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## **Gender-Based Justice Beyond Courts: A Jurisprudential Analysis of ADR mechanisms**

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### **Abstract**

The pursuit of gender-based justice requires the legal system to look beyond traditional court-centered processes and engage with alternative ways to resolve disputes. In India, gender-based justice is still developing as victims have to deal with legal processes that are formal, slow, and intimidating. In this context, Alternative Dispute Resolution has gained renewed attention. This paper undertakes a jurisprudential analysis of Alternative Dispute Resolution (ADR) mechanisms in advancing gender-based justice. The objective of the study is to assess whether mechanisms like mediation, conciliation, and Lok Adalats can meaningfully respond to gender-based disputes without compromising substantive justice. The methodology adopted is doctrinal and analytical, which focuses on the current judicial policy, statutory frameworks and criticisms of informal justice procedures. The paper suggests that while ADR may reduce procedural burden and emotional strain, it also raises the risk of normalising private settlements in matters that involve broader social and legal accountability. The findings suggest that ADR can strengthen gender-based justice only when it is integrated as a complementary mechanism with strong safeguards, rather than being seen as an alternative that replaces formal judicial processes.

**Keywords:** *Alternative Dispute Resolution, Gender-based Justice, India, Judicial Policy, Substantive Justice*

# **Gender-Based Justice Beyond Courts: A Jurisprudential Analysis of ADR Mechanisms**

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## **1. Introduction**

### **1.1 Gender-Based Justice Beyond Courts**

Justice holds significance when it is accessible, inclusive and has the capacity to respond to lived realities. Gender-based justice does not only involve equal treatment; but, it takes the concept of substantive equality, where both fairness of outcomes and procedures matter. It can be understood that gender is not merely a biological classification, it is also a social experience that emerges from power, expectation and cultural conditioning. In India, this social experience continues to be dictated by patriarchal norms about how women should speak, negotiate and claim their rights. To achieve gender justice, we need not only progressive laws but also mechanisms to redress structural inequalities. When it comes to women's rights, the law has indeed made significant progress but the way the court systems provide justice doesn't always meet the demands of its female litigants, and more often, those going through a marriage, domestic violence, property, child support, or custody disputes find the procedures riddled with inordinate delays and laced with societal stigma and emotional exhaustion.

In this context, Alternative Dispute Resolution (ADR) has emerged as a complementary avenue to traditional courts. Different mechanisms such as negotiation, mediation, conciliation and Lok Adalats are built on communication, understanding, confidentiality, and voluntary settlement. They offer informal spaces where disputes can be resolved without the rigidity of courtroom settings. For women, ADR presents a forum where their voices can be heard without fear or procedural intimidation.

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While informality and flexibility in the procedure of ADR mechanisms are often appreciated, these characteristics may also allow latent power asymmetries to materialize. In gender-related disputes, for instance, negotiation often takes place within existing hierarchies in which women—either due to socio-cultural conditioning, economic dependence, or internalized expectations of concession—may be at a structural disadvantage at the outset. The conciliatory outcome may, in these cases, stress compromise over accountability, leading to a situation where peace is achieved without commensurate justice. The following question thus becomes critical: do ADR mechanisms have the potential to genuinely further gender justice, or are they in danger of slipping into private spaces wherein unequal relations are merely renegotiated rather than rectified?

This paper addresses this question by undertaking a jurisprudential review of the competence of ADR processes to promote substantive equality in disputes involving gender issues. The critical analysis of both the normative promises and practical limitations of ADR identifies the conditions under which alternative mechanisms operate as empowering channels and the situations when they also perpetuate patriarchal relations. Instead of evaluating ADR as an inherently better option than formal adjudication, the discussion places both ADR and formal courts in a complementary framework.

## **1.2 Objectives of the Study**

- To introduce the need for gender-based justice beyond traditional court processes.
- To understand the theoretical and jurisprudential basis for gender-sensitive dispute resolution.
- To examine the functioning of major ADR mechanisms in India.
- To analyse the role of ADR in women-related disputes, with focus on community forums like Nari Adalats.
- To evaluate the legal and policy framework supporting ADR.
- To identify the institutional, procedural and socio-cultural challenges in gendered ADR practice.
- To derive key findings from the study and present a concluding assessment of ADR's capacity to deliver gender justice.

## **1.3 Methodology**

This research follows a doctrinal methodology, analysing statutory frameworks, case laws, policy documents, and academic scholarship relating to gender justice and ADR in India.

