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## Beyond the Courtroom: Exploring the Potential of Alternate Dispute Resolution in Domestic Violence Cases in India

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*Domestic Violence (DV) is an important socio-legal concern that is frequently unreported and, at best, under-reported, continuing to evade the courts of law, resulting in a notable absence of legal redress in most instances. This chapter explores the potential of Alternative Dispute Resolution (ADR) mechanisms as a complementary approach to the traditional legal framework for addressing DV cases. Although the linchpin of legal recourse, the formal court system, by its very nature being adversarial, hinders its own effectiveness in the handling of DV matters. Despite several initiatives like Mission Shakti and Nari Adalat, the reality is that the courts are overburdened and the clientele is under-represented. Protracted timelines of the proceedings, alienation due to societal stigma, patriarchal norms and a lack of trust in the justice system are some shortcomings that contribute toward decreased offender accountability and injustice. The possibility of integrating ADR to apply their core principles of confidentiality, party autonomy and informed consent in overcoming these limitations through a collaborative method is considered. Different ADR mechanisms are defined and differentiated alongside their suitability for DV cases. The benefits of using ADR in the context of domestic violence are underscored while also examining its challenges and feasibility. The role of neutral third-party actors like mediators, conciliators and arbitrators in the ADR processes is highlighted. Difficulties in implementing ADR mechanisms to tackle DV cases, particularly power imbalance, risk of abuse and victim safety are also discussed. Safeguards and recommendations for the apt incorporation of ADR procedures emphasising the importance of training and accreditation of the practitioners, fostering cultural sensitivity, trauma recognition and competence within the process and adopting a system that*

*prioritises the victim's well-being and restoration while also factoring in the reformation of the offender through therapeutic interventions, specialised training and community engagement are provided.*

**Keywords:** *domestic violence, alternate dispute resolution, gender justice, women-centric policies, victim empowerment, therapeutic interventions.*

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## INTRODUCTION

*"Human rights are women's rights and Women's rights are human rights, once and for all."*

- Lady Hillary Rodham Clinton<sup>1</sup>

*pitā rakshati kaumāre bhartā rakshati yauvane |*

*raskhati sthavire putrā na strī svātantryamarhati | |*

[The father guards her virginity, the husband her youth

The son guards her in old age, the woman never needs to be independent]

- Manusmriti (Verse 9.3)<sup>2</sup>

*The verse above from Manusmriti talks about household relationships. A father is to protect his daughter from any insult or unchaste advances, a husband is to protect her in her youth and her son is to care for her in old age. This concept can be given proper meaning only if people were to translate it in the context it was made to be understood. As India is patriarchal and culturally deep rooted in its origins<sup>3</sup>, a maiden was promised to a man in her childhood and married in her teens such that they grow together as companions, or in other words, the girl falls under the umbrella of her husband's protection. And thus, when she is a child, her father is responsible for her and in her youth, her husband takes on that responsibility. Further in her life, her son is responsible for her in her old age. This ideology, whether the marriage happens when they are*

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<sup>1</sup> 'Women's rights are human rights, once and for all' (Presidential Libraries)

<<https://clinton.presidentiallibraries.us/exhibits/show/womens-rights/wr-hr-introduction>> accessed 23 February 2024

<sup>2</sup> Gaganatha Jha, *Manusmriti with the commentary of Medathithi* (Motilal Banarsidass 2016)

<sup>3</sup> Indira Sharma et. al., 'Hinduism, Marriage and Mental Illness' (2013) 55(Suppl 2) Indian Journal of Psychiatry <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3705690/>> accessed 16 January 2024

children or adults, persists and is distorted in such a manner that women are considered burdensome and commodities that need to be settled or sold in return for some money. Dowry and other perverse gender unequal acts are justified because the woman needs to be protected by men<sup>4</sup>.

But the times have evolved and women are now inching more towards independence and economic stability with the evolution of technology and growth of knowledge bases, women are now more than capable of holding out on their own, creating a conflict between the values and principles that have been set in stone – they are refusing marriages<sup>5</sup> and volunteering to be childless<sup>6</sup>. Though the empowerment of women is becoming a reality in several regions in India, many women are still subjected to the lifestyle of the old ways – treated as child bearers<sup>7</sup>. Since women are considered inferior to men, they are also further subjected to cruelty and harsh situations, forcing them to provide dowry or simply being abused for their being a woman. Women, for several generations and sometimes even now, teach their daughters to suffer in silence as that is all that they can do as well, without realizing (or even trying to) that there are laws that can protect them from such a harsh environment.

As such, because of the continued deterioration of women's lives, domestic violence has become a complementary aspect of the lives of countless Indian women – whether they are socially pressured into bringing more dowry or physically hit by their alcoholic spouse or otherwise, 1 out of 3 women in India are likely to be subjected to this cruelty<sup>8</sup>. Most people who violate women in India ardently believe their actions to have no consequences and further force the

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<sup>4</sup> 'Child Marriage- Frequently Asked Questions' (*United Nations Population Fund*, 04 February 2022) <<https://www.unfpa.org/child-marriage-frequently-asked-questions>> accessed 21 January 2024

<sup>5</sup> Uma Shashikant, 'Why women refuse marriage' *The Economic Times* (29 April 2024) <<https://economictimes.indiatimes.com/wealth/personal-finance-news/why-women-refuse-marriage/articleshow/109640655.cms?from=mdr>> accessed 30 April 2024

<sup>6</sup> Ashwani Mahajan, 'Educated women are having fewer children. It's not good for India's demographic dividend' *The Print* (19 February 2024) <<https://theprint.in/opinion/educated-women-are-having-fewer-children-its-not-good-for-indias-demographic-dividend/1971404/>> accessed 01 March 2024

<sup>7</sup> Rema Nagaraj, 'Indian women finish bearing children at an earlier age now: Study' *Time of India* (06 July 2023) <<https://timesofindia.indiatimes.com/home/science/indian-women-finish-bearing-kids-at-an-earlier-age-now-study/articleshow/101526804.cms>> accessed 01 March 2024

<sup>8</sup> Yuvaraj Krishnamoorthy et. al., 'Physical, emotional and sexual violence faced by spouses in India: Evidence on determinants and help-seeking behaviour from a nationally representative survey' (2020) 74(9) *Journal of Epidemiology and Community Health* <<https://doi.org/10.1136/jech-2019-213266>> accessed 10 April 2024

women to endure the violation of their bodies, liberty, and legal and fundamental rights, allowing even to this day, dowry, child marriage and many evil ideologies against women to be practiced<sup>9</sup> without the issue ever seeing the light of day. It is estimated that 95% of crimes against women in India go unreported<sup>10</sup>. The cases of domestic violence saw a surge during the quarantine (lockdown due to COVID-19) period as well. The India Times, on its website, noted that violence within the household had been reported to have over 6,900 registrations for 2022 and accounted for 23% of the total count of more than 30,900<sup>11</sup>. The victims, most often by their mothers, are told to endure it as they are 'women' and that the violence inflicted on them is a 'normal' happening in the life of every married woman. Imagine a girl with only hopes of happiness and joy and excitement over a new life, new home and her own family, being subjected to direct and/or indirect cruelty and convinced to compromise for the sake of 'family'<sup>12</sup>. This is the reality of many women in India.

