as **mediation**, has been proposed as a private and less confrontational way to address family conflicts. However, the question arises: can it truly offer justice in cases involving violence?

¹³Conflict prevention and resolution, available at: <https://www.unwomen.org/en/what-we-do/peace-and-security/conflict-prevention-and-resolution> (last visited on November 9, 2024).

¹⁴Facts and figures: Women, peace, and security available at: <https://www.unwomen.org/en/what-we-do/peace-and-security/facts-and-figures> (last visited on November 9, 2024).

¹⁵Ruchana Kushal, *Protection of Women from Domestic Violence Act 2005—An Appraisal*. Mainstream, (2010).

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BOX 1.1 ALTERNATIVE DISPUTE RESOLUTION

“ADR’S offer a solution to the problem of access to justice faced by citizens in many countries due to three factors: the volume of disputes brought before the courts is increasing, the proceedings are becoming lengthier, and cost incurred by such proceedings are increasing.”

2.2.3 OVERBURDENED COURTS: THE RISE OF ALTERNATIVE DISPUTE RESOLUTION

A recent landmark publication by the World Bank offers a powerful understanding of two key concepts. Voice is defined as a woman’s ability to speak up, be heard, and participate meaningfully in conversations, decisions, and public life. Agency refers to her capacity to make choices about her own life and act on them to achieve her goals, without facing violence, fear, or punishment. These are not just academic terms but reflect a deeper need for dignity, freedom, and respect in everyday experiences.

India’s judicial system, though rich in tradition and deeply rooted in history, is struggling under an overwhelming number of pending cases. Even with the establishment of fast-track courts, the backlog continues to grow. In this context, Alternative Dispute Resolution (ADR) stands out as a practical and people-friendly solution that offers quicker and more collaborative ways of settling disputes moves away from the rigid procedures of traditional litigation and creates a space where people can talk openly, find common ground, and work toward solutions together. It helps save time and money and often protects relationships that would otherwise suffer through prolonged legal battles.

With different methods like mediation, arbitration, and negotiation, ADR offers flexible tools to address a wide range of disputes. These processes can be adapted to the specific situation, ensuring outcomes that are fair and focused on the needs of those involved. As the Indian legal system continues to face increasing pressure, ADR provides a way to ease the burden on the courts while making justice more accessible. It also strengthens the ability of individuals, especially women, to take part in decision-making without fear. By encouraging dialogue, trust, and mutual respect, ADR plays an important role in building a more understanding and responsive legal culture.

Advantages of Alternative Dispute Resolution (ADR):

- **Efficiency:** ADR processes are typically faster than traditional litigation, expediting the resolution of disputes.

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- **Cost-Effectiveness:** ADR can significantly reduce legal costs, including court fees, attorney fees, and expert witness fees.
- **Flexibility:** ADR offers a range of methods, allowing parties to choose the most suitable approach for their specific circumstances.
- **Party Autonomy:** ADR empowers parties to have greater control over the dispute resolution process, enabling them to reach mutually agreeable solutions.
- **Preservation of Relationships:** ADR can help maintain positive relationships between parties, particularly in cases involving ongoing business relationships or family disputes.
- **Reduced Court Congestion:** By diverting cases away from traditional courts, ADR can alleviate the burden on the judicial system.
- **Expert Involvement:** ADR often involves experts in the specific subject matter of the dispute, ensuring that solutions are informed and practical.

Alternative Dispute Resolution (ADR) has emerged as a powerful tool to address the growing backlog of cases in India's judicial system and provide speedy justice.¹⁶ By providing a more efficient and accessible means of dispute resolution, ADR aims to expedite justice and reduce the burden on courts. This approach offers a range of benefits, including faster resolution times, lower costs, and a greater degree of party autonomy empowers individuals and businesses to resolve disputes outside of traditional courtrooms, often with the assistance of neutral third-party mediators or arbitrators. By fostering open communication and collaboration, ADR can lead to more amicable and sustainable solutions.¹⁷ Furthermore, it can help preserve relationships and prevent the escalation of conflicts. As ADR continues to gain prominence, it is poised to play a vital role in shaping the future of the Indian legal system. Matrimonial disputes, often marked by emotional intensity and complex legal issues, are increasingly being resolved through Alternative Dispute Resolution (ADR) mechanisms. ADR, which encompasses a range of processes like counseling, mediation, and conciliation, offers a more amicable and efficient approach compared to traditional litigation.¹⁸

2.2.4 Beyond the Courtroom: Exploring ADR in Matrimonial Disputes

¹⁶*Hussainara Khatoon v. State of Bihar*, AIR1980 SC 1819

¹⁷LIBERATING INDIA FROM THE SHADOW OF DELAYED JUSTICE: IMPERATIVE THEMES FOR CONSIDERATION, available at: <https://www.rostrumlegal.com/liberating-india-from-the-shadow-of-delayed-justice-imperative-themes-for-consideration/> (last visited on 11 November 2024).

¹⁸Online Dispute Resolution, available at, <https://justact.co.in> (last visited on 11 November 20, 2024).

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The evolving social landscape of India, marked by increased literacy and economic independence, has led to a rise in matrimonial disputes. As societal norms shift and divorce becomes more socially acceptable, the traditional legal system often struggles to adequately address the complex emotional and psychological dimensions of these cases. The adversarial nature of litigation can exacerbate tensions and lead to protracted legal battles, often resulting in court-imposed solutions that may not align with the parties' best interests. Numerous factors, including familial pressures and differing expectations, can contribute to marital discord. Early marriages, characterized by immaturity and a lack of understanding, are particularly susceptible to conflict. Conversely, long-term relationships often foster greater tolerance and resilience. Additionally, the demands of dual-career couples can strain marital harmony, as competing priorities and limited time together can exacerbate tensions.

Effective communication is crucial in addressing and resolving marital disputes. Mediation, facilitated by a neutral third party, provides a structured platform for open dialogue and negotiation.¹⁹ This process is particularly well-suited for family law matters, as it allows parties to maintain a constructive relationship, especially when children are involved. Mediation offers several advantages, including reduced costs, expedited resolution, increased confidentiality, and reduced emotional stress. By promoting collaborative problem-solving, mediation can lead to more amicable and sustainable outcomes.