### **Sources of Data: Primary Sources**

- Constitutional provisions relating to equality and access to justice.
- Statutes: Section 89 CPC, Arbitration and Conciliation Act 1996, Legal Services Authorities Act 1987, Family Courts Act 1984, PWDVA 2005, POSH Act 2013, etc.

- Judicial precedents including *B.S. Joshi v. State of Haryana* (2003), *Gian Singh v. State of Punjab* (2012), *Afcons Infrastructure v. Cherian Varkey* (2010), *K. Srinivas Rao v. D.A. Deepa* (2013) and other relevant Court decisions.
- Policy frameworks and guidelines issued by NALSA, mediation manuals, legal aid schemes & Lok Adalat reports.

## **Secondary Sources**

- Scholarly articles and research papers on ADR and feminist legal theory.
- Reports published by NALSA, NCW, Ministry of Women & Child Development, PIB.
- Books on alternative dispute resolution and gender justice.

## **Method of Analysis**

- Statutory & policy analysis to evaluate ADR regulatory structure.
- Case law analysis to examine judicial trends in referring women-related disputes to ADR.
- Jurisprudential analysis using feminist legal theory, substantive equality, and access to justice frameworks.

## **1.4 Scope and Limitations**

### **Scope**

- The study focuses on ADR mechanisms in women-related disputes in the Indian context.
- It examines how ADR supports or limits gender-based justice beyond courts, emphasising mediation, conciliation, arbitration, Lok Adalats, Nari Adalats, and ODR.
- Covers legal frameworks, judicial interpretation, and policy structures.
- Evaluates ADR's relevance to SDG-5 (Gender Equality) and SDG-16 (Justice & Strong Institutions).

### **Limitations**

- The study is doctrinal; no fieldwork or empirical interviews have been conducted.
- Limited availability of gender-disaggregated ADR outcome data.
- Community-based ADR practices vary across regions, affecting uniform assessment.

- The research does not evaluate non-legal socio-psychological aspects beyond secondary evidence.

## **2. Theoretical and Jurisprudential Framework**

### **2.1 Feminist Jurisprudence**

Feminist jurisprudence is a critical school of legal thought which questions whether laws truly treats everyone equally. Instead of seeing law as fair and objective, it looks closely at how gender and power shapes different rules and outcomes. What counts as normal in legal thinking often reflects male experience, not shared human reality. Assumptions buried deep inside legal reasoning affect real people every day. Women's roles, choices, struggles appear distorted or missing entirely in many areas of law. This perspective pushes back against claims that laws work the same for everyone. Thus, the primary aim of Feminist Jurisprudence is to reveal and confront how legal structures have historically marginalized the embodied experiences of women and perpetuated patriarchal forms of power.<sup>1</sup>

Feminist thinkers point out how laws appearing fair on the surface can still deepen gender gaps. These rules often ignore the unequal conditions women have already been facing since early times. Instead of helping, they quietly reinforce old imbalances. What looks equal at first glance may actually sustain hidden barriers. Real fairness means seeing beyond the law's wording into its effects. In India, feminist scholars in law question how Constitutional Protection like Articles 14 and 15 appear neutral yet function inside male-dominated systems. While framed as equal treatment, such clauses are seen better when used to correct long-standing imbalances women face. True Justice means fixing past wrongs, and not just avoiding present bias.<sup>2</sup>

Feminist jurisprudence serves as a vital lens when examining how women engage with systems meant to settle conflicts including alternative dispute resolution mechanisms. Though such methods often promise casual settings, adaptability, quick results, and open conversation, their advantages might not reach everyone equally. What seems impartial at first glance can also lead to imbalance due to existing hierarchies. Gaining insight into fairness through a gender-aware perspective means looking beyond how fast agreements happen. Instead, it matters whether women emerge stronger, heard, and self-directed after negotiations.

### **2.2 Formal vs Substantive Equality**

What stands out in feminist legal thought is its clear separation of formal from substantive equality. Treating everyone the same presumes they begin from similar positions, which overlooks deep-rooted imbalances. Women have long carried burdens shaped by history and culture. When institutions operate within male-dominated frameworks, neutral rules can deepen existing gaps. Fair procedures gain little ground if access, influence, or support systems remain uneven.

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<sup>1</sup>Utsav Mandal, *Feminist Jurisprudence & Indian Perspective*, 3 IJIRL 1, 1-14 (2020).