'Domestic violence' is defined as any act, omission, commission or conduct of the respondent in case it harms or injures or endangers the health, safety, life, limb, or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse<sup>13</sup>. Domestic violence in India can take the form of:

- killing for reasons not limited to dowry deaths, bride burnings, honour killing, and infanticide;

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<sup>9</sup> Sonali Verma, 'India records 51 cases of crime against women every hour; over 4.4 lakh cases in 2022: NCRB Report' *Times of India* (03 April 2024) <<https://timesofindia.indiatimes.com/india/india-records-51-cases-of-crime-against-women-every-hour-over-4-4-lakh-cases-in-2022-ncrb-report/articleshow/105731269.cms>> accessed 12 April 2024

<sup>10</sup> Ashraf Engineer, 'No solution in sight for rising crimes against women' (*All Indians Matter*, 09 December 2023) <<https://www.allindiansmatter.in/no-solution-in-sight-for-rising-crimes-against-women/#:~:text=In%20India%2C%20women's%20literacy%20is,crimes%20against%20women%20go%20unreported.>>> accessed 20 March 2024

<sup>11</sup> Ambika Pandit, 'Over 6,900 domestic violence complaints filed by women in 2022' *The Times of India* (09 January 2023) <<https://timesofindia.indiatimes.com/india/over-6900-domestic-violence-plaints-filed-by-women-in-2022/articleshow/96839600.cms>> accessed 10 April 2024

<sup>12</sup> Nandita Banerjee Dhawan and Harshita Bhasin, 'Combating domestic violence in West Bengal, India: Gendered norms and legal regulations' (2024) 7 *International Journal of Educational Research Open* <<https://www.sciencedirect.com/science/article/pii/S2666374024000347>> accessed 30 April 2024

<sup>13</sup> Protection of Women from Domestic Violence Act 2005, s 3

- sexual violation not limited to marital rape, incest, prostitution, human trafficking and child sexual assault;
- disfigurement in the forms not limited to acid attacks, female genital mutilation, beating or hitting with hands or objects and burning;
- mental violation in the forms not limited to gaslighting, forced relationships (marriage, pregnancy, abortion etc.), marriage to the offender, and more.

The above crimes are part of a non-exhaustive list, which can have effects of varying degrees depending on the situation and the offender. The Protection of Women from Domestic Violence Act, 2005 is the most recent legislation formulated for the protection of women from domestic violence. The Government has also laid down guidelines under the *Mission Shakti* to empower and elevate the situation of women, but it is becoming clear that with the rise in the volume of cases in the courts, these issues are either never discovered and those that are, despite an order or judgement do not come to fruition if the victim does not keep appealing to the magistrates or higher courts. As of December 16, 2023 it was reported that over 5 crore cases were pending in the Indian courts<sup>14</sup>. Women also do not want to approach authorities for fear of societal stigma and alienation<sup>15</sup>. There is a critical need for alternatives at this juncture.

## WHAT HAS BEEN TRIED AND WHAT WENT WRONG? THE EFFORTS OF THE INDIAN EXECUTIVE, LEGISLATURE AND JUDICIARY

India has always been a huge advocate of conflict resolution through third-party involvement. This has been in force through Panchayats which are still a part of the governmental structure of the Republic of India. The Indian Constitution, by its 73<sup>rd</sup> amendment legally recognized the Panchayati system. A 'Panchayat' (which translates to five wise men), according to the Act, means an institution (by whatever name called) of self-government constituted under Article 243B for rural areas<sup>16</sup>. The Panchayat includes a 'Gram Sabha', which is a body consisting of persons

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<sup>14</sup> 'Over 5 crore court cases pending in India, government tells Lok Sabha' *Times of India* (16 December 2023) <<https://timesofindia.indiatimes.com/india/over-5-crore-court-cases-pending-government-tells-lok-sabha/articleshow/106032857.cms>> accessed 13 March 2024

<sup>15</sup> Akanksha Rani and Fahim Ul Hassan, 'Suffering in Silence: Stories of Indian Women with Chronic Mental Illness and Sexual Coercion' (2020) 42(2) *Indian Journal of Psychological Medicine* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7173658/>> accessed 25 March 2024

<sup>16</sup> Constitutional Amendment Act 1992, s 243(d)

registered in the electoral rolls in the village within the Panchayat area<sup>17</sup>. The Panchayat is established as a three-tier system at the village, intermediate, and district levels. This Part was added to the Eleventh Schedule, which is related to family welfare, women and child development and social welfare, amongst others. Though the major function of the Panchayat is the economic and financial development of rural villages, the role extends to that of hearing and resolving conflicts among the locals. From this Panchayat emerged the concepts of *Nyaya Panchayats*, *Gram Nyayalayas*, *Lok Adalat*, *Nari Adalat*, Family Courts and then the latest Mission *Shakti*. In fact, the first-ever *Nari Adalat* was developed through a Taluk Panchayat under a neem (margosa) tree in the District of Vadodara in Gujarat in September 1995<sup>18</sup>.

**Nyaya Panchayats: The 42<sup>nd</sup> Constitutional Amendment Act of 1976 and the 73<sup>rd</sup> Constitutional Amendment of 1992:** Under the 42<sup>nd</sup> amendment, Article 39A was introduced and inserted, which established the right to free legal aid for each and every citizen regardless of their economic or other disabilities to ensure the promotion of justice and development of equal opportunity. In order to comply with the same, ‘Nyaya Panchayats’ were established at the grassroots with the motive to reduce the burden of the courts and deliver justice. They are considered part of the Panchayati Raj System, operating at the most basic level of the Indian judiciary. The Gram Nyayalayas Act of 2008 establishes *Gram Nyayalayas*’ for every Panchayat<sup>19</sup> headed by a *Nyayadhikari* (presiding officer)<sup>20</sup>. The presiding officer is bound to conduct periodical trials for the villages falling under his jurisdiction at places that he regards as a place in close proximity to where the parties ordinarily reside or where the cause of action arose – these are mobile courts held outside the headquarters<sup>21</sup>. The mobile courts are to be given wide publicity about the date and place proposed for it to be held by the *Gram Nyayalayas*. The Nyaya Panchayats can decide on cases as per the first schedule and in accordance with the Code of

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<sup>17</sup> Constitutional Amendment Act 1992, s 243(b)

<sup>18</sup> Bandana Devi, ‘Nari Adalat: Justice for Women and Women for Justice’ (*Nari Adalat*, 05 September 2014) <<https://www.pradan.net/sampark/wp-content/uploads/2019/07/Nari-Adalat-Justice-for-Women-and-Women-for-Justice.pdf>> accessed 01 May 2024

<sup>19</sup> Gram Nyayalayas Act 2008, s 3

<sup>20</sup> Gram Nyayalayas Act 2008, s 5

<sup>21</sup> Gram Nyayalayas Act 2008, s 9

Criminal Procedure, including offences such as theft, outraging the modesty of women, trespass, injuring public property, mischief and the like.