Conflicts are an inherent part of human interaction. While the legal system is designed to resolve disputes, it often struggles with the increasing volume of matrimonial cases, particularly those involving complex issues such as child custody, property division, and maintenance. The adversarial nature of traditional litigation can exacerbate tensions and lead to prolonged legal battles, often causing emotional distress for all parties involved. Alternative Dispute Resolution (ADR) offers a more amicable and efficient approach to resolving matrimonial disputes. By providing a collaborative and empathetic environment, ADR empowers couples to reach mutually agreeable solutions. Mediation, a prominent ADR mechanism, facilitates open communication and encourages parties to express their concerns and needs without fear of judgment. This collaborative approach can lead to more constructive outcomes and minimize the emotional toll on all parties involved.²⁰

For example, in a child custody dispute, mediation can help parents prioritize their child's best interests by fostering a cooperative discussion on parenting plans. This approach can reduce the adversarial nature of litigation and promote a more harmonious resolution. By providing a more efficient, cost-effective, and less stressful alternative, ADR can help alleviate the burden on the legal system and promote healthier outcomes for families.

¹⁹ Anand A.S., *Justice for Women- Concerns and Expressions*, 2nd ed. Universal Law Publishing Co. Pvt. Ltd., Delhi, 2003.

²⁰ concept and Process of Mediation, Mediation and Conciliation Project Committee, Supreme Court of India, available at, http://mediationbhc.gov.in/PDF/concept_and_process.pdf (last visited on 11 November 20, 2024).

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3. Resolving Disputes, Restoring Justice: Women and the ADR-Litigation Divide

3.1 A Paradigm Shift: Reimagining Legal Practice for a More Compassionate Future

As rightly said by William E. Gladstone that is justice is delayed it is denied. This means that if the principle of timely justice isn't adhered to, it's equal to whole negation of justice. Traditional litigation, often characterized by its adversarial nature, can be a grueling experience for clients. The focus on legal technicalities and strategic maneuvering can overshadow the underlying human element of legal disputes. Clients often feel marginalized, their concerns and emotions overlooked in the pursuit of victory. A growing number of legal professionals are advocating for a more compassionate and client-centered approach to legal practice. This paradigm shift emphasizes the importance of building strong client relationships, actively listening to their needs, and exploring alternative dispute resolution techniques. By prioritizing empathy and understanding, lawyers can help clients navigate complex legal issues with greater dignity and respect. This transformative approach not only improves client satisfaction but also fosters a more just and equitable legal system. It challenges the traditional adversarial model and encourages a more collaborative and restorative approach to resolving disputes.²¹

Amid a heated dispute, what does a person truly want? Often, it's something as simple and profound as the desire to be heard. Traditional courtrooms, burdened with endless formalities and procedural delays, rarely offer that solace. But imagine this instead: a calm, neutral space where the air feels lighter, and the walls carry no judgment. In this room, two individuals sit across from each other, their voices no longer competing to rise above the din of a crowded courtroom. Here, they speak—not with fear or hesitation—but with clarity and purpose, knowing their words will be met with respect and understanding.

Alternative Dispute Resolution (ADR) offers a more accessible and confidential platform for individuals to express their concerns and seek resolution. By facilitating open communication between the parties involved, ADR ensures that their voices are heard, and their needs are addressed. This process bypasses the complexities and delays often associated with traditional litigation, providing a more efficient and personalized approach to dispute resolution. ADR mechanisms, such as mediation and arbitration, create a safe and supportive environment where individuals can share their experiences, feelings, and perspectives without fear of judgment or retaliation. This open dialogue empowers individuals to actively participate in the resolution process, leading to more equitable and satisfying outcomes.

3.2. INDIAN JUDICIARY AND ACCESS TO JUSTICE

²¹Kathy Mack, "Alternative Dispute Resolution and Access to Justice for Women" *The Adelaide Law Review* (1995).

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A dispute arises from differences or disagreements between people, which, if left unresolved, can escalate into conflicts. These unresolved issues can intensify hostility and lead to broader confrontations. Webster's Dictionary defines conflict as the clash or competition between opposing forces or qualities, highlighting that a society without conflicting interests is hard to imagine. Litigation refers to a legal dispute presented before a court, categorized into civil or criminal cases. Both types interrupt an individual's legally enforceable rights. The Indian legal system operates under a unified judicial structure, with District Courts at the base, High Courts at the state level, and the Supreme Court at the top. The Supreme Court's rulings are binding on all lower courts, and its power of judicial review allows it to invalidate laws and executive actions. Aggrieved parties can seek redress through mechanisms like Public Interest Litigation (PIL). The criminal justice system is designed to prevent crime and bring offenders to justice.

'Access to justice' originated in common law and was formalized in the Magna Carta. Simply put, it means people should have the ability to access courts to assert their rights, considered a fundamental human right. This includes the right to a fair hearing and to be heard during legal proceedings.²² However, for women in India, access to justice remains a flawed concept. Wealthy individuals can afford senior counsels and expensive legal services, a privilege not available to poorer litigants, particularly women.

The Indian government has made efforts to address this issue through various constitutional provisions like Article 14, Article 21, Article 22(1), Article 38, and Article 39A, which promote legal aid. The Legal Services Authorities Act of 1987 further supports this by providing free legal aid and creating the National Legal Services Authority (NALSA) to oversee the legal aid programs. Additional legal provisions like Section 304 of the CrPC and Order 33 of the CPC also address legal aid. However, barriers such as lack of awareness, financial constraints, high court fees, unaffordable legal counsel, and fear of the legal system discourage many from accessing justice. These factors render the right to justice meaningless for countless litigants. Therefore, providing suitable legal representation to those who cannot afford it is crucial for ensuring equal access to justice.²³ In an ideal world, women would achieve true equality when they are empowered to assert their rights in a court of law. For this to happen, access to legal aid services is essential. Under Article 39A of the Constitution of India, the state is obligated to ensure that the legal system operates on the principle of equal opportunity for all, providing free legal aid through appropriate laws, schemes, or other means. The goal is to ensure that no citizen, especially women, is denied the chance to secure justice due to financial or other disadvantages. Section 12 of the Legal Services Authorities Act (LSAA)²⁴ specifically recognizes women as a group entitled to free legal aid. True justice for women means they are empowered to seek redress without discrimination, ensuring that perpetrators are held accountable for their actions. Access to justice

²²R.K.Tondon, *Women in Modern India* (Indian Publishers Distributors, 1998).

²³*Anita Kushwaha v. Pushap Sudan* (2016) 8 SCC 509.

²⁴Legal Services Authorities Act, 1987, s.12.

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guarantees that women can approach the courts and seek justice as per their legal and constitutional rights, so they are not left vulnerable or without recourse.

However, the reality for many women is far from ideal. The absence of proper legal advice and guidance is one of the biggest challenges women in distress face. Often, women in need of legal assistance must navigate through a maze of institutions, struggling to identify sources of aid or find a reliable lawyer. It's not just illiterate women; even

Box 2: Section 89 of the Civil Procedure Code, 1908

89. Settlement of Disputes Outside the Court

(1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the Court may reformulate the terms of a possible settlement and refer the same for—

- (a) Arbitration;
- (b) Conciliation;
- (c) Judicial settlement including settlement through *Lok Adalat*; or
- (d) Mediation.

