



Jai Maa Saraswati Gyandayini

An International Multidisciplinary e-Journal

(Peer-reviewed, Open Access & Indexed)

Journal home page: www.jmsjournals.in, ISSN: 2454-8367

Vol. 09, Issue-III, January 2024



PRENUPTIAL AGREEMENT WITH ADR CLAUSES: ADDRESSING POWER IMBALANCES AND CONFLICTS BETWEEN COUPLES

Mahima Singh^{a,*},

Dr. Pankaj Tyagi^{b,**},

^aResearch Scholar, Chaudhary Charan Singh University, Meerut, U.P. (India).

^bProfessor, H.O.D-Legal Department, M.M.H. College, Ghaziabad, Professor, H.O.D-Legal Department, M.M.H. College, Ghaziabad, Chaudhary Charan Singh University, Meerut U.P. (India).

KEYWORDS	ABSTRACT
Alternative Dispute Resolution (ADR), Prenuptial Agreements, Power Imbalances, Marital Captivity, Divorce.	Marriage is a sacred institution that needs significant sacrifice and dedication from both parties. Marriage is no different from any other type of civil partnership as in this, arguments and disputes inevitably arise, as in any other relationship or bond. Engaging ADR methods like Mediation and Conciliation, in a Prenuptial Agreement can be one strategy to prevent potentially unpleasant legal disputes, post-marriage, which shall be discussed later in chapter. The article supports the inclusion of these tried-and-tested ADR techniques in premarital agreements to be included as clauses, so that the division of assets and liabilities, and other disputable issues can be faced amicably, and resolved legitimately amongst a couple. It may also have potential to envision and resolve if an unforeseen event—such as a marital breakdown—could occur in the future. This article will discuss two important practical aspects. Firstly, ADR Techniques shall be employed to resolve a marital dispute. Secondly incorporating these ADR Techniques, as clauses, in an Agreement planned, accepted and executed by couple before they enter into marital bonding. The main theme of paper, hence is, that any disputes that can develop throughout the marriage or in the future, if has a bare possibility to be anticipated earlier, shall be settled by the parties before (through Prenuptial Agreement), by devising forehand ways (like ADR techniques) to tackle them in future. This article will examine the usage of ADR as a productive method of resolving marital conflicts and the inclusion of ADR procedures in prenuptial agreements. Both the parties to a prenuptial agreement can create a framework for resolving disputes quickly and affordably by incorporating provisions requiring the parties to submit to ADR. The approach outlined in this article involves the parties to engage in mutual consultation to select an Alternative Dispute Resolution (ADR) method and agency. This individual possesses the ability to fulfill the roles of an arbitrator, conciliator, or mediator, which were previously held by the “Bicholia”. We acknowledge the significance of their position by explicitly designating their appointment in the prenuptial agreement. This step ensures that disputes can be resolved in a friendly and expeditious manner, without the need for prolonged legal proceedings, while also promoting the various ADR techniques.

1. Introduction

Alternative Dispute Resolution (ADR) methods are already being used largely to resolve marital disputes. This article discusses benefits and

implications regarding inserting them as clauses in prenuptial agreements, providing a comprehensive overview with a focus on solving marital disputes in India.

Corresponding author

*E-mail: singhmahima26@gmail.com (Mahima Singh)

**E-mail: pankaj_ria@rediffmail.com (Dr. Pankaj Tyagi)

DOI: <https://doi.org/10.53724/jmsg/v9n3.04>

Received 10th Nov. 2023; Accepted 10th Jan 2024

Available online 30th Jan. 2024

2454-8367 /©2024 The Journal. Published by Research Inspiration (Publisher: Welfare Universe). This work is licensed under a [Creative Commons Attribution-NonCommercial 4.0 International License](https://creativecommons.org/licenses/by-nc/4.0/)



<https://orcid.org/0009-0009-0761-7971>

<https://orcid.org/0009-0001-9795-709X>

ADR methods including Mediation, Negotiation, Conciliation, Arbitration have many advantages to solve marital disputes, as it helps limit hostility between parties, utilizing a simplified process to resolve issues. Parties do not require to go to court to resolve matters and ADR is also less expensive than litigation. It is a process that provides alternatives to the institutional framework of marital conflict so that family matters stay confidential, out of hostile court affairs. Some of the countries that use ADR methods in prenuptial agreements are: France, Germany, Poland, Switzerland, Sweden, Denmark, Belgium, Norway, Finland, Australia, Canada, New Zealand, U.S.A, etc. In India, Mediation among other ADR methods is compulsorily prescribed in Family Courts though the validity of prenuptial agreements is still questionable under the Indian Contract Act of 1872.