These Panchayats are established mainly with the view to deliver justice through quick and efficient disposal of cases. For criminal cases, the Nyaya Panchayats have the same power as that of a Court of the Judicial Magistrate of the First Class. In India, a Judicial Magistrate of the First Class is a lower-level criminal court judge who can handle cases with a punishment of up to 7 years of imprisonment and fine.

**Lok Adalats and reinventing the Nari Adalat through Mission Shakti:** *Lok Adalats* are courts established under the National Legal Services Authorities Act of 1987 to secure the operation of the legal system through accessibility at the local level and enable the promotion of justice on the basis of equal opportunity. It has dedicated Parts VI and VIA to Lok Adalat and Pre-Litigation Conciliation and Settlement, respectively. Lok Adalat is named after the Hindi words '*Lok*', meaning people and '*Adalat*' meaning court. In simple terms, Lok Adalat is a court for the common people – and as one of the mechanisms of Alternative Dispute Resolution, it is a forum where disputes and even cases pending before courts are settled amicably during the litigation or pre-litigation stage. These courts are temporary and established by the *Taluk* (Sub-division of a District) Legal Services Authority, District Court or Legal Services Authority, State Legal Services Authority, High Court Legal Services Committee or Supreme Court Legal Services Committee as and when necessary to determine and arrive at a compromise in any matter falling within its jurisdiction or pending cases referred to it by the court if it is *prima facie* satisfied that there are chances of settlement provided that such cases are of a referable nature. The parties can either approach the Lok Adalat thereof or the Court in which the case is pending can refer it to *Lok Adalat* on proof of chances of compromise. The award made by a *Lok Adalat* is final and binding on the parties, with no appeal lying against it<sup>22</sup>.

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<sup>22</sup> National Legal Services Authorities Act 1987

In comparison to data from 11.02.2023<sup>23</sup> and 09.03.2024<sup>24</sup>, one can notice that the grand total of pre-litigation cases taken up by the National Lok Adalat across India increased from 32,713,845 to 69,043,255, out of which 17,604,677 (in 2023) and 27,331,725 (in 2024) cases have been disposed of which is a 63% increase. The pending cases taken up in the grand total by all the States across India in comparison to the data increased from 5,990,139 to 6,086,977. A total of 3,057,454 cases were disposed of in 2023, and 3,867,082 cases were disposed of in 2024, which is a 24% increase. From the NALSA (National Legal Services Authority) data for ADR and Mediation Statistical Information from April 2023- March 2024, there have been a total of 413 ADR Centres across the nation working out of the 484 Centres established and a grand total of 99033 cases settled through mediation<sup>25</sup>. This is a definite increase from the 375 out of 399 functioning ADR Centres, but the number of cases settled remains more or less the same, with the data for 2016-17 remaining at 93732 settled cases<sup>26</sup>. Despite this effort, as of July 2022, over 4.7 lakh cases under the Protection of Women from Domestic Violence Act across 801 districts are still pending as reported by NALSA<sup>27</sup>. But it was only on the 24<sup>th</sup> of February 2023 that the Supreme Court bench consisting of Justices S R Bhat and Dipankar Datta found that the implementation of the Act had been abysmal since the protection officer would be encumbered with 600 cases individually to manage<sup>28</sup>.

This led to them giving further instructions for implementing 'Mission Shakti'<sup>29</sup>. It is an integrated women empowerment programme that was designed to *touch upon and address all concerns and issues of women*; the Ministry of Women and Child Development issued a

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<sup>23</sup> 'National Lok Adalat (11.02.2023)' (National Legal Services Authority, 11 February 2023) <<https://nalsa.gov.in/statistics/national-lok-adalat-report/national-lok-adalat-2023/national-lok-adalat-2023-11-02-2023>> accessed 23 March 2024

<sup>24</sup> 'National Lok Adalat (09.03.2024)' (National Legal Services Authority, 09 March 2024) <<https://nalsa.gov.in/statistics/national-lok-adalat-report/national-lok-adalat-2024/national-lok-adalat-09-03-2024>> accessed 23 March 2024

<sup>25</sup> National Legal Services Authority, *Settlement through Mediation Report, April 2023 to March 2023* (2023)

<sup>26</sup> National Legal Services Authority, *Settlement through Mediation Report, April 2016 to March 2017* (2017)

<sup>27</sup> Srishti Ohja, 'Over 4 lakh cases pending under Domestic Violence Act, Supreme Court told' *India Today* (02 September 2022) <<https://www.indiatoday.in/law/supreme-court/story/over-four-lakh-cases-pending-domestic-violence-act-nalsa-tells-supreme-court-1995554-2022-09-02>> accessed 02 May 2024

<sup>28</sup> Dhananjay Mahapatra, 'SC finds working of Domestic Violence Act dismal, 4.7 lakh cases pending', *The Times of India* (25 February 2023) <<https://timesofindia.indiatimes.com/india/sc-finds-working-of-domestic-violence-act-dismal-4-7-lakh-cases-pending/articleshow/98220736.cms>> accessed 08 May 2024

<sup>29</sup> 'About: Mission Shakti' (Ministry of Women and Child Development) <<https://missionshakti.wcd.gov.in/>> accessed 28 April 2024



notification on 25<sup>th</sup> March 2022<sup>30</sup>. Through the notification, they discontinued the *Parivarik Mahila Lok Adalats* as it is now included as one of the components of the 'Mission Shakti' under the name of *Nari Adalat*. The *Nari Adalat* was initially set up on a pilot basis as an alternate grievance redressal mechanism for solving cases of harassment, subversion, and curtailment of rights or entitlements.

The Mission Shakti formulated by the Ministry of Women and Child Development, Government of India, is a wide-ranging and inclusive scheme that focuses more on the rehabilitation of women facing violence in their lives. Its essence is to mitigate the issue that despite seeking redressal and getting justice for the suffering, many women still face problems in terms of independent livelihood and maintaining the lives of themselves and their children. The scheme provides for both redressal and support to the affected women and their children as well.