(2) Where a dispute had been referred—

- (a) for arbitration or conciliation, the provisions of the Arbitration and

Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act.

(b) to *Lok Adalat*, the Court shall refer the same to the *Lok Adalat* in accordance with the provisions of subsection (1) of Section 20 of the Legal Services Authority Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the *Lok Adalat*.

(c) for Judicial Settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a *Lok Adalat* and all the provisions of the Legal Services Authority Act, 1987 shall apply as if the dispute were referred to a *Lok Adalat* under the provisions of that Act.

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

This Section was inserted in CPC in 1999 and brought into force with effect from 01 July 2002. The 'Notes on Clauses' of the CPC (Amendment) Bill 1999 stated:

"Clause 7 provides for the settlement of disputes outside the Court. The provisions of Clause 7 are based on the recommendations made by the Law Commission of India and the Malimath Committee. It was suggested by the Law Commission of India that the Court may require the attendance of any party to the suit or proceedings to appear in person to arrive at an amicable settlement of the dispute between the parties and make an attempt to settle the dispute between the parties amicably. The Malimath Committee recommended making it obligatory for the Court to refer the dispute, after issues are framed, for settlement either by way of arbitration, conciliation, mediation, judicial settlement or through *Lok Adalat*. It is only when the parties fail to get their disputes settled through any of the alternate dispute resolution methods that the suit could proceed further. Given the above, clause 7 seeks to insert a new Section 89 in the Code to provide for alternate dispute resolution'.

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3.2.1 JUDICIARY STANCE

*Alternative Dispute Resolution (ADR) has become an integral part of the Indian legal system, offering a range of benefits for both litigants and the courts. The Civil Procedure Code (CPC) was amended in 1999 to mandate that courts refer cases to ADR mechanisms before proceeding to trial. These ADR mechanisms include arbitration, conciliation, mediation, judicial settlement, and Lok Adalat. While arbitration is a formal, binding process, the other four are non-adjudicatory, focusing on negotiation and compromise. The Supreme Court, in the case of **Afcons Infrastructure Limited v. Cherian Varkey Construction Company**, has identified various types of disputes suitable for ADR, including commercial, construction, insurance, and family matters. By encouraging the use of ADR, the Indian legal system aims to reduce the burden on courts, expedite dispute resolution, and promote amicable settlements. Matrimonial disputes, divorces, and legal separation require conciliation and not confrontation. They need effective handling through the approach of giving and take.*

*The rationale of using ADR in matrimonial disputes was highlighted by the Hon'ble SC in the case of **G.V. Rao v. L.H.V. Prasad & Ors.**²⁵ wherein it observed that*

Marriage is a sacred union that enables a couple to settle down in life and live peacefully. But little matrimonial skirmishes that erupt may assume serious proportions that require pondering and terminating disputes amicably by mutual agreement instead of fighting it out in a Court of law where it takes years and years to conclude and, in that process, the parties lose their "young" days in chasing their "cases" in different Courts.

***Afcons Infrastructure Limited and Another v. Cherian Varkey Construction Company Private Limited and Others**²⁶, resulting in an enormous increase in the referral of suitable cases.*

The judges must do sensitive handling of cases relating to violence against women. Sticking to principles of natural justice, as unbiased practitioner they must avoid gender stereotypes in the sentencing policy. It becomes imperative for them to sensitively deal with these cases. Procedural impediments must be eradicated to ensure that justice is not only done but also appears to be done. In all-around change in attitudes is necessary judges have an additional obligation to secure that woman is equitably and impartially treated during the ADR process by being gender-sensitive to the gender bias for a thriving ADR programme in India. While making a referral he must minutely scrutinize the facts of the issue at hand. He must evaluate if the presence of power imbalance will have a bearing on the outcome of the matrimonial dispute, if the reference will do more harm to the battered woman and if she will be honestly helped by the process. For this gender justice education must be imparted as a part of the judicial training programmers especially to the newly inducted judges. The judges have a supreme responsibility in the entire process.

²⁵G.V. Rao v. L.H.V. Prasad & Ors (2000) 3 SCC 693.

²⁶Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. P. Ltd. (2010) 8 SCC 24

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*K. Srinivas Rao v. D.A. Deepa*²⁷, the Hon'ble SC observed that:

“In matrimonial disputes usually both the parties are at fault and before the dispute assumes alarming proportions, parties must be made to see reason at the earliest stage, before complaint making the indecent allegation is filled. The cause of the dispute or misunderstanding will be trivial and can be sorted but for that at the earliest stage i.e. when the dispute is taken up by the Family Courts or by the Court of the first instance for hearing, it must be referred to mediation centers. “

In Ruchi Agarwal v. Amit Kumar Agarwal & Ors.,²⁸ a similar view was taken, and FIR was quashed.

Matrimonial disputes arising from a complaint under Section 498-A of the IPC can be quashed by the HC in case the parties settle their dispute. Some offences which bear civil flavour like offence arising out of matrimony, relating to dowry, and when the offender and the victim amicably settle all disputes between them even if the offence is not made compoundable, the HC may quash the criminal proceedings for the ends of justice.

So, ADR serves an instrumental function by enabling an amicable settlement of disputes outside the Courts. They serve an intrinsic function by enabling the parties to settle disputes on their own.

*In Salem Advocate Bar Association, Tamil Nadu v. Union of India*²⁹, the SC upheld the constitutional validity of this reformed section and appointed a committee to frame rules and implementation of mediation procedures in civil Courts. The committee framed the model rules 'Alternative Dispute Resolution and Mediation Rules, 2003' later approved by the SC and direction was issued to every HC for referring to mediation, conciliation and arbitration mandatory.

It was only in 2007 onwards that the process of mediation virtually commenced in various states. Court-annexed mediation centers are now functioning at the various Courts across India. A pilot project on mediation was initiated in Delhi in 2005 with the first permanent mediation center. Today, the court-annexed mediation centers are established in Courts that dispose of many cases referred to it. The court-annexed mediation programme applicable to cases filed or pending in the Courts is vastly famous now.

3.3 THE MEDIATION PROCESS

Mediation is a flexible and confidential process where a neutral third party, the mediator, helps disputing parties communicate effectively and reach a mutually agreeable solution. Unlike traditional litigation, mediation empowers the parties to take control of the process and make their own decisions. The mediator guides the process, facilitating

²⁷*K. Srinivas Rao v. D.A. Deepa* AIR 2013 SC 2176.

²⁸*Ruchi Agarwal v. Amit Kumar Agarwal & Ors*(2005) 3 SCC 299.

²⁹*Salem Advocate Bar Association v. Union of India*, (2003) 1 SCC 49.

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open dialogue and identifying shared interests. This collaborative approach can help to resolve conflicts more efficiently and amicably than adversarial legal proceedings.