<sup>2</sup>*Id.*

In case of substantive equality, what matters most is not just rules, but results. Rather than treating everyone the same, it takes differences into account, especially those rooted in long-standing disadvantage. Legal fairness means adapting laws so that outcomes reflect true equity, not abstract ideals. Scholars who study gender argue that removing obvious obstacles does not fix deeper patterns built over time. Equal treatment sometimes demands unequal responses.<sup>3</sup>

When it comes to family law, cases involving domestic abuse, ownership of assets, or discussions around settlements, differences in starting position matter a great deal especially for women. Imagine a mediation setup that looks fair on paper: both sides speak freely, decisions seem mutual. Yet if someone relies financially on the other, or fears social backlash when refusing demands, then true choice disappears behind a mask of legality. Fairness here cannot depend solely on rules being followed; instead, dispute resolution methods need active steps to correct uneven footing.

### **3. Overview of Alternative Dispute Resolution (ADR) Mechanisms**

#### **3.1 Meaning of ADR**

A way to settle disagreements without going to court is called Alternative Dispute Resolution, or ADR. As it tends to be quicker and easier to access, many places around the world now rely on it instead of standard legal trials. Instead of facing off in a courtroom, people can choose from several approaches like negotiation, mediation, conciliation, arbitration, or trying mixed models. These options let those involved find solutions together, usually with someone impartial guiding the process. Fundamental to ADR is the belief that conflict need not mean confrontation; cooperation often leads to faster, cheaper outcomes compared to trials.<sup>4</sup>

People involved get space to talk through issues in ways that fit their circumstances. Unlike courtroom rules, these methods usually stay private, adapt easily, and skip rigid formats helping resolve disputes. The main objective of the ADR movement is to provide speedy and inexpensive justice and to promote the notion of “equal access to justice” for all. ADR cannot be considered as a replacement for courts but as a complementary mechanism that enhances access to justice by offering multiple pathways for dispute resolution.<sup>5</sup>

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<sup>3</sup> Adan Fatima, *Gender Perspectives in ADR: Women's Access to Justice*, 5 IJALR (2025), <https://ijalr.in/wp-content/uploads/2025/07/ADR-AND-WOMEN-Adan-Fatima.pdf> (last visited Dec.30, 2025).

<sup>4</sup>*Id.*

<sup>5</sup> *Gender Disparities in ADR: Participation and Outcomes*, USLLS ADR Blog (Apr. 17, 2024), <https://usllsadrblog.com/gender-disparities-in-adr-participation-and-outcomes/> (last visited Dec. 29, 2025)

### **3.2 Modes of ADR in Justice Delivery**

Alternative Dispute Resolution (ADR) includes different methods which can be used to resolve conflicts outside formal courts. These methods rely on consensual and community-based approaches which allows the parties to resolve their disputes amicably.

The main modes of ADR are as follows:

1. Negotiation
2. Arbitration
3. Conciliation
4. Mediation
5. Lok Adalat
6. Online Dispute Resolution (ODR)

These methods form a system that helps to ease the burden on courts and ensure proper access to justice.<sup>6</sup>

#### **3.2.1 Negotiation**

Negotiation is the most straightforward and simplest way of resolving disputes. It includes communication between the parties on the disagreement and does not involve a third party. This technique is voluntary and informal. The parties express their needs, offer solutions, and come to an agreeable solution. Negotiation is often placed as the first step in dispute resolution and may occur before mediation or arbitration. In India, negotiation is not subject to a formal framework but rather acts as a flexible and personal settlement method.<sup>7</sup>

#### **3.2.2 Arbitration**

Arbitration is a quasi-judicial process where parties in dispute submit the matter before one or more arbitrators. The decision of the arbitrators is called an award, and it is final and binding on the parties. An arbitrator is an impartial adjudicator appointed by agreement between the parties or designated by an arbitral institution or court when required. This proceedings are similar to a court hearing but is comparatively less formal, quicker, and confidential. Unlike mediation or conciliation, an arbitrator has powers to decide the rights and obligations of the parties and deliver a binding verdict that can be enforced like a decree of court under the Arbitration and Conciliation Act, 1996. At present times, arbitration has become popular for commercial, cross-border, corporate, and infrastructure related disputes, and it is considered the most legally enforceable alternative to litigation.<sup>8</sup>

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<sup>6</sup> Dr. Caesar Roy, *Alternative Dispute Resolution and Its Mechanism: A Critical Analysis in the Light of Access to Justice in India*, 4 IJCCSL 25, 25-30 (2024).