However, the skyrocketing increase in the number of divorces in India as well in other countries has given rise to thoughts of considering a Prenuptial Agreement among the educated fraternity of to-be-spouses as well their parents so as to plan beforehand any misfortune further. A prenuptial agreement allows a couple to specify in advance which specific dispute resolution method- Arbitration or Mediation, or any other, they can use in the event of a disagreement. Therefore, conflicts between the couple could now be resolved in the first instance, through ADR techniques with help of this settlement, hence decreasing the likelihood of a marital breakdown or divorce in future.

Prenuptial agreements are legal instruments created to lessen the likelihood of divorce as well as

inevitable financial burden in the future. Therefore, these agreements shall be interpreted as supporting marriage and preventing marital disputes, and therefore in restraint of a divorce, but not in restraint of Marriage. However, as people indulge in greater freedom and choice to enter or leave a marital relationship, marriage and divorce have grown more secular and individualistic in modern society, with number of divorces increasing at an unprecedented rate.

According to data from the National Crime Records Bureau (NCRB), more people in unhappy marriages appear to choose suicide over divorce, in recent years. According to the “Accidental Deaths and Suicides in India” study from the National Crime Records Bureau (NCRB), between 2016 and 2020, marital issues were the root cause of almost 37,591 suicides in India. This equals a daily average of around twenty people committing suicides due to marital reasons. Sadly, we have this data, but we could never get data of individuals living life in broken marriages, facing marital captivity every day. Marital captivity occurs on the ill-fated path between marriage and divorce, where emotionally broken partners are moving towards the legal breakdown of marriage. Instead, these partners, feel trapped in suffocative bond, owing to several reasons like societal pressure, children etc. and become victims of marital captivity where they are not able to get out of their unhappy lives. They may fall victim to depression and several other mental and physical illnesses. It is worth mentioning that India has one of the lowest divorce rates of any country, yet this does not necessarily imply that Indian marriages are flawless, happy,

and tranquil!

This social problem needs to be solved with a very practical approach. Hence to avoid future risks like someone experiencing mental trauma while being held captive in a marriage, prenuptial agreement is a preventive measure, that before marriage, the couple with their families mutually identify, the potential areas of disputes, primarily related to assets and liabilities like fund allocation, maintenance, and then together they pre-devise a strategy for any possible conflict later in marriage.

They can do this in their Prenuptial Agreement, by including clauses of Dispute Resolution Technique, like Negotiation, Conciliation, Mediation that they like to adhere to. This practical approach needs to be understood by youth and advocated by parents as well the grandparents of spouses. Promoting prenuptial agreements guarantees the family's enduring financial stability. This strategy is realistic, practical and takes note of both critical priorities and a sustainable future. It has a potential to resolve any possible risks related to upcoming marital life.

Also, it is high time to reconsider the recent positive judicial approach towards validity of Prenuptial Agreements in our country. The Prenuptial agreement may have provisions for settling any future marital disputes amicably and through ADR in a well drafted legal format, which could act as a wand against domestic violence perpetrators.

A prenuptial agreement often discusses how assets would be divided in the event of a divorce. And if done properly and brought up early on, it could be a good option for both spouses. The agreement

may have provisions for settling any future marital disputes amicably and through ADR as mentioned in their Prenuptial Agreement, rather than letting an individual continue living a trapped life in marriage, feeling caged in marital relationship. Such bonding may further consist of domestic abuses, with data showing how Indians preferring choose death over divorce.

2. Prenuptial Agreement

A prenuptial agreement is a document that two people sign before they wed, that outlines, besides other clauses to lead a happy married life, also how they would share their property, debts, and other matters, in the event of a divorce or other dissolution of their union. Depending on the situation and the couple's viewpoint, a prenuptial agreement may play a part in averting an unpleasant or depressing marriage.

This well drafted legal instrument, the prenuptial agreement could guide young spouses what they were supposed to do, if anyone among them tries to infringe each other's basic human as well marital rights. Instead of being bound to live the life of a marital captive, these young spouses can now embrace and cherish life. Instead of finally resorting to divorce, relationships could become amicable and pleasant, and a well drafted Prenuptial Agreement could also contribute towards a lesser number of divorce rates, as it is doing in the U.S.A. Regardless of geographic location, they offer a means of ensuring financial security and safeguarding the interests of both parties in a marriage and after. These legally binding documents outline the division of assets and financial responsibilities in case of marital

breakdown due to any reason viz death or divorce. Hence prenuptial agreements, acknowledged in numerous countries like the USA, the United Kingdom, and various European nations, serve as a universal legal mechanism for couples. Objective of these agreements is to lessen mental agony associated at time of marital breakup, among spouses.