Mediation sessions often involve both joint and private meetings. In joint sessions, the mediator brings the parties together to discuss the issues and explore potential solutions. During private sessions, the mediator meets with each party individually to address concerns, gather information, and build trust. This structured approach allows for open communication and helps to identify underlying interests and needs.³⁰

One of the key strengths of mediation is its focus on empowerment. By giving the parties, a voice and the freedom to shape their own solutions, mediation can lead to more creative and sustainable outcomes. The mediator's role is to facilitate the process, not to impose a decision. This collaborative approach can foster a sense of ownership and satisfaction among the parties, even if they ultimately reach a compromise.

3.3.1 Gender Gaps in ADR

While the inclusion of women in peace processes and community mediation efforts is widely recognized as essential for gender equality and sustainable peace, cultural and societal barriers often impede their participation.³¹ These barriers include:

- **Gender Stereotypes and Patriarchal Norms:** *Deep-rooted cultural norms and patriarchal structures often exclude women from public decision-making roles, including peace processes. This marginalization can limit women's ability to contribute their unique perspectives and experiences to conflict resolution.*
- **The Gendered Perception of Rationality:** *Women are often perceived as less rational than men, leading to the dismissal or downplaying of their ideas and opinions. This gender bias can limit women's participation in decision-making processes and perpetuate harmful stereotypes.*
- **Traditional Gender Roles and Women's Empowerment:** *Deeply ingrained cultural norms continue to confine women to domestic roles, restricting their opportunities for personal and professional growth. These expectations often prioritize family and household responsibilities over individual aspirations, hindering women's ability to pursue their dreams and contribute to society.*
- **Double Standards and Gender Inequality:** *Women are subjected to stricter social scrutiny than men. While men's career ambitions are often celebrated, women who prioritize their careers may face criticism, judgment, and even social ostracism. This double standard reinforces traditional gender roles and limits women's choices and opportunities.*

³⁰The need for enhanced gender equality in ADR or how to get more women around a mediation table, available at: <https://mediationblog.kluwerarbitration.com/2023/09/14/the-need-for-enhanced-gender-equality-in-adr-or-how-to-get-more-women-around-a-mediator-table/> (last visited on 12 November 2024).

³¹Ibid.

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- **Lack of Trained Women Mediators:** *A shortage of qualified women mediators can hinder their participation in peace processes. Investing in training and capacity-building programs for women can help to address this issue.*
- **Mediators' Capacity to Facilitate Women's Participation:** *Mediators play a crucial role in ensuring that women's voices are heard, and their concerns are addressed. However, a lack of awareness and sensitivity to gender issues can limit their ability to create inclusive and equitable spaces.*

To overcome these challenges, it is essential to adopt a nuanced and culturally sensitive approach. While promoting women's participation in peace processes, it is important to respect and understand the cultural context. By engaging in open and honest dialogue with community members, it is possible to identify and address underlying concerns and build consensus.

4. BREAKING THE CYCLE OF ABUSE: A THREAT TO WOMEN'S SAFETY AND WELL-BEING

Domestic abuse, also known as "domestic violence"³² or "intimate partner violence,"³³ refers to a pattern of abusive behaviors used by one person to gain or maintain control over another in a relationship. Abuse can manifest in various forms, including physical, sexual, emotional, economic, or psychological actions, as well as threats of harm. These behaviors may include frightening, intimidating, manipulating, humiliating, or injuring the victim. Domestic violence can occur in any relationship, whether in marriages, cohabitations, dating, or even among family members. According to UN Women, at least 35% of women worldwide have experienced some form of physical or sexual violence at home during their lifetime. Moreover, incidents of domestic violence surged during the COVID-19 pandemic. As a result, by September 2020, 40 countries had incorporated violence prevention and response measures into their COVID-19 plans, and 121 countries had strengthened services for domestic violence survivors during the crisis. In total, 155 countries have passed laws specifically addressing domestic violence. Despite these developments, a significant issue persists fewer than 40% of women who experience violence seek any form of assistance. Domestic violence, often occurring in the private sphere of the home, remains a "hidden" type of violence. As a result, many women refrain from turning to formal institutions like the police or healthcare services. Instead, they are more likely to seek help from family members and friends, if they seek help at all.

³²Domestic Violence: To Mediate or Not to Mediate? Available at: <https://jgu.edu.in/mappingADR/domestic-violence-to-mediate-or-not-to-mediate/> (last visited 12 November 20, 2024)

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BOX 3. Domestic Violence and Intimate Partner Violence: What's the Difference?

“Use of the term ‘intimate partner violence’ moved us away from the old view that abusive violence only occurs in marital relationships where the husband was the abuser, and the wife was the victim. The concept of intimate partner violence acknowledges that abuse can exist in any personal, intimate relationship, regardless of sexual orientation, marital status, or gender. ... Regardless of whether we call it ‘domestic violence’ or ‘intimate partner violence,’ the term refers to a cycle of violence demonstrated through control and abuse that exists in a personal and intimate relationship. The cycle of violence that exists in a relationship can be challenging to break without intervention and external support systems for the victim.”

In the field of domestic violence services, terms such as “domestic violence” and “intimate partner violence” are often used interchangeably. While both describe forms of relationship violence, they differ in scope and specificity. ³⁴

Domestic violence encompasses violence occurring between individuals in a domestic setting. This includes not only spouses or partners (of any gender) but also family members such as siblings, parents, aunts, uncles, or cousins. Many Indian women, even in the face of domestic violence, prioritize saving their marriages due to societal pressures and the fear of social stigma associated with divorce.³⁵ Traditional norms emphasize the sanctity of marriage, making it difficult for women to seek legal remedies, even when their rights are violated. Financial insecurity and a lack of job opportunities further compound the challenges faced by women who experience domestic violence. The fear of economic hardship can deter them from leaving abusive relationships, as they may lack the resources to support themselves and their children independently.³⁶

Intimate partner violence³⁷ refers specifically to violence perpetrated by a partner within a romantic or dating relationship. This term highlights abuse in romantic partnerships and is the primary focus of organizations like Women Against Abuse. Although “intimate partner violence” is a more recent and precise term, many still associate “domestic violence” predominantly with abuse involving intimate or dating partners. As this is a nuanced issue, both terms are used interchangeably to ensure clarity and inclusivity until a universally recognized and adopted terminology is established.

4.2 The unspoken bonds: Intimate partner violence

In a small corner of the world, a young woman sits quietly, her heart heavy with unspoken pain. Her relationship, once a sanctuary of love, has turned into a prison of fear. The bruises on her soul are deeper than any visible scars,

³⁴Andre R. Imbrogno, ‘Using ADR to Address Issues of Public Concern: Can ADR Become an Instrument for Social Oppression?’ [1999] 14(3) OSJDR 855.