<sup>7</sup> Pinki Krishnarao Churad, *Alternative Dispute Resolution: Types, Benefits and Drawback*, 7 IJLMH 951, 951-963 (2024).

<sup>8</sup> *Id.*

### 3.2.3 Conciliation

Conciliation is a process that is informal and voluntary in nature. With the assistance of a neutral conciliator, the parties identify issues and explore possible settlements. Unlike arbitrator, the conciliator does not impose a decision but facilitates discussion to reduce conflict, and may offer non-binding suggestions. The conciliator may hold joint meetings or meet with the parties separately and often draws up a report, which may be accepted by the parties or modified. In conciliation, relational dynamics and communication are in the foreground, and thus it is especially applicable in family, labour, marital, and employment disputes. When the parties agree to a settlement, it becomes legally valid under the Arbitration and Conciliation Act, 1996, but the conciliator's recommendations are non-binding.<sup>9</sup>

### 3.2.4 Mediation

Mediation is a process that is voluntary and driven by the parties themselves, where a neutral mediator facilitates a dialogue to assist them in reaching an agreement. The mediator promotes communication, clarifies interests, generates options, and helps in easing tension; however, the settlement by mutual consent rests solely with the parties. The process is widely used in family, marital, property, business, and community disputes. One of the distinguishing features of Mediation from Conciliation is that mediators normally do not make prescriptive recommendations, whereas conciliators may propose terms.<sup>10</sup>

Court-annexed mediation is reported to have a 60–70% success rate in family and matrimonial disputes, significantly reducing judicial backlog and enabling more amicable resolutions.<sup>11</sup>

### 3.2.5 Lok Adalat

Lok Adalat, which translates to “People's Court,” is an ADR institution in India that offers a novel way of settling disputes outside formal court system through conciliation, negotiation, and participatory discussions. The Legal Services Authorities Act, 1987 created the Lok Adalat system, which stipulated that its decisions are conclusive, binding, and enforceable in the same way as civil court decrees. Lok Adalats are authorized to hear disputes related to civil matters, non-compoundable criminal matters, family conflict, automobile accident claims, and both litigation and pre-litigation disputes. They are credited with a significant role in the reduction of judicial backlogs and the enhancement of the accessibility of justice to the community by means of their advantages of speed, informality, and low costs. Between 2022–23 and 2024–25, Lok Adalats resolved over 23.58 crore

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<sup>9</sup>Supra note 6.

<sup>10</sup> P. Sai Prsanth, *Gender Justice and Power Imbalance in Mediation*, 6 IJRPR 6134, 6134-6137 (2025).

<sup>11</sup> *Key Benefits of Family Court Mediation: Avoid Lengthy Battles in Delhi NCR*, THE KANOON ADVISORS (Oct. 8, 2025), <https://thekanoonadvisors.com/7-key-benefits-of-family-court-mediation-avoid-lengthy-battles-in-delhi-ncr/> (last visited Dec.30,2025)

cases (state, permanent and national Lok Adalats), demonstrating ADR's reach and efficiency in justice delivery across India.<sup>12</sup>

### **3.2.6 Online Dispute Resolution (ODR)**

Online Dispute Resolution (ODR) is a modern extension of ADR that incorporates digital platforms, communication technology and web-based tools. ODR has removed the obstacles of location, time, and cost and is mostly adopted in e-commerce, customer dissatisfaction, and financial claims of small value or even family quarrels where parties find meeting hard due to distance. Presently, platforms like SAMA, Presolv360, Agami, and the institutional models under NALSA are processing thousands of online cases, making it possible for users to access them 24/7, book appointments without hassle, and employ technology for documentation. ODR helps women who:

- fear physical confrontation
- live far from legal institutions
- need anonymity
- prefer remote access due to safety or childcare<sup>13</sup>

## **3.3 Advantages and Disadvantages of ADR**

### **3.3.1 Advantages of ADR**

1. Flexibility of Procedure: The ADR procedures do not follow the strict rules and procedures of the Civil Procedure Code or the Bharatiya Sakshya Adhinyam. The flexibility that this brings allows the parties to create their own rules of engagement, choose the order of hearings and call witnesses without any technical barriers. The elimination of formalities shortens the length of the process. The structures that are flexible take into account the socio-cultural sensitivities and allow for inventive remedies that might be barred to the courts.