The 'Mission Shakti' has two components, namely, *Sambal* and *Samarthya*. The former is designed for safety and security and the latter ensures empowerment. Sambal is set to include erstwhile schemes of One Stop Centres, Women Helplines, Beti Bachao Beti Padhao, along with the newer Nari Adalats. On the other hand, Samarthya includes erstwhile sub-schemes of *Ujjwala Homes*, *Swadhar Greh*, Working Women Hostel, National Creche Scheme and *Pradhan Mantri Matru Vandana Yojana*<sup>31</sup>. The schemes are developed as alternate dispute resolution and support systems for women who face violence and need rehabilitation. Among the schemes were:

**One Stop Centres:** Implemented in 2015, the OSC is the centrepiece of the scheme. Covering every possible amenity and support that can be provided to a woman facing violence, the Mission Shakti plans to establish 300 more OSC's in the districts where violence and crime rates are high. The centres will be connected to every helpline and scheme available to support and protect a woman facing violence. It is noteworthy that the OSC is to provide institutionalized mental health counsellors to support and assist any woman facing harassment or other forms of distress. It also considers the economic and social backgrounds and connects women to need-

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<sup>30</sup> 'Nari Adalat' (Ministry of Women and Child Development, 25 March 2022)

<<https://pib.gov.in/PressReleaselframePage.aspx?PRID=1809709>> accessed 12 April 2024

<sup>31</sup> *Ibid*

based hubs for their development and empowerment. Under the Nirbhaya Fund, they are also in connection with Anti-Human Trafficking Units, Women Help Desks, Special Fast Tracks Courts, and District Legal Services Authorities<sup>32</sup>. This scheme extends to the children of women who are aged up to 12 years as well in connection with the Juvenile Justice Act 2015 and POCSO 2012. Overall, legal, medical, psychological, social and economic support is provided under the scheme to women facing violence.

**Women Helplines:** Included in the *Sambal* component of Mission Shakti, women helpline numbers 112 (National Police Helpline) and 181 (National Women Helpline) are centralized Emergency Response Support Systems working round the clock to support assistance and guidance. These numbers can connect a woman in distress directly to the service required of them- police, fire, ambulance, OSCs, legal aid, counselling and more. They further help with connecting a woman with institutional and schematic support systems for psycho-social counselling and empowerment through education, financial support and skill building. The helplines are also available through text or any form of message for those who are unable to communicate. Where 112 connects them to emergency support, 181 provides support in terms of the development and empowerment of women. They are also connected to the 1098 Child Line and NALSA helplines. There is also a constant transfer of cases between 112 and 181 as well under the scheme.

**Nari Adalat:** A newer component of Mission Shakti in its sub-scheme Sambal, these are courts developed for alternate grievance redressal for 'petty' cases. They are formed of women who are passionate and committed to the purpose of establishing the Adalat. These courts are in collaboration with the Gram Panchayat, Ministries of Panchayati Raj, Rural Development, and Common Service Centres (CSCs).

**Anti-Human Trafficking Units along with Sakhi Niwas and Palna:** Set up in various districts across the nation, these units work towards victim rehabilitation. One part of this sub-scheme under *Samarthyaa* is the setting up of halfway homes where victims of human trafficking live and work. It is meant for the smooth transition of these victims to their independent living in the

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<sup>32</sup> *Ibid*

community. The scheme also entails facilitating repatriation orders for cross-border victims to the country of their origin, covering expenses incurred towards food, travel and incidental expenses. *Sakhi Niwas* are places for working women to live – whether they are single, married, widowed, divorced or separated. The limit of income for women in metropolitan cities is 50k/month and 35k/month in other places. *Palna* is a creche facility initiative for empowering women to seek jobs while providing quality care and protection for children.

**Indian Legislature and Judiciary in reinforcing the need for ADR in DV Cases:** Both the above counterparts were aimed at the betterment and resolution of cases of Domestic Violence but the ideology of women as nothing significant is so deep-rooted that an alternative targeted towards not just the vulnerable but also the offender is required. Alternate Dispute Resolution could be an extraordinary feature if presented in a coalesced manner. In the efforts mentioned above, the need for arbitration and conciliation as alternates has always been given importance.

1. The Gram Nyayalayas Act of 2008 makes an effort for conciliation under sections 26 and 27. Section 26<sup>33</sup> lays down that the *Gram Nyayalaya* in the first instance (where it is possible) shall endeavor to assist, persuade and conciliate the parties in arriving at a settlement with respect to the subject matter of the suit or claim or dispute (keeping in mind the nature and circumstances of the case). As such where the *Nyayalaya* finds a reasonable possibility of settlement, then it may adjourn the proceeding for such time period as is fit to enable attempts with the view to arrive at a settlement. On adjournment, the *Gram Nyayalaya* may refer the matter to one or two Conciliators to further a settlement between the parties. For this purpose, the District Court has the power to appoint conciliators, after consulting with the District Magistrate<sup>34</sup>. The District Court can establish a panel consisting of social workers working at the village level who are qualified to be Conciliators.
2. *Nari Adalat* (formally a part of the Mahila Samakhya of the Ministry of HRD) is a gender-sensitive informal Alternate Dispute Resolution platform in response to the rise in the number of cases of violence against women. Its major role is to issue verdicts and

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<sup>33</sup> Gram Nyayalayas Act 2008, s 26

<sup>34</sup> Gram Nyayalayas Act 2008, s 27

propagate legal literacy at the grassroots in India and encourages the use of methods in ADR including mediation, negotiation, conciliation and fines<sup>35</sup>. It is a counterpart to the now discontinued ‘Parivarik Mahila Lok Adalats’ (family women’s courts) implemented as one of the components of Mission *Shakti* as of 25 March 2022<sup>36</sup>. But there is no denying that despite these efforts, crimes against women are not decreasing at all.