³⁵ADR AND DOMESTIC VIOLENCE, available at: <https://viamediationcentre.org/readnews/NDI5/ADR-and-Domestic-Violence> (last visited on 12 November, 2024).

³⁶Indira Jaising, *Law of Domestic Violence* (Universal Law Publishing Co, 1st edn., 2007).

³⁷Whose Justice, Whose Alternative? Locating Women’s Voice and Agency in Alternative Dispute Resolution Responses to Intimate Partner Violence available at: <https://www.aidsdatahub.org/sites/default/files/resource/justice-alternative-locating-women-voice-agency.pdf> (last visited on 12 November 2024).

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yet she says nothing. Not because she lacks the courage, but because society has already passed its judgment. The abuse she suffers isn't within the confines of a marriage—it's within an intimate relationship, one that many deem unsanctioned and shameful. The whispers of disapproval echo louder than her cries for help. For her, the world outside feels colder than the torment she endures within.

Where can she turn when her reality doesn't fit the narrative of what society deems "acceptable"? The stigma attached to relationships outside marriage silences her voice. It tells her that her pain is less valid, her suffering less important, because it exists beyond the bounds of tradition. She deserves to be heard, to be seen, and to be free of this anguish.³⁸ Yet, society's judgment shackles her, leaving her isolated and invisible. This silence is not hers alone; it is a silence we've imposed. It's a reflection of our collective failure—a failure to embrace progress, to support those in need, and to extend compassion beyond outdated norms.

Her story is a mirror, reflecting not just her struggle, but ours as a society. It demands that we listen, not with judgment, but with humanity. For when we fail her, we fail ourselves.

4.3ADR: A Flexible and Accessible Solution

In many households, the fear and pain of domestic violence remain hidden behind closed doors. Women experiencing abuse often grapple with a deeply personal question: How can I address this violence and feel safe? Seeking justice through traditional courtrooms can feel intimidating, leading some women to turn to Alternative Dispute Resolution (ADR) mechanisms, such as mediation. While ADR offers a private and less confrontational method for resolving family conflicts, its application to cases of domestic violence presents unique challenges.

Mediation and Domestic Violence: A Complex Intersection

Mediation, with its emphasis on communication and tailored solutions, has become a widely adopted tool for family dispute resolution globally. Its therapeutic approach contrasts with the adversarial nature of courts, relieving overburdened judicial systems and reducing costs. However, applying mediation to domestic violence cases raises significant concerns.³⁹ Treating abuse as just another family conflict risks reinforcing harmful perceptions that domestic violence is a private issue rather than a societal problem. While the flexibility and personalized outcomes of mediation may appeal to survivors, its private nature can limit public scrutiny and slow the development of stronger legal protections for women.

³⁸ Giridhar, N. The global spread of domestic violence legislation: Causes and effects. (International relations honors thesis, New York University). available at: http://politics.as.nyu.edu/docs/IO/4600/Giridhar_Nisha.pdf (last visited on 12 November 2024).

³⁹Whose Justice, Whose Alternative? Locating Women's Voice and Agency in Alternative Dispute Resolution Responses to Intimate Partner Violence available at: <https://www.aidsdatahub.org/sites/default/files/resource/justice-alternative-locating-women-voice-agency.pdf> (last visited on 12 November 2024).

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Challenges of Mediation in Domestic Violence Cases

Mediation in cases of domestic violence is fraught with challenges, primarily due to the inherent power imbalances between the parties. Effective mediation requires both participants to engage willingly, honestly, and with the capacity to compromise. However, in relationships marked by violence, these conditions are rarely met. Women often face economic dependency, societal pressures, and fear of retaliation, which can prevent them from advocating for their needs or making autonomous decisions. Moreover, the abusive dynamics of control and coercion inherent in domestic violence further diminish the victim's ability to engage meaningfully in the process.

Another significant issue is the reduced public oversight that comes with mediation. Unlike court proceedings, which are open to public scrutiny, mediation is private. While this privacy can provide a safe space for survivors, it also limits broader societal accountability and awareness of domestic violence as a systemic issue. This lack of visibility can hinder the development of legal protections and perpetuate the perception of abuse as a private matter rather than a societal concern.

ANALYSIS AND INTERPRETATION OF STUDY

The analysis of the present study is divided into two parts.

- The first part comprises analysis and interpretation of Personal Information Forms filled by the participants.

5.1 Sample Size and Tools

The sample for the study was limited to 109 participants studying or permanently residing in Delhi majority of them are active legal practitioners and former/ current parties to mediation. The tool used for data collection was an online form with close ended and open-ended questions.

5.2 Ethical Considerations

The principle of informed consent was duly followed, and the participants were made aware of the purpose of the research. The names, email address, phone numbers or other personal information of the participants was not recorded to ensure anonymity. Full effort was maintained to avoid leading questions to eliminate bias.

5.3 Age of Respondents

Out of the 109 respondents, 62 participants were between 26 and 35 which made for a big chunk of the total at 57.4%. 18 participants (17.6%) were between 18-25. 18 participants were between 36-45 (16.7%) and 7 participants were 45-60 constituting 6.5% of the total participants. Thus, most respondents were young away from age of retirement. Figure 5.1 corresponds to the data.

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Age Group ?
102 responses

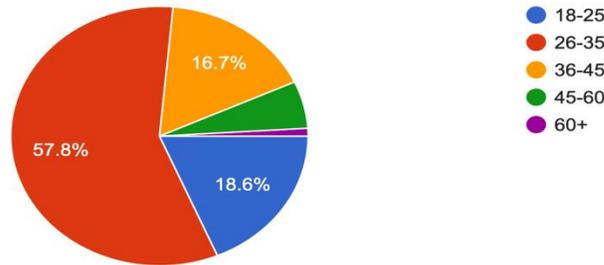


Fig. 5.1

2.3 98.2% that is 107 respondents were aware about the alternative dispute resolution (ADR) methods like mediation, arbitration, and negotiation.

Are you familiar with alternative dispute resolution (ADR) methods like mediation, arbitration, and negotiation?