2. Scope to Initiate ADR at any Stage of Dispute: Parties can always resort to ADR before the initiation of litigation, during the process and even after a decree, which gives them a broad option to choose settlement. Under Section 89 of the Civil Procedure Code, Indian courts often send cases for mediation as a means to clear the backlog. So, it can be said that ADR is not only an alternative but also a simultaneous route to justice.

3. Cost and Time Efficiency: ADR settlements are faster than court trials and involve lower administrative expenditure, as proceedings do not include lengthy hearings and repeated adjournments.

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<sup>12</sup>

<sup>13</sup>Supra note 3.

4. Party Autonomy and Selection of Neutral: One of the unique aspects of ADR is that the parties have the ability to select their own neutral (arbitrator, mediator or conciliator) based on the neutral's expertise, education or background. In cases involving construction, intellectual property, finance, or family counseling, a neutral with specialized knowledge in those fields will likely have a better grasp of the technical aspects associated with those areas. When the neutral is selected by the parties, it enhances the parties' willingness to accept the final result.

5. No Mandatory Lawyer Representation: Parties can argue their matter personally if they choose. ADR enhances accessibility for individuals who cannot afford prolonged legal representation.<sup>14</sup>

### **3.3.2 Disadvantages of ADR**

1. Possibility of Dominance or Coercion: The stronger parties, socially or economically, will have more power to influence the neutral party or might use the weaker party's emotions to put pressure on them.

2. Risk of Reduced Access to Courts in Mandatory Arbitration: With the mandatory arbitration clauses in many commercial contracts, the right of the weaker party to go to courts gets practically lost.

3. High Cost in Certain Arbitration Matters: Generally ADR is cost-effective, nevertheless, arbitration, particularly institutional or international, can absorb a lot of money in costs like tribunal fees, expert opinions, or administrative charges.

4. Narrow Grounds for Appeal: Arbitral awards cannot be easily reversed. Courts do not intervene unless there are special circumstances like conspiracy, bias, procedural irregularity, or public policy violation.

5. Awards require Enforcement Through Court: Arbitration awards require judicial enforcement if a party refuses to comply. This adds a procedural step.<sup>15</sup>

## **4. ADR in Women-Related Disputes**

Getting fair treatment under the law remains difficult for many women in India because of deep-rooted barriers such as limited income, cultural shame, lack of knowledge about rights and slow court procedures. Even though laws such as the Protection of Women from Domestic Violence Act, 2005, Dowry Prohibition Act, 1961, and Hindu Succession (Amendment) Act, 2005 offer some protection, they are applied inconsistently across regions.

Women often find it easier to speak up in processes like mediation, conciliation, or negotiation because these methods feel safer and more private. Instead of facing off in rigid courtrooms, they allow dialogue to unfold in calmer spaces. More recently, online dispute resolution has begun appearing, giving access even from remote areas. For women who hesitate to enter courts because of

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<sup>14</sup>Supra note 7.

<sup>15</sup>Supra note 7.

cost, stigma or mobility limitations, ADR forums serve as bridges to justice that courts alone cannot always provide.

#### **4.1 Nature of disputes women bring to Alternative Dispute Resolution**

ADR platforms typically involve:

- (i) Domestic Violence & Cruelty– emotional, physical or economic abuse within marriage ;
- (ii) Dowry harassment and extortion after marriage;
- (iii) Maintenance, alimony and financial support ;
- (iv) Divorce and separation including mutual agreements ;
- (v) Child custody and visitation rights;
- (vi) Inheritance and property rights;
- (vii) Workplace harassment; and
- (viii) Abandonment, marital desertion and neglect of dependents.<sup>16</sup>

#### **4.2 Community-Based ADR for Women: The Role of Nari Adalats**

What makes Nari Adalats different from other ADR methods is their foundation in community-led justice, built by women to support women. These informal forums began through the Mahila Samakhya Programme during the 1990s. Nari Adalat function as informal courts and are run by local women who receive training and handle conflicts while emphasizing knowledge of legal rights and responsibility within society. Nari Adalats handle cases involving domestic abuse, along with emotional cruelty, dowry harassment and financial exploitation, denial of maintenance, inheritance & property rights, marital abandonment, child custody conflicts, etc.<sup>17</sup>

These forums are different in how they value personal stories over strict legal evidence. Instead of following rigid procedures, participants speak openly, without rank or status getting in the way. Women share their accounts at ease, while others listen and reflect together. Outcomes emerge through dialogue, guided by empathy and shared values. The unique characteristics of Nari Adalats are as follows:

- (a) They are located in community places instead of government buildings;
- (b) The judges/mediators are women with training but not necessarily with legal degrees;
- (c) The decisions are made through a combination of legal knowledge and the social context ;
- (d) Women are given the emotional safety to speak out:
- (e) The victims very often get therapy, support groups, and follow-ups.