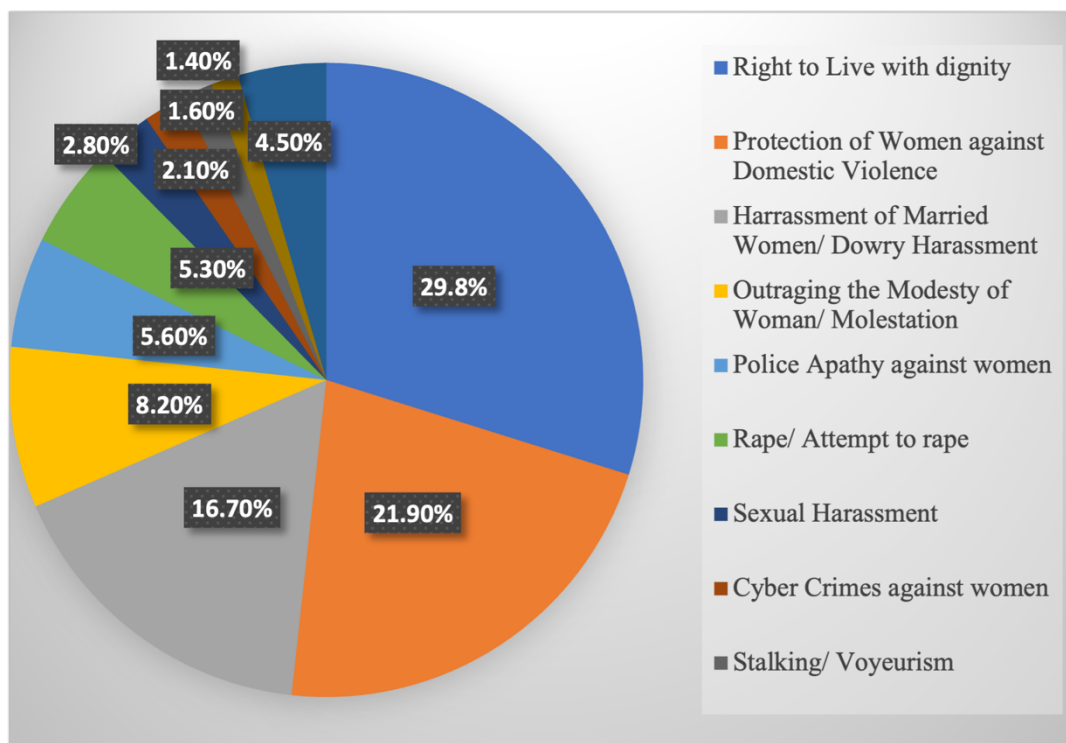


Figure 1: Nature-wise number of cases registered during 2023<sup>37</sup>

## EFFORTS BY THE JUDICIARY

The Hindu Marriage Act of 1955 and the Family Courts Act of 1984 enforced the need for reconciliation and settlement between parties at the first instance. It is only after a failure of such an attempt that the matter is forwarded to a court proceeding. Even when cases are presented in front of the courts, the Judges ask couples to consider an attempt at reconciliation. Section

<sup>35</sup> Namita Raje, ‘Case Study: Nari Adalat: A Beacon for Women in Distress’ (*News Reach*, 16 July 2017) <<https://www.pradan.net/wp-content/uploads/2017/02/Article-3-Nari-Adalat-A-Beacon-for-Women-In-Distress-.pdf>> accessed 21 May 2024

<sup>36</sup> Nari Adalat (n 30)

<sup>37</sup> ‘Nature-wise number of cases registered during 2023’ (*National Commission for Women*) <[https://ncwapps.nic.in/frmComp\\_stat\\_Overview.aspx](https://ncwapps.nic.in/frmComp_stat_Overview.aspx)> accessed 05 April 2024

23(2) of the Hindu Marriage Act states that ‘Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties’. Similarly section 9(1) makes an attempt for settlement before any further court proceeding in family disputes – ‘In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistently with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.’ In *Shiv Kumar Gupta v Lakshmi Devi Gupta*<sup>38</sup>, the Division Bench of the Calcutta High Court observed that compliance with section 23(2) of the Hindu Marriage Act is a statutory duty of the Judge trying matrimonial cases. The same was held true for Family Court judges in the case of *Rajesh Kumar Saxena v Smt. Nidhi Saxena*<sup>39</sup> where the Allahabad High Court held that it was the bounded duty of the Family Court to make an attempt at conciliation before proceeding with the trial in matrimonial cases.

In the case of *Jagraj Singh v Birpal Kaur*<sup>40</sup>, the Supreme Court of India re-enforced the same and asked the couple to attempt living separately when the wife decided to file for divorce on the grounds of cruelty and desertion. The court stated that they are making an experiment in creating confidence further adding that matrimonial matters must be handled carefully with human angle and sensitivity. The court relied on the judgement provided in cases such as *Chhote Lal v Kamala Devi & Ors.*<sup>41</sup>, *Jivubai v Ningappa*<sup>42</sup>, *Raghunath v Urmila Devi*<sup>43</sup>, *Jaswinder Kaur v Kulwant Singh*<sup>44</sup>, *Sushma Kumari v Om Prakash*<sup>45</sup> and many more to solidify and provide evidence to the fact that reconciliation in family matters must be considered at the first instance by the

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<sup>38</sup> *Shiv Kumar Gupta v Lakshmi Devi Gupta* (2005) 1 HLR 483

<sup>39</sup> *Rajesh Kumar Saxena v Smt. Nidhi Saxena* (1995) 1 HLR 472

<sup>40</sup> *Jagraj Singh v Birpal Kaur* (2007) 2 SCC 564

<sup>41</sup> *Chhote Lal v Kamala Devi & Ors.* (1967) 4 SCC 298

<sup>42</sup> *Jivubai v Ningappa* (1963) 4 SCC 90

<sup>43</sup> *Raghunath v Urmila Devi* (1973) 4 AHC 342

<sup>44</sup> *Jaswinder Kaur v Kulwant Singh* (1980) 1980 MARRI LJ 296

<sup>45</sup> *Sushma Kumari v Om Prakash* (1993) 2 BLJ 371

Court of law and that it must stretch measures and endeavor to make reconciliation between the couple.

In *Bini v Sundaran K.V.*<sup>46</sup>, Hon'ble Justices Kurian Joseph and Harun-Ul-Rashid of the Kerala High Court examined the question of whether conciliation is mandatory after the introduction of the Family Courts Act, 1984 even on the excepted grounds of conversion to another religion, renunciation of the world, mental disorder, venereal diseases, and leprosy. The Court held that the primary object is to promote and preserve the sacred union of parties to the marriage. In *Smt. Manju Singh v Ajay Bir Singh*<sup>47</sup>, a case that the court relied on for the judgement, held that in the case where the court does encourage the couples to reconcile, then the order passed by it would be illegal. Following this, in the case of *Sangeeta v Suresh Kumar*<sup>48</sup>, the parties after living separately with their child for some time decided to withdraw the applications filed before the court with the court's permission. The Court in this case had observed the importance of reconciliation for the welfare and interest of the children.

## REASONS FOR THE SHORTCOMINGS OF THE JUDICIARY

While the *Lok Adalat* and *Nari Adalat* were to serve as a means of alternate redressal, it has become profoundly clear that the initiatives have some lacking. The percentage of crimes against women has shown no sign of stopping, staggering to a rise each year. Even with the judiciary's efforts, there is no resolution to the prevalence of domestic violence and abuse. Some of the reasons for the same can be attributed to the following reasons:

**1. Underreporting of Cases:** As per the National Family Health Survey, 87% of the victims still do not report or seek help for several reasons<sup>49</sup>. They believe it is a matter of privacy and that society will look at them with shame about the disgrace they would bring if the crime of DV was reported. Most Indian women are homemakers, making them financially dependent on the male members of the family for centuries now, causing the notion that they are dutybound to and

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<sup>46</sup> *Bini v Sundaran K.V* (2008) 1 KER LJ 162

<sup>47</sup> *Smt. Manju Singh v Ajay Bir Singh* (1985) 8 DRJ 354

<sup>48</sup> *Sangeeta v Suresh Kumar* (2000) 9 SCC 442

<sup>49</sup> Kavitha Reddy, 'Domestic violence: An untamed evil' *Deccan Herald* (03 January 2024) <<https://www.deccanherald.com/opinion/domestic-violence-an-untamed-evil-2833197>> accessed 15 May 2024

need to be grateful to their husbands despite having to endure abuse. They are also weary of alienation by society and any kind of retaliation they might face for raising their voices against the cruelty they suffer<sup>50</sup>. The survivor thinks, that in such a situation everyone other than themselves, approaches in the first instance family and friends and then other people before approaching the appropriate authorities. Other reasons that can be included are the fact that there is a lack of awareness and resources for survivors to seek help.