109 responses

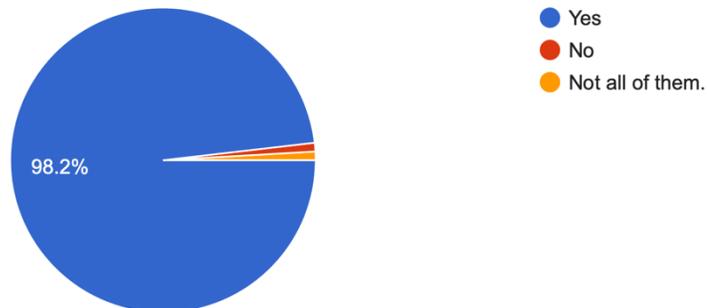


Fig. 5.2

5.3 A significant majority of respondents, 54.1% (59 individuals), strongly agreed that cultural or societal factors negatively influence women's experiences with litigation in IPV cases. This highlights a widely recognized reality where systemic barriers, including societal stigma, gender biases, and traditional expectations, discourage women from pursuing formal legal remedies. Additionally, 41.3% (45 respondents) expressed agreement, albeit not as strongly. This group may share similar concerns about the formal justice system but may also recognize certain limitations of ADR methods. For instance, while ADR can offer a less intimidating platform, its capacity to address

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deeply entrenched power imbalances or systemic issues might not be as robust as the formal legal process. Conversely, a small minority—3.7% (4 respondents) disagreed, and 0.9% (1 respondent) strongly disagreed—suggesting skepticism about the extent to which cultural or societal factors negatively impact litigation or doubts regarding the efficacy of ADR in IPV cases.

Do you believe there are any specific cultural or societal factors in your community that impact negatively in women's experiences with litigation in... dispute resolution methods are actually helpful ?

109 responses

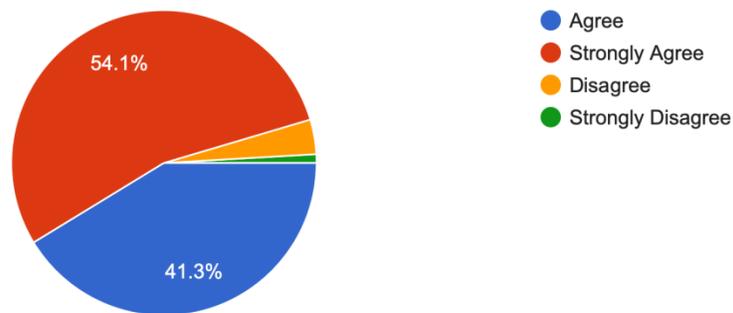


Fig 5.3

5.4 *The survey data reveals a strong consensus regarding the usefulness of mediation in family disputes, particularly given the emotional complexities inherent in such cases. A majority of respondents, 56.9% (62 individuals), strongly agreed that mediation is effective an additional 37.6% (41 respondents) agreed with this perspective, suggesting widespread acknowledgment of mediation's capacity to address emotional nuances and foster constructive dialogue in familial conflicts. Only a small fraction expressed dissent, with 4.6% (5 respondents) disagreeing and 0.9% (1 respondent) strongly disagreeing, indicating minimal skepticism.*

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Do you believe that mediation is useful in family disputes because family matters involve not solely the law and facts, however additionally feelings.

109 responses

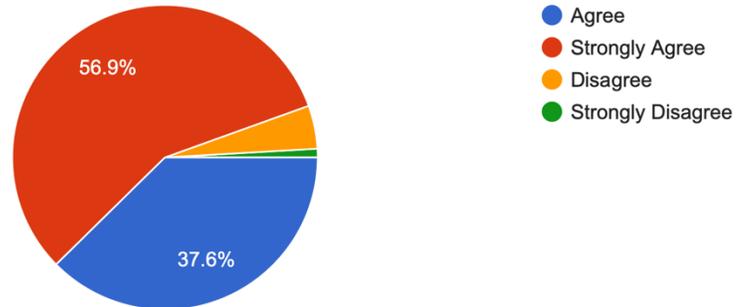


Fig 5.4

5.5 The survey data highlights significant support for the integration of mediation throughout the course of marital disputes, emphasizing its potential to foster compromise and societal harmony. Among the respondents, 45.9% (50 individuals) strongly agreed that mediation should not be limited to the beginning of a case but should remain an option at any stage, given the courts' pivotal role in promoting peace and long-term congeniality. Another 47.7% (52 respondents) agreed with this approach, reflecting a widespread belief in the complementary roles of mediation and legal adjudication in resolving conflicts. A small minority, comprising 5.5% (6 respondents) who disagreed and 0.9% (1 respondent) who strongly disagreed, expressed reservations. This data underscores the recognition of mediation as a dynamic and flexible tool for conflict resolution, one that aligns with the broader judicial goal of fostering equitable and sustainable outcomes in marital disputes.

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Mediation should not only be made at the beginning of the case and at any other time in case of a marital dispute considering that courts/law play a...te by a compromise between two warring groups ?

109 responses

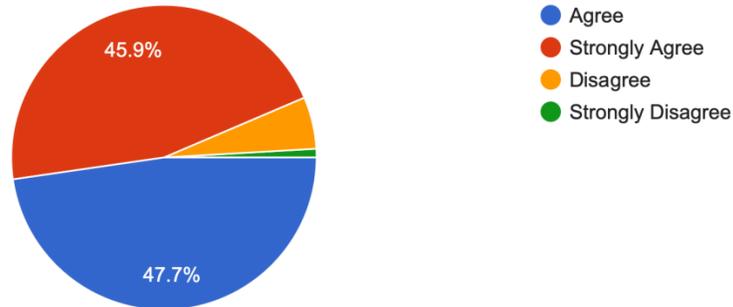


Fig. 5.5

5.6The survey findings indicate a strong recognition of mediation as an effective mechanism for saving time and reducing the hostility typically associated with litigation. A significant majority of respondents (53.2% strongly agreeing and 40.4% agreeing) acknowledged that mediation helps to minimize strained relationships when compared to traditional legal processes. In contrast, only a small proportion of participants (5.5% disagreeing and 0.9% strongly disagreeing) expressed reservations about these advantages. This demonstrates a broad consensus on the practical and emotional benefits of mediation in resolving disputes.

Do you believe that mediation as a form of conflict resolution not only saves time, but also reduces acrimony and strained relationships that may arise from litigation.

109 responses

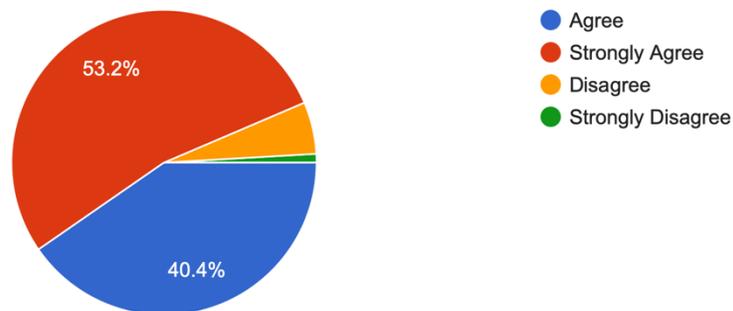


Fig 5.6

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5.7 The role of mediation in preserving matrimonial relations was also strongly endorsed. An impressive 71.6% of respondents agreed that mediation is effective in resolving marital disputes in the public interest, with an additional 14.7% somewhat agreeing and 8.3% strongly agreeing. This highlights a collective belief in mediation’s capacity to prevent unnecessary disruptions in family ties, resonating with societal values that emphasize harmony and unity within families. Opposition was minimal, with only 4.6% expressing dissenting views.