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<sup>16</sup>Dr. Nandkishor K Ramteke, *Alternative Dispute Resolution (ADR) Under International and National Context - An Overview*, 7 IJRAR 846, 846-852 (2020).

<sup>17</sup>Chandra Shekhar, *Legal Empowerment Through Nari Adalat: A Study of Women's Courts in India*, 6 IJRPR 7771, 7771-7782 (2025).

The government's intention to reinforce Nari Adalats through the Mission Shakti program (2024) is a sign of increasing acknowledgment of their potential. The project is aimed at creating Nari Adalats in groups consisting of 50 to 100 villages, which will allow decentralized justice at the grassroots level. This growth marks a change from an individual-based, community-justice approach to one that is institutional and responsive to women's issues.<sup>18</sup>

## **5. Legal Framework Governing ADR in Women-Related Disputes**

The Indian legal system has recognized and accepted ADR to a great extent, not only as a means of postponing the hearing of cases in the courts but as a tool that can actually lead to making justice more participatory. The success of ADR is very much dependent on the legal framework around it and the manner in which courts monitor its application in gender-sensitive situations.

### **5.1 Statutory Foundation of ADR**

1. Section 89 of the Civil Procedure Code (CPC) of 1908 gives the authority to the courts to refer disputes to mediation, conciliation, Lok Adalat, or arbitration. One of the largest categories of disputes referred for settlement under Section 89 CPC mainly comprises matrimonial disputes, particularly in issues of cruelty and maintenance claims. This provision was interpreted liberally by the Supreme Court in *Afcons Infrastructure v. Cherian Varkey (2010) 19* where matrimonial, guardianship and maintenance disputes were expressly categorised as "fit for mediation," forming the basis for routine referral of women-related cases to ADR.
2. The next important legislation is the Arbitration and Conciliation Act, 1996, which was enacted in accordance with the UNCITRAL Model Law to modernise arbitration and conciliation in India. Although the arbitration is mostly brought up in the case of commercial disputes, the Part III of the Act on Conciliation is very much relevant for civil matters concerning women, as the agreements arrived at under this Part are enforceable as arbitral awards once they are signed.
3. The Legal Services Authorities Act, 1987, is another significant legislation which institutionalised the Lok Adalat system in India. Once the Lok Adalat awards are given, they can neither be appealed against nor contested. Only one possibility is left and that is through writ jurisdiction. This new method has been such a great help to women, particularly in maintenance, divorce by mutual consent, custody arrangements, and small-property disputes for the very reason that the Lok Adalat atmosphere is not so formal and intimidating. It is also important to note that the Act has the authority to appoint the National Legal Services Authority (NALSA), State Legal Services Authorities and District Legal

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<sup>18</sup>Supra note 17.

<sup>19</sup> *Afcons Infrastructure v. Cherian Varkey*, Civil Appeal no.6000 of 2010.

Services Authorities to conduct Lok Adalats, legal literacy drives and mediation camps. In the last decade , NALSA's Matrimonial Settlement Lok Adalats and Women Help Desks have settled thousands of disputes related to maintenance arrears, visitation, domestic conflicts, and sharing of property, which proves that legal assistance can be administered effectively when women feel secure to take part in the process.

4. The Family Courts Act of the year 1984 further strengthens role of ADR in matrimonial disputes by putting emphasis on conciliation as the most preferred step that should be taken before the trial. Mediation cells with the support of counsellors, social workers, and trained mediators are present in Family Courts throughout India. This makes it possible for the parties to reach an agreement on issues such as maintenance, custody, and separation in a non-confrontational manner.

5. The same goes for the Protection of Women from Domestic Violence Act, 2005 (PWDVA), in which Section 14 allows for counselling and settlement in cases where it is appropriate but with a caveat: mediation cannot take precedence over a woman's right to protection, residence, maintenance, or even the right to prosecute for abuse.