**2. Lack of Police Support:** In the Annual Report for 2022-23 by the National Commission for Women, it was noted that police apathy against women ranks 6 out of the 23 nature of complaints that are received, with a total of 1496 registered complaints<sup>51</sup>. In recent times, the Manipur incident of police brutality where the women of the Kuki-Zomi community were stripped naked, paraded and sexually assaulted after the police had reportedly driven and handed them over to the Meiti rioters after having previously denied them refuge<sup>52</sup>. This echoes the origin of the Vishaka guidelines against Sexual Harassment in the Workplace, which were established following the case of *Vishaka & Ors. v State of Rajasthan*<sup>53</sup>, where the activist Bhanwari Devi was raped by the police for trying to stop child marriage. These incidents highlight the persistent lack of police support for women, which exacerbates their vulnerability and confines them to continued cruelty.

**3. Secondary Victimization:** The lack of support and belief by the people close to the survivor and lack of faith in the justice system often leads to women not reporting crimes. However, those who do report them despite these hurdles face the issue of secondary victimisation<sup>54</sup>. A case study by Namita Raje states that ‘The traditional forms of justice-dispensing mechanisms had patriarchal biases. If women ever dared to raise their voices against the atrocities inflicted on

<sup>50</sup> Payal Seth, ‘Decoding the Extent to Which Domestic Violence Is Under-Reported in India’ *The Wire* (12 February 2021) <<https://thewire.in/women/domestic-violence-india-underreported>> accessed 13 May 2024

<sup>51</sup> National Commission for Women, *Annual Report 2022-23* (2023)

<sup>52</sup> ‘Manipur sexual assault case: Kuki women were driven to mob by cops, stripped naked, paraded, says CBI chargesheet’ *The Mint* (India, 01 May 2024) <<https://www.livemint.com/news/india/manipur-sexual-assault-case-kuki-women-stripped-naked-paraded-were-driven-to-mob-by-cops-says-cbi-chargesheet-11714524458591.html>> accessed 17 May 2024

<sup>53</sup> *Vishaka & Ors. v State of Rajasthan* (1997) 6 SCC 241

<sup>54</sup> N Amareswari RS, ‘Women Victims and Eradication of Secondary Victimization – An Urgent need’ (2019) Tejasvi Astitva <<https://www.tejasviastitva.com/women-victims-and-eradication-of-secondary-victimization-an-urgent-need-amareswari-r-s/>> accessed 09 April 2024

them, they would face criticism and humiliation, both at home and in society. They were often reviled if they questioned the prejudiced view of women in society.<sup>55</sup> Women are almost always subjected to harsh scrutiny and scepticism, and even if the cases are proved, they are asked to compromise and settle at all times for the convenience of the offender, either her husband or her in-laws or a combination of both.

**4. Pendency in Courts:** According to the National Judicial Data Grid (NJDG), there are 1 crore civil cases and 3 crore criminal cases pending in the District and Taluk Courts of India. Similarly, there are 61 lakh cases pending in the High Court approximately (44 lakh civil and 17 lakh criminal cases) and 64,731 cases (63729 civil and 17185 criminal cases) pending in the Supreme Court<sup>56</sup>. The alarmingly low sanctioned strength of judges sits in contrast to the country's relatively large volume of work and population. India now has 21 judges per million population, which is definitely an increase but not enough to deal with the backlog in Courts<sup>57</sup>. The World Justice Project, vide their Rule of Law Index (2021), depicted the alarming position of India when it secured 79th position out of 139 countries at the global forum and 3rd position out of 6 countries at the regional forum<sup>58</sup>, with being placed 40th for Openness of the Government, 93rd for the implementation of Fundamental Rights, 121st for Order and Security, 78th for Regulatory Enforcement and 110th and 86th when looked at through the Civil and Criminal Justice Systems respectively. As far as the country's civil and criminal justice systems are concerned, the report reveals India's issues with unreasonable delays and the lack of timely and effective adjudicatory mechanisms. Among other factors and subfactors, the report also depicts India's unsatisfactory performance in combating corruption, enforcing due process of law, and maintaining an open government.

## ALTERNATE DISPUTE RESOLUTION: ANOTHER ATTEMPT IN A NEW LIGHT

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<sup>55</sup> Raje (n 35)

<sup>56</sup> 'District and Taluka Courts of India' (*National Judicial Data Grid*)

<[https://njdg.ecourts.gov.in/njdgnew/?p=main/pend\\_dashboard](https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard)> accessed 05 April 2024

<sup>57</sup> 'Unstarred Question No. 1335' (*Ministry of Law and Justice*, 09 February 2024)

<<https://sansad.in/getFile/loksabhaquestions/annex/1715/AU1335.pdf?source=pqals>> accessed 12 April 2024

<sup>58</sup> World Justice Project, *World Justice Project Rule of Law Index Report* (2021)



Alternative Dispute Resolution was introduced as an alternative to reduce the burden of the courts but has not been recognised as a formal method of adjudication. They do not replace the courts but rather support and strengthen the formal system, thereby reducing the burden of the court and resolving conflict between two disputing parties in an amicable and peaceful process. Alternative Dispute Resolution has different methods based on the circumstances and situations of each particular case. India currently has arbitration, conciliation and mediation as forms of Alternate Dispute Resolution, especially in civil and commercial dealings.

**Arbitration:** Arbitration refers to an alternative dispute resolution method where the parties in a dispute agree to have their case heard by a qualified arbitrator outside of the court<sup>59</sup>. In accordance with the UNCITRAL Model Law, Part I of the Arbitration and Conciliation Act of 1996 under section 2(a) only states that 'Arbitration' means any arbitration, whether or not administered by a permanent arbitral institution. There is no fixed definition of arbitration, but it is consensually understood to be a process involving an arbitrator as per the arbitration clause provided in an agreement or contract. The decision of an arbitrator is binding on the parties.

**Conciliation:** With a mutual view to avoid litigation, conciliation is the alternative dispute resolution method through informal negotiations involving the aggrieved person and the respondent through a mutual and friendly agreement. The Indian Arbitration and Conciliation Act again does not provide for a definition, but it does lay out the roles of a conciliator in Part II<sup>60</sup> as follows:

- Assist parties in an independent and impartial manner;
- To be guided by principles of objectivity, fairness and justice and, among other things, to give consideration to the rights and obligations of the parties;
- Conducting a conciliation proceeding where the circumstances of the case are taken into account and both parties have equal opportunity to express their wishes;
- Make a proposal for settlement of disputes with a statement of reasons.