That mediation is an effective tool in solving marital disputes as it is in the public interest to preserve matrimonial relations and, to the extent pr... at the request of any of the parties to a marriage.

109 responses

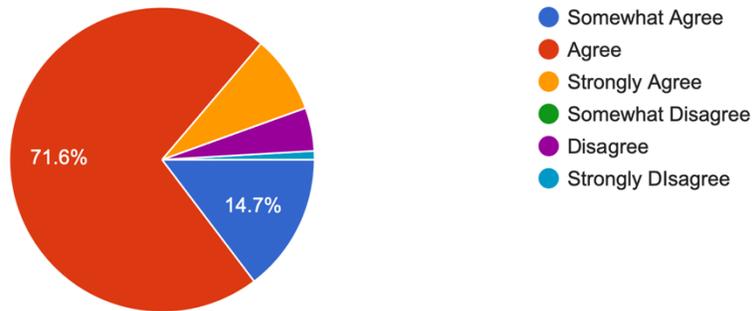


Fig. 5.7

5.8 Mediation's ability to uphold party autonomy received notable recognition. 53.2% affirmed that mediation, by facilitating discussions without imposing decisions, respects the autonomy of the parties more effectively than formal litigation. This underscores mediation's perceived role as a collaborative and empowering process. Very few respondents (4.6% disagreeing and 0.9% strongly disagreeing) held opposing opinions, further reinforcing the broad acceptance of mediation's respectful and participatory approach.

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Considering that mediator doesn't impose a call on the parties but however the mediator facilitate the parties to debate and choose the matters that a... autonomy of a party more than formal litigation.

109 responses

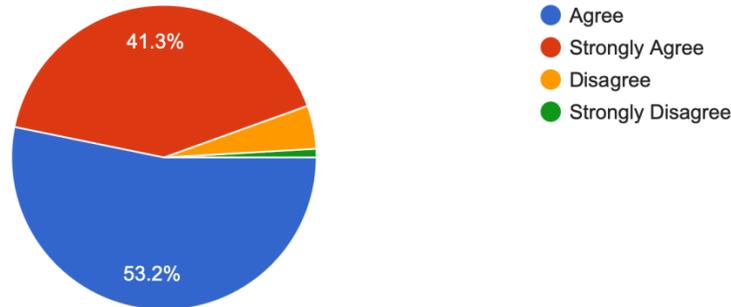
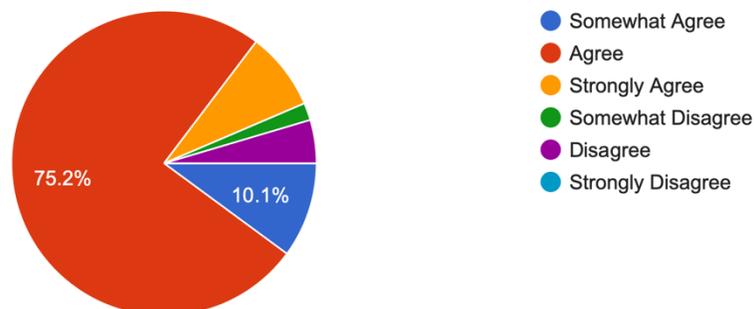


Fig 5.8

5.9 A substantial 82 out of 109 respondents (75.2%) agreed that such factors play a role, reflecting widespread recognition of how deeply societal norms and cultural values can shape dispute resolution dynamics. Additionally, 10.1% of respondents somewhat agreed, indicating a nuanced acknowledgment of the issue, perhaps highlighting the complexities of individual experiences within different cultural contexts. A smaller proportion, 8.3%, strongly agreed, suggesting that while there is awareness, fewer participants see these factors as overwhelmingly significant. Only a minority of respondents (5%) disagreed, reflecting limited opposition to the notion that societal and cultural norms influence women's ADR experiences

Do you believe there are any specific cultural or societal factors in India that impact women's experiences with ADR in matrimonial disputes ?

109 responses



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Fig. 5.9

5.10 Compliance with Section 12 of the Protection of Women from Domestic Violence Act The findings indicate significant non-compliance with the provisional mandate of Section 12 of the 'Protection of Women from Domestic Violence Act,' which requires cases to be resolved within 60 days. Most respondents (53 out of 109, or 48.6%) stated that this provision is "never complied with," reflecting widespread skepticism about the efficiency of case resolution under this act. An additional 35.8% (39 respondents) noted that the provision is "rarely complied with," reinforcing the perception of systemic delays. Only 15.6% of respondents reported that the provision is "always complied with," suggesting that compliance is the exception rather than the norm. This highlights the need for stronger enforcement mechanisms and accountability to uphold the act's timeline and ensure justice delivery.

The provisional mandate of section 12 of the 'Protection of Women From Domestic Violence Act', that an adjudicator should eliminate a case below th...that this provision is never complied or pursued.
109 responses

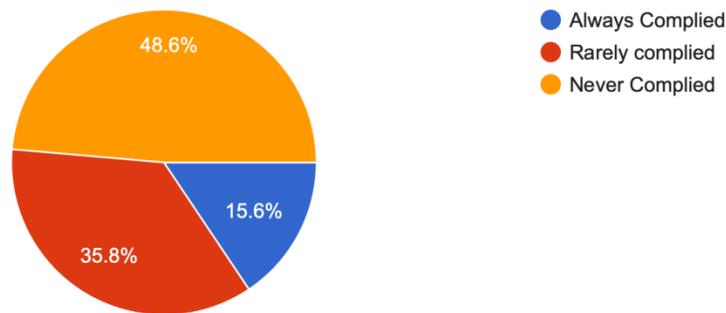


Fig 5.10

5.11 Cost-Effectiveness of ADR Compared to Traditional Litigation When asked about the cost-effectiveness of ADR compared to traditional court proceedings, 54.1% of respondents (59 out of 109) strongly agreed, rating it a 5 on the scale. This majority reflects a consensus on ADR's financial accessibility and its potential to reduce litigation costs. A further 37 respondents (33.9%) rated it a 4, indicating agreement with some reservations. The smaller percentages assigning ratings of 3, 2, or 1 (7.3%, 3.7%, and 0.9%, respectively) suggest minimal dissent on ADR's cost-effectiveness, supporting the view that it offers a more affordable alternative to litigation for most individuals.