6. The statutory push for ADR, is evident even in labor law. The Internal Complaints Committees' (ICC) under the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 may commence conciliation before the inquiry starts at the request of the woman. This shows a very delicate legislative balancing act between maintaining confidentiality, quick conflict resolution, and allowing the victim to choose. On the other hand, conciliation is absolutely voluntary and not allowed for grave misdeeds, which indicates an acknowledgment that some conflicts need formal punishment.<sup>20</sup>

## 5.2 Judicial Approach

The Indian judiciary has significantly influenced the adoption of ADR in matrimonial and gender-related disputes, and has implicitly created a body of law that promotes settlement out of court while being mindful of the rights and the safety of the parties involved. A landmark case is the *B.S. Joshi v. State of Haryana (2003)*<sup>21</sup> wherein the Supreme Court sanctioned the quashing of criminal proceedings under S. 498A IPC on the basis of compromise between the spouses and confirmed that mediation in private matrimonial disputes may serve the ends of justice only when the woman herself opts for reconciliation.

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<sup>20</sup>Supra note 3.

<sup>21</sup>*B.S. Joshi v. State of Haryana*, (2003) 4 SCC 675

This idea was further improved in *Gian Singh v. State of Punjab (2012)*<sup>22</sup> where the Court drew a line between disputable marital disagreements and grave offences, affirming that mediation could settle cases of domestic cruelty and dowry harassment only with the victim's consent, but the grave crimes that are detrimental to the public interest cannot be handled in private forums of negotiation. Both these rulings together determine the boundary between ADR as a means of dispute resolution and the criminal justice system as a protector against gender-related harms.

In *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (2010)*<sup>23</sup>, the Supreme Court clarified the scope of Section 89 CPC and expressly identified matrimonial, custody, maintenance and partition matters as the most suitable for mediation and conciliation. The ruling was the genesis of the attaching of mediation to the courts in family disputes that were of a large scale. Further, in the case of *K. Srinivas Rao v. D.A. Deepa (2013)*<sup>24</sup>, the court suggested that mediation centers should be set up in Family Courts and pre-litigation settlement should be encouraged in order to minimize emotional suffering, particularly in cases where children are involved. Thus, the Courts consider ADR not as a substitute for trial but rather a parallel approach to justice that is more humane and participatory if the situation allows.

### **5.3 Challenges in the Existing Implementation Framework of ADR Mechanisms**

The situation with ADR in the Indian legal context is rather paradoxical, that is, while there is a legal framework and judicial encouragement for ADR in India, the mechanisms still face great hurdles when it comes to practically dealing with disputes of a gender nature and involving women. The policy architecture may look strong on paper, but empirical studies and scholarly analyses bring to light systematic deficiencies that result in ADR's failure to provide the needed gender justice.

#### **5.3.1 Power Imbalances and Inadequate Gender Sensitivity**

The main issue is the power imbalance that exists between the disputing parties in cases of domestic violence and marital conflicts- this is a situation that ADR processes cannot handle without guaranteeing gender responsiveness and safeguards. In cases of domestic violence, abuse is often present, the woman fears retaliation, and there is economic dependency, and societal stigma, these factors make women's participation in mediation less meaningful.

Critics argue that if domestic violence is treated as a negotiable conflict then the abuser will be viewed as the private disputant rather than the society's wrongdoer. The private nature of ADR can thus limit public scrutiny and detract from long-term legal protections for women.

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<sup>22</sup>Gian Singh v. State of Punjab (2012) 10 SCC 303

<sup>23</sup>Supra note 19

<sup>24</sup> K. Srinivas Rao v. D.A. Deepa (2013) 5 SCC 226

### **5.3.2 Ambiguity in Scope: Criminal vs. Civil ADR Application**

ADR is accepted widely for civil disputes, e.g., maintenance, custody, and property division, but its application in the contexts of criminality like repeated domestic abuse is still disputable. Literature on the topic of the application of ADR in criminal offenses points out that assaults against women of a very "heinous" character are usually not suitable for compromise. The techniques of ADR were not invented for the purpose of settling cases where the interests of the state in punishing, deterring, and administering justice to the public are most important.

### **5.3.3 Inadequate Institutional Support and Legal Recognition**

Nari Adalats, among other community-based ADR forums, are crucial at the grassroots level when it comes to women's access to justice, but they are still bound by structural limitations. These forums, although appreciated widespread as the factors that make women's access to justice easier and more comfortable in rural or marginalized communities, do not have formal statutory status in the larger legal system which negatively impacts their funding, training standards, enforceability and integration with legal aid mechanisms.