Though prenuptial agreements date back to 2000 years, since they are considered a theme from Western World, they are still not accepted in many legislations in the world including India. Recently Family Court Judge, Mr. Harish Kumar of Patiala House Court, Delhi has asked Higher Courts to consider prenuptial agreement mandatory for a couple before they enter into marriage. He made the observation after granting divorce to a couple involved in a legal fight for the last 7 years. However, still realizing several benefits of the Prenuptial Agreement, our country lacks clear cut guidelines in implementing it.

The honorable judge in the Delhi courts also highlighted a new concern. He tried drawing attention to the growing number of matrimonial disputes that lack actual cruelty. He highlighted the fact that even pleasant divorces, where both partners willfully want to separate, actually turns into bitter judicial fights in the absence of prenuptial agreements. He added that Prenuptial agreements should be made mandatory in order to expedite the divorce process, decrease arguments, and lighten the load on the courts so the judiciary may concentrate on cases that actually involve legal challenges.

3. Prenuptial Agreement with ADR Clauses:

Empowering Marital Harmony

Marriage disputes are normal, but if there is an unequal power dynamic between the couples, the situation continues and may worsen. A marital relationship where one partner feels more in control can cause the other to feel “caged” or silenced leading to a typical situation of marital captivity. In a paternalistic society, this situation is generally realized by females.

This imbalance may have several underlying causes. They may originate from a partner's personality, such as one's desire for dominance or the other's desire to avoid conflict. Hence prior to marriage, it's critical for couples to have frank conversations in order to identify and address these imbalances. They ought to be aware of one another's expectations and decide on specific ground rules for their partnership. This arrangement of mutual consultation among spouses before marriage was suggested thousands of years before, in ancient Egypt as “ketubah”. Then it was bargained by parents of spouses regarding dowry and bride's wealth. In the current era, it is known as a Prenuptial Agreement.

3.1 Role of ADR Agent Analogous to “Bicholia” in Traditional Indian Weddings:

In the context of traditional Indian marriages, “bicholia” or “बिचौलिया” denotes a person who acts as a mediator or middleman for both parties in marriage. He mediates conversation or negotiation between future spouses and their families, particularly in the context of arranging a marriage. The bicholia serves as an intermediary, facilitating the exchange of messages and proposals between the families of the potential bride and groom

during the marriage negotiations. This holds traditional significance in arranged weddings, as in traditional Indian culture, it's not considered wise to discuss about certain conflict arising topics, hence families give this duty to the “बिचौलिया”, who serves is role of a messenger between parties, and can be a male or female. Conflicts and power disparities are manageable if they are identified, and modes of their resolution are taken care of.

“Bicholia” is generally a well-regarded and trusted family member or relative. They may continue to provide advice and support in the couple's married life, particularly in resolving family conflicts or delivering advise based on their extensive experience and knowledge. It is crucial to acknowledge that the ongoing participation of a “Bicholia” following marriage is not a formal or obligatory position, but rather relies on the specific dynamics and cultural customs of the families concerned. Acknowledging the role of a “Bicholia” following marriage is essential, although it is not a formal or obligatory position. Instead, its existence hinges on the specific dynamics and cultural customs of the families involved.

This article proposes a proactive approach: mutual consultation between both parties to appoint an Alternative Dispute Resolution (ADR) agent. This individual can serve as a mediator, conciliator, or arbitrator—roles previously fulfilled by the “Bicholia.” By explicitly mentioning this appointment in the prenuptial agreement, we grant legal recognition to their crucial function. This step not only reinforces the ADR process but also ensures that disputes can be resolved efficiently and harmoniously, without resorting to lengthy

litigation.

Challenges:

Modern prenuptial agreements that establish reciprocal rights and duties are not new but they are the product of a major shift of procedures over many centuries, like Ketubah in Egypt, Saptapadi in Hinduism and Nikahnama with Mahr-al Muakhar in Islam, reflecting larger social shifts towards gender equality and marital fairness.

4. Benefits of ADR Clauses in Prenuptial Agreement

Incorporating ADR clauses (including Mediation, conciliation, negotiation) in a Prenuptial Agreement is particularly crucial in circumstances when parties may struggle to communicate clearly with one another. As role of an ADR agent is to urge the parties to engage in productive and courteous communication and negotiation, they can help to promote a cooperative and respectful relationship between the parties. Hence if the parties wish to keep their relationship positive, they can choose ADR approaches that encourage communication and understanding over litigation.