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<sup>59</sup> 'Arbitration' (*Law School Online Dictionary*) <<https://www.law.cornell.edu/wex/arbitration>> accessed 20 April 2024

<sup>60</sup> Arbitration and Conciliation Act 1996, s 67

**Mediation:** The Supreme Court of India, in its Mediation and Conciliation Project Committee Brochure, has defined mediation as a voluntary, binding process where an impartial and neutral mediator facilitates disputing parties in reaching a settlement<sup>61</sup>. It is important to note that a mediator is not someone who can impose a solution, rather, they create a conducive environment for the smooth resolution of the dispute between the conflicting parties<sup>62</sup>. Though the difference is subtle, an arbitrator's order is binding on the parties, whereas the conciliator hears both sides and brings out a fair and just settlement, stating the reasons for the same. The mediator simply oversees the proceedings such that the parties are able to reach a settlement on their own.

These methodologies are quick, responsive, and cost-efficient and create solutions that are agreeable to both parties so that there are no further disputes. It is also confidential and informal, so there is no factor of publicity, societal shame or stigma involved. The parties can come together on a mutual agreement and resolve their conflict with the help of a third party who can guide them consciously. At the tip of the iceberg, these are the reasons ADR can be adopted in cases of domestic violence. The objectivity and fairness of the third-party arbitrator/mediator/conciliator, due to non-involvement in the case personally and the consideration of the circumstances with legal constraints, can provide a better-tailored solution for the victims to settle amicably. It would also eliminate any stigma towards the victim, enabling them to speak out about the violation they faced and as a result, they need not endure the long, tedious and harsh process of trials and cross-examinations. Further, if the litigation costs and the overburdened courts are taken into account, ADR can be an attractive alternative in cases of domestic violence. Thus, where ADR is directly implemented with community involvement and training, it has the potential to achieve results not seen before.

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<sup>61</sup> 'Mediation' (*Mediation and Conciliation Project Committee: Supreme Court of India*, 18 December 2005) <<https://main.sci.gov.in/pdf/mediation/Brochure%20-%20MCPC.pdf>> accessed 10 May 2024

<sup>62</sup> 'Mediation Training Manual of India' (*Mediation and Conciliation Project Committee: Supreme Court of India*, 08 September 2012) <<https://main.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf>> accessed 10 May 2024

One such example can be the efforts made by NGOs in the Kangra and Chamba Districts of Himachal Pradesh<sup>63</sup>. It was noted that among the general public and the legal community, there was a lack of awareness with regard to the existence of the *Nari Adalats*. Ayushi Parashar, a fellow with the American India Foundation, approached the host organisation *Jagori Rural Charitable Trust (Jagori Grameen Dharmashala)*, registered under the DV Act as a special service provider running 4 *Nari Adalats* in Kangra District and 1 in the Chamba District. Through dialogue and negotiations, the voices of women were brought forth as central to decision-making. Everyone, with no limitations, is free to seek help from the cadre of 12 women and 3 men justice activists engaging actively in addressing violence against women alongside the *Nyaya Sakhis*, who regularly follow up and help the aggrieved women. *Nyaya Sakhis* are described as the backbone of these *Adalats*. Women are not sent home as a convenient means of resolution but are provided space to heal and find physical and mental safety. A free platform is also given for the narration of their incidents. These women who reach out after years of hoping for a change find in these *Nari Adalats* a breath of fresh air and safety. They significantly improve their self-worth, confidence and happiness alongside their physical and mental well-being.

### CRITICISM OF EMPLOYING ADR IN DV CASES

Employing ADR in domestic violence cases seems to be a very appealing and efficient method to dissolve the issues that arise within a family without major external influence or losing the dignity of family life. However, when the ground reality of victims is not taken into consideration, implementing alternative methods of dispute resolution would be futile. There has been strong criticism against using ADR methods in cases of domestic violence. Reasons for the same are:

**Power Disparity:** Where family laws and humanitarian laws develop with respect to the public norm, it is no surprise that in a patriarchal and male-dominated setup, women are unaware of the laws, rights and remedies available to them, much less allowed to seek redressal. This power disparity is a major criticism for adopting ADR in cases of domestic violence. ADR, with its

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<sup>63</sup> Ayushi Parashar, 'Nari Adalats: Changing Lives at the Community Level' (*American India Foundation*, 14 May 2020) <<https://aif.org/nari-adalats-changing-lives-at-the-community-level/>> accessed 03 May 2024

focus on communication and private negotiations, though tailored to the needs of individual parties, still faces the brunt of stigma and mistrust<sup>64</sup>. Further, it is pertinent to note that women are only recently engaging in areas of power, but even that is still impossible in rural areas. In areas where taking dowry is considered a source of pride and subjecting women to harsh environments is normal, it becomes rare to convince a woman or other women around her that she can be independent and successful. The mindset that women need not work or engage in the social and political front is deeply ingrained in both men and women in India.

**Sex Role Ideology:** In the context of sex-role ideology, the author Jamila Chowdhury notes several points as to why Western feminist scholars are against the use of ADR to resolve family disputes in cases resolving violence. The major focus, she argues, of these feminist scholars is the negotiation capacity of women. Under the violence of the perpetrator, there is a clear disparity in power created where women consider silence over justice. She provides evidence to the argument that the role of the perpetrator and supporters of the offender establishes control over the victim woman, thereby influencing her thoughts and actions. To avoid violence and to placate the offender in the hopes that the violence would be minimal, the victims often choose to stay silent about their violation and some do not even dare to negotiate. And therefore, the negotiating power that these women hold is restricted. The argument is that the development of the stimuli to placate rather than disagree with the perpetrator would most likely be a challenge during mediation, making it difficult for a mediator to ensure fair and just outcomes<sup>65</sup>. In the Indian context, women are discriminated against for being vocal about their experiences – they are alienated and rarely find support. The fear that even after getting out of the violence they endure they would have no support system or livelihood makes the victims hesitant. This sex ideology will most definitely be a barrier to implementing ADR in cases of domestic violence.

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<sup>64</sup> Andre R Imbrogno, 'Using ADR to Address Issues of Public Concern: Can ADR Become an Instrument for Social Oppression?' (1999) 14(3) Ohio State Journal on Dispute Resolution <<https://kb.osu.edu/items/df38cac7-05dd-5c7a-b2c8-11542f72f9c1/full>> accessed 03 May 2024

<sup>65</sup> Jamila A. Chowdhury, 'ADR in Criminal Cases and Decriminalisation of Violence: A Gender Perspective' (2016) 7(2) Indian Journal of Law And Justice <<https://ir.nbu.ac.in/bitstreams/08f8a76d-987a-48a4-8e85-41219a074990/download>> accessed 03 May 2024

**Oversight of Public Discourse:** When a case of domestic violence is adjudicated in a court, it can be re-enforced as a social message branding such action as a criminal offence. The arrest of a perpetrator of domestic violence and conviction of their crimes would produce strong and significant caution among the public about these wrongs. In ADR, the conflict is resolved privately behind closed doors and is of no concern to the public. Violence when made a public concern, can promote the welfare of women and provide better opportunities for empowerment. However, through ADR, where the adjudication is informal and unaccountable, the results promoted through these methods may be overlooked by the public, thereby impairing the legal enforcement of rights and liabilities. It can minimize the effects of violence but also undermine the societal impact as a consequence<sup>66</sup>. Where this is the case, the legal remedies available to women and victims of violence are diminished, thereby hindering the development of laws and statutes with regard to issues of domestic violence and family law. The development of law is a vital factor in the development and empowerment of women. A decrease in the quality of the law formulated to support women would create a vicious circle of violence and suppression.