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On a scale of 1 to 5 (1 being strongly disagree and 5 being strongly agree), how much do you believe ADR is more cost-effective than traditional court proceedings ?
 109 responses

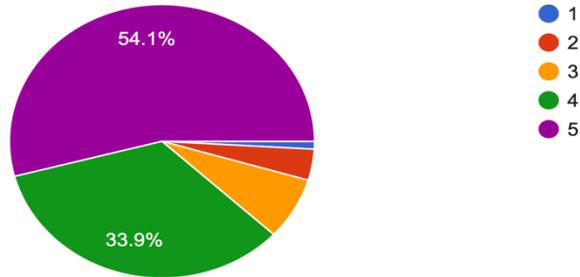
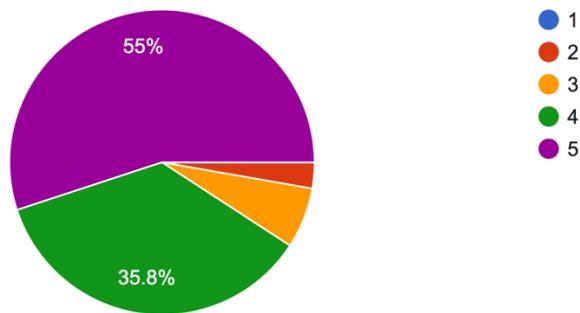


Fig. 5.11

5.12 The survey results highlight that ADR is widely regarded as offering greater privacy compared to traditional court proceedings. A majority of respondents (60 out of 109, or 55%) strongly agreed, rating it a 5 on the scale, while another 39 respondents (35.8%) rated it a 4. This near unanimity emphasizes that the confidential nature of ADR processes is a key advantage, particularly in sensitive cases such as matrimonial disputes or domestic violence, where public scrutiny can be detrimental to the parties involved.

On a scale of 1 to 5 (1 being strongly disagree and 5 being strongly agree), how much do you believe that ADR allows for more privacy than traditional court proceedings ?
 109 responses



5.12

5.13 Regarding the efficiency of ADR in resolving disputes, an overwhelming 65 respondents (59.6%) strongly agreed, rating it a 5 on the scale, that ADR is faster than traditional litigation. Another 34 respondents (31.2%)

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rated it a 4, indicating general agreement. This consensus underscores ADR's potential to alleviate delays typically associated with formal court systems, offering a swifter resolution pathway for parties involved.

On a scale of 1 to 5 (1 being strongly disagree and 5 being strongly agree), how much do you believe that ADR is faster than traditional court proceedings ?

109 responses

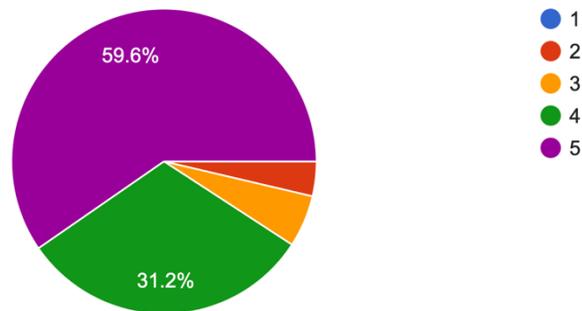


Fig. 5.13

Analysis of Suggestions for Improving Women's Access to Justice

The open-ended responses reveal a strong emphasis on addressing the systemic, procedural, and awareness-related barriers that women face in accessing justice in matrimonial disputes. The following themes emerged prominently from the suggestions:

- 1. Affordable and Quality Legal Services:** Respondents highlighted the critical need for affordable and accessible legal services for women across both urban and rural areas. This reflects the persistent challenge of resource disparity and the financial barriers many women face when seeking justice. Ensuring affordability would help bridge the gap for economically disadvantaged women, enabling equitable access to the justice system.
- 2. Specialized Legal Support:** The establishment of specialized legal aid centers within family courts can provide targeted support and guidance to women facing matrimonial disputes. These centers can offer tailored legal advice, counseling, and representation, addressing the unique challenges faced by women in such cases.
- 3. Promoting ADR and Mediation:** Encouraging the use of alternative dispute resolution mechanisms, such as mediation and conciliation, can help resolve matrimonial disputes in a more amicable and efficient manner. These methods can reduce the adversarial nature of litigation and promote collaborative solutions.

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4. Raising Awareness and Legal Literacy: *By raising awareness about women's rights, legal remedies, and the availability of legal aid, we can empower women to seek justice. Legal literacy programs can help women understand their rights and navigate the legal system effectively.*

5. Strengthening Enforcement Mechanisms: *Effective enforcement of court orders and mediated agreements is crucial to ensure that women's rights are protected. Strengthening enforcement mechanisms will deter non-compliance and provide recourse for women who face difficulties in enforcing their rights.*

CONCLUSION, RECOMMENDATION AND WAY FORWARD

This research paper has explored the intricate landscape of gender, Alternative Dispute Resolution (ADR), and women's access to justice in India. It delves into the complexities women face when navigating legal disputes within a society where patriarchal norms often create systemic barriers to equality. While traditional legal systems can be adversarial, time-consuming, and costly, potentially silencing women and reinforcing existing power imbalances, this research posits ADR, particularly mediation, as a potential pathway to a more equitable and accessible form of justice.

The study reveals a growing awareness of ADR methods among respondents, with a majority recognizing its potential advantages. ADR is widely perceived as more accessible, cost-effective, efficient, and less stressful than traditional court proceedings. This perception aligns with the core principles of ADR, which aims to provide a less formal and adversarial setting where parties, especially women, can feel more empowered to voice their concerns and participate actively in finding resolutions. However, the research acknowledges that merely introducing ADR does not automatically guarantee gender equality. Deeply ingrained cultural and societal factors continue to influence both litigation and ADR processes in India. This necessitates a critical examination of how power dynamics and biases can subtly undermine women's agency even within the seemingly more egalitarian space of mediation. The study reveals instances where patriarchal attitudes and stereotypes persisted, emphasizing the critical need for gender-sensitive training for mediators and legal professionals involved in ADR.

Furthermore, the research highlights the gap between legal provisions and their implementation on the ground. Despite the Protection of Women from Domestic Violence Act mandating a 60-day resolution timeline, the study found significant non-compliance, raising concerns about the effectiveness of legal safeguards in the absence of robust enforcement mechanisms. This underscores the need for not only legal reforms but also a commitment to ensuring their proper implementation to protect women's rights and safety. The overall message of this paper is a call for a multi-faceted approach to enhance women's access to justice. It advocates for a paradigm shift that moves away from viewing marriage as an institution that limits women's autonomy, towards one that respects their rights and agency. This involves empowering women with legal literacy, providing accessible and affordable legal aid,

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training mediators and legal professionals to be gender-sensitive, strengthening enforcement mechanisms, and addressing the root causes of gender inequality through broader societal and cultural changes.

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