- ADR provisions in a prenuptial agreement can help couples avoid the frequently contentious and expensive process of going to court. Instead, with the aid of a mutually agreed, impartial third party, they can collaborate to produce a solution that works for both parties. If the said ADR agent is within the family, (as in role of Bicholia) this will also reduce cost of entire processes, be it just conflict management during marriage or for separation or divorce meetings. Hence this way incorporating

ADR clause in Prenuptial Agreement, will make the entire process very cheaper as compared to court litigations.

- Arbitration is not favored in marital disputes in India. However, if arbitration becomes permissible in the future and is included as a clause in prenuptial agreements by couples, it could significantly impact dispute resolution in prenuptial agreements. It would have a binding effect, allowing couples to address potential disputes proactively. This would also reduce litigation, reducing emotional strain and time-consuming court battles. Furthermore, arbitration could facilitate divorce settlements, streamlining the process and providing a structured framework for resolution. Thus, integrating arbitration into prenuptial agreements could enhance the effectiveness of Alternative Dispute Resolution (ADR), promote amicable resolution, and reduce legal burden.
- They can offer a quicker, more affordable, and more adaptable means of resolving any issues or disputes that may arise during a couple's marriage. For instance, if the parties cannot agree on how to value or divide their assets in future, they can prefer using mediation or arbitration in Prenuptial Agreement, to come to an amicable agreement rather than taking their case to court and incurring the time and expense of legal fees and procedures.
- Another advantage of employing ADR in a

prenuptial agreement is that it gives couples the option to tailor the procedure to meet their particular requirements. Couples can guarantee that the ADR process will be tailored to their particular needs and concerns by specifying which ADR techniques will be used in the prenup in case any dispute arises. For instance, they may decide to use mediation to resolve issues related to child custody or support, or they may choose arbitration to settle financial disputes. Instead of relying on litigation, they can provide the parties with greater authority and say in how their disagreement is resolved. For instance, using ADR procedures allows the parties to decide what issues to address, how to address them, and what terms to agree upon, rather than leaving these decisions to a judge or jury. This gives the parties more control and participation in the resolution of their dispute.

- It is crucial to understand that having ADR clauses in a prenuptial agreement does not signify that parties are giving up their ability to file a lawsuit in the event that ADR is unable to settle their differences. Instead, it offers another option for settling conflicts that may be more expedient, less expensive, and less contentious than going to court.

ADR strategies can therefore be mentioned in prenuptial agreements to prevent disagreements in the future because they can provide some benefits for resolving any potential issues or

conflicts that may develop in a courteous and peaceful manner. ADR methods could have various drawbacks or restrictions that need to be taken into account, and they might not be appropriate or effective for all sorts of disputes or parties.

Getting ADR settings in a prenuptial agreement, will firstly help a couple during the course of their marriage, in working towards solution of any conflict. However if conflicts did not get resolved, it shall also smoothen the processing of divorce, if required by parties. It enables couples to rapidly and cost-effectively resolve problems, to resolve any conflict before it reaches the stage for divorce, and facilitating a smoother transition throughout divorce processes if required. Couples can create a harmonious, balanced relationship that values both partners by identifying and addressing these problems early on in their partnership through a prenuptial agreement. This arrangement also covers how to resolve power disparities between spouses in future, resolving future disputes through conciliation or mediation.

5. Benefits of involving Arbitration in Marital Conflicts through Prenuptial Agreements:

Presently, arbitration is not permissible in marital conflicts in India. If arbitration is allowed in the future and incorporated as a provision in prenuptial agreements subsequently, it could have a more substantial effect than other ADR methods like Negotiation, Conciliation or Mediation on

resolving disputes. In the event that arbitration is included in a prenuptial agreement, any conflicts arising between the couple would be settled exclusively through the process of arbitration. The conclusions rendered during arbitration would possess a legally binding effect, akin to a judgment issued by a civil court.

By integrating Arbitration into prenuptial agreements, spouses can proactively tackle possible conflicts, before they need to approach litigation. Partners can address conflicts during their marriage without resorting to court process, which is also emotionally exhausting and time-intensive for families concerned.

Arbitration clauses in divorce cases streamline the process of resolving disputes and reaching settlements regarding property division, alimony, and other related topics. It simplifies the process and offers a systematic framework for resolving issues. Difference between other ADR methods and Arbitration, is that the decision given by an arbitrator will be binding on both parties, and both parties have to accept it, as a decision by the Family Court.