## **SUGGESTIONS, RECOMMENDATIONS AND CONCLUSION**

There are several schemes and policies already in action for the development, empowerment and protection of women facing violence. The lack of effectiveness isn't in terms of schemes or support but in terms of action. Implementation of any scheme would be impractical where deep-rooted practices that run counter to its objective are majorly in play. The gender-based roles involving the suppression of women in India have become a traditional and cultural phenomenon. It is a sin to be born a woman, is a phrase that victims of violence and harassment know all too well. This mindset is deeply ingrained and widespread, where women are considered property or commodities rather than human beings. The fact that male children are preferred over female ones even today in rural and some parts of urban India shows that the root of the problem of implementation lies in the roles assigned to people based on their gender. The need, then for the protection of women from domestic violence lies in changing this

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<sup>66</sup> Andre (n 64)

mindset. Otherwise, adopting ADR or any scheme for the effective administration of justice would not be possible.

**In the Indian context, a two-fold method can be implemented first at a social level and then at a legal level:**

**Gender-based communities and Restorative Justice Circles:** Women must be encouraged to be part of communities exclusively where they can communicate, share and support fellow victims of violence. These communities, unlike government-run organizations must be run and supported by women plainly for the purpose of companionship. These communities, apart from being pillars of support can work towards forming circles with the aim of restorative justice – the women can work towards training as mediators who are empathetic and work with the view of ‘Restorative justice’. These are usually victim-offender rehabilitation or mediation programmes that involve the victim and offender working closely alongside people involved in the legal field and peace-making groups of people<sup>67</sup>. Where an entire community of women comes around to support and stand up for a fellow woman, the community as such is implementing strong ideals of togetherness and harmonious rehabilitation.

**Therapeutic Interventions:** Cases of violence are distinctive and individualistic based on the person seeking justice and their individual circumstances. Based on a case-by-case basis and the needs of the domestic violence case presented at hand, the legal professionals can recognize what care and empirical needs are required by the victim and offender; involving appropriate qualified intervening parties can make way for healed relationships. Indian courts reinforce the need for familial and matrimonial relationships for the welfare and safety of the child. Similarly, based on the case, the court may, by recognising and understanding mental health as a vital factor, pass orders that include trauma-informed practices and/or refer the victim/offender to a mental health counsellor, family therapist, divorce counsellor, therapeutic recontact/

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<sup>67</sup> Maria Volpe, ‘Post Disaster ADR Responses: Promises and Challenges’ (2015) (26)1 Fordham Environmental Law Review  
<[https://www.academia.edu/114955561/Post\\_Disaster\\_ADR\\_Responses\\_Promises\\_and\\_Challenges](https://www.academia.edu/114955561/Post_Disaster_ADR_Responses_Promises_and_Challenges)> accessed 19 April 2024

reunification clinician or clinician for either parents or children as interventionists<sup>68</sup>. Creating partnerships between legal and mental health professionals can lead to support and guidance for peaceful understanding among the parties and deter violence from recurring.

Apart from all this, support systems can be created through collaboration between various stakeholders. Guidance and problem-solving are very necessary in case of sensitive issues such as domestic violence. Additionally, education and awareness about such incidents and vocational education for independent livelihood or cultivation of interest is a necessary part of resolving cases of domestic violence. Violence must be considered as a public concern and given priority in order to tackle the obstacles to women's empowerment and protection<sup>69</sup>. Some of these support systems include:

**Community Mediation Camps:** Small-term temporary camps educating people about mediation and conciliation along with other legal and social schemes available to the victims and offenders can be discussed within local communities along with informal sessions (either free of cost or for a nominal amount) for resolving small conflicts can be administered. Through collaboration with social workers, psychologists and legal professionals, these cases can be referred to higher authorities for solutions.

**Community Vocational Camps:** The formation of small camps and groups that volunteer to learn vocations either for personal interest or for earning a livelihood can provide a form of community for victims and offenders. In collaboration with other creative arts associations, art workshops, music-based therapy sessions or drama-based interventions can speak to the victims and offenders on a personal level through the expression of their hurt, healing their trauma and understanding for a harmonious life going forward.

**Trauma-Informed ADR Specialization Training:** Mediators/ Arbitrators/ Conciliators or other interventionists should be specifically trained for trauma-based support. Victims who muster

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<sup>68</sup> Charlton S. Smith, 'A Lawyer's Guide to Marriage Counseling' (1964) 50(8) American Bar Association Journal <<https://www.jstor.org/stable/25722894>> accessed 19 April 2024

<sup>69</sup> Samrudhi Dalvi, 'Mediation and Alternate Dispute resolution in Hindu Marriages' (*Aishwarya Sandeep Parenting and Law*, 29 December 2023) <<https://aishwaryasandeep.in/mediation-and-alternate-dispute-resolution-in-hindu-marriages/>> accessed 19 April 2024

the courage to make a change to their violence-inflicted lifestyle are complicated and offenders who are misunderstanding can have a difficult time understanding their wrongs and actions. The trauma-based ADR specialist must be sensitive to the narrative of both parties such that issues on both sides are resolved and repetitive patterns of violence and miscommunication are not born.

It is important to work closely with stakeholders, including government bodies, legal professionals, NGOs, and mental health professionals, to implement these approaches effectively. Pilot projects, research, and evaluation can help assess the efficacy of these methods in the Indian context and guide further implementation. Additionally, it is crucial to continually educate and raise awareness among the general public about the availability and benefits of these innovative approaches in violence-related cases.

The methodologies for ADR are effective in resolving disputes between two parties in a short span of time, saving costs for both parties in terms of the litigation cost and other expenses incurred while proceeding with a case. It also ensures that both parties are satisfied with the result of the mediation/negotiation. But in case of violence in matrimonial and familial scenarios, where all the above options can be implemented it can be ineffective as victims would be fearful of societal and familial hostility. Additionally, it can diminish the effects of the legal system and cause the public to overlook laws and statutes formulated especially for addressing domestic violence. India has developed its own creative and inclusive methodology of ADR in the forms of Lok Adalats, Nari Adalats and One Stop Centres that focus on rehabilitation and encouraging women to be independent and endeavour to pursue a livelihood along with other victims of domestic violence. These schemes fall under the integrated programme of Mission Shakti that aims to improve the legal, physical, mental, social and economic standards of women.

In conclusion, based on several scenarios, the implementation of ADR in cases of extreme violence would undermine the purpose of these methodologies, creating a discrepancy between justice and societal needs. Therefore, implementing ADR in instances of petty crimes in a domestic and matrimonial scenario can lessen the burden of courts and also allow for a peaceful



and amicable settlement between the victim and perpetrator without the disruptions and misunderstandings of third parties.