### **5.3.4 Limited Data, Monitoring and Accountability**

One of the critical issues constantly highlighted by the academic reviews is the lack of strong data concerning the ADR outcomes for women in particular, such as the rates of satisfaction, the compliance with the mediated settlements, the recurrence of abuse after the settlement, and the gender-specific success metrics. The statistics for the usage of ADR are being registered (for instance, through Lok Adalat success figures) but the gender-disaggregated data about the experiences of women still remains very limited.

If there is no systematic monitoring, the policymakers and institutions will not be able to determine whether ADR really brings about a change in women's legal status or just speeds up the settlement process without tackling the root causes of inequality. The lack of this kind of data makes it impossible to carry out reform based on evidence and at the same time it hides the quality of justice provided.

### **5.3.5 Socio-Cultural Barriers and Awareness Deficit**

A lot of women go through social stigma, family pressure, and the devaluation through internalized norms that force them to hide their grievances or undergo family "harmony" through compromise.

In addition, especially in rural and tribal areas, women are still not aware about their legal rights and the existence of ADR or mediation forums.

## **5.4 Towards a Gender-Sensitive ADR Framework: Suggestions**

For ADR mechanisms to be truly responsive to gender-related disputes, it is necessary to adopt the survivor-centered reform approach. It is seen that the community-led ADR models like Nari Adalats have a great impact on women's access to justice but require the support of the formal institutions in

terms of legal recognition, resource allocation, and more so, to operate effectively and reach out to the women across the country's states and Union Territories. Also, systematic training programmes for ADR practitioners, legal aid integration and awareness campaigns can help address power asymmetries and ensure survivors can negotiate from a position of knowledge and safety.

Besides, the extension of the statutory bodies' outreach, like the National Legal Services Authority (NALSA), to offer legal literacy, ADR facilitation, counseling, and post-settlement support especially in rural and underprivileged communities, would turn the ADR into a more reliable tool of substantial justice, not just a quick resolution option.

## **6. Findings of the Study and Concluding Reflections**

A close look at how things actually work suggests Alternative Dispute Resolution plays a growing role alongside courts, especially in helping women reach justice more easily. Instead of relying only on courtrooms, methods like mediation, conciliation, Lok Adalats, and Nari Adalats open doors to simpler processes, wider involvement, and safer conversations where women speak without dreading shame or backlash.

Drawing from feminist legal thought, it becomes clear: while peaceful settlements sound good, they may quietly uphold unequal dynamics if women bargain under strain from money troubles, community expectations, or threats behind closed doors. The findings therefore reveal a tension between efficiency and equity: ADR performs well as a dispute-settlement forum, yet its capacity to transform gender-related harms into accountable remedies remains conditional. Laws including Section 89 CPC, the Arbitration and Conciliation Act, the Legal Services Authorities Act, the Family Courts Act, and PWDVA do acknowledge ADR's place in family and civil matters, yet institutional gaps persist.

Progress here ties closely to targets under Sustainable Development Goal 5 (Gender Equality) and SDG 16 (Peace, Justice and Strong Institutions), revealing that alternative dispute resolution widens access to fairness only when rooted in stronger systems. What emerges clearly is that such processes do not automatically serve gender equity, they shift meaningfully only if women participate freely, speak without pressure, and leave with binding outcomes instead of vague agreements. To sum up the findings, the study proves that ADR is not gender fair by nature, but it becomes a force of change when there are no barriers to entry for women in negotiation, and their rights are not just conciliatory but also enforceable at the end of the process.

It can be concluded that gender-based justice cannot be assessed only on the basis of the number of cases disposed of or disputes settled; it must be experienced by women who vanquish conflicts with dignity, safety, and a feeling of being heard. ADR, as a process, is very promising, not as a retreat from the courts, but as an area where the law gets to express itself with compassion, where fear can be

substituted by dialogue, and a woman's whisper will not be a disruption but the core of the discussion. If the process is set up with compassion and is supported by legal systems, the outcome of ADR could be turning point for women to even be beyond compromise to spread the word of empowerment, healing, and social change. When the legal system respects the realities of life and allows women to be in the negotiating position of strength instead of in the position of dealing with it, we get to the future that SDG-5 and SDG-16 have envisioned.