6. Challenges of using ADR Methods for Prenuptial Agreements

1. In India, there is no proper set of rules and protections for prenuptial agreements, as well as inclusion of ADR procedures and Arbitration, for resolving family law disputes outside of court.
2. ADR may not be able to address all the issues and contingencies that may arise in the future, especially if there are changes in

the circumstances, laws, or expectations of the parties. It's not feasible at time of marriage to include everything that is unforeseen like financial status. Possibilities are innumerable, hence Prenuptial agreement shall be drafted, taking all these considerations, that any change in situation, doesn't alter its objective.

7. Need of ADR Clauses in Prenuptial Agreement

A Delhi family court's (recent ruling, in October 2023 stressed the need to make prenuptial agreements mandatory in India. Justice Harish Kumar argued that compulsory prenups, following counseling and breach reporting, could alleviate the suffering that couples often face during divorce proceedings. The court's vision is to promote transparency and reduce the emotional and financial toll of divorce on couples. Delhi family courts emphasize making prenuptial agreements mandatory.

A prenuptial agreement can be used to determine the parameters of a marriage, engaging of alternative dispute resolution (ADR) methods to settle any problems that may emerge, besides determining how assets would be shared in the case of a divorce.

ADR may entail strategies like collaborative law, arbitration, negotiation, conciliation, and mediation. Couples can create a framework for resolving conflicts quickly and affordably by putting language in a prenuptial agreement that require the parties to submit to ADR.

As of now Arbitration is not preferred in marital disputes in India. However, if subsequently Arbitration becomes permissible, and is included as a clause in Prenuptial agreement, by the couple, it will all together resolve matter with a binding effect as that of a civil court ruling. This way ADR in a Prenuptial Agreement, will be more strongly working towards its objectives, reducing all together any need of litigation further, facilitating Divorce disputes and settlements.

8. Validity of ADR Methods in Marital Disputes with Reference to Indian Legislation

Processes like mediation, negotiation, and conciliation, is a proactive approach for resolving marital disputes that is also recognized and validated by Indian courts. Indian Courts prefer resolution of issues outside of a court. It will not only maintain dignity of marital relations, but will also aid in reducing burden over court.

If ADR is allowed in resolving a Marital dispute by Court, hence it shall be indispensably made a clause regarding conflict management in Prenuptial Agreements as well.

Following are Indian acts and legislations that validate inclusion of ADR in Marital Disputes:

1. **The Arbitration and Conciliation Act, 1996**, which is based on the **UNCITRAL** Model Law on International Commercial Arbitration, governs the use of Alternative Dispute Resolution in India. According to the Act, arbitration is a procedure in which the disputing party's consent to have their disagreements heard by one or more arbitrators or mediators who then render a

legally enforceable decision. One of arbitration's key benefits is that it provides a quick, adaptable, and private alternative to litigation, which is frequently drawn-out, rigid, and in the open. Aside from choosing their own arbitrators, who may be knowledgeable in the dispute's issue, arbitration also gives the parties the chance to set the ADR rules and procedures to be utilized further. It shall be noted that most of family matters are disagreements that result from marriages, including divorce, annulment, maintenance, child custody, guardianship, adoption, succession, etc.

2. The family matters are arbitrable under Indian law as they come under the purview of **Section 9 of the Civil Procedure Code (CPC), 1908**. These matters are governed by various personal laws and statutes in India, such as the Hindu Marriage Act, 1955, the Special Marriage Act, 1954, the Muslim Personal Law (Shariat Application Act), 1937, the Indian Succession Act, 1925, etc. According to Section 9, “the courts shall have jurisdiction to try all matters of a civil nature, except suits of which their cognizance is either expressly or impliedly precluded,” subject to the restrictions herein stated. This clause states that any disagreements involving the private rights or responsibilities of parties are civil in character and subject to civil court adjudication. Family issues can therefore be thought of as civil disputes that can be arbitrated.

3. Additionally, **Section 89 of the CPC** allows for the resolution of issues outside of court through a variety of techniques, including arbitration, conciliation, mediation, or judicial resolution. In order to put the recommendations of the 129th Report of the Law Commission of India into effect, Section 89 was added by an amendment in 1999. This clause aims to persuade parties to choose alternative dispute resolution (ADR) methods over courtroom proceedings. As a result, Section 89 also suggests that family-related disputes may be resolved through arbitration. The court may construct the conditions of a potential settlement through mediation, conciliation. It can only turn to litigation in the event that these alternative dispute resolution methods are unsuccessful.

Additionally, **Order XXXIIA Rule 6 of the CPC** mandates settlement procedures in all lawsuits involving family-related issues. In 1976, Order **XXXIIA** was added by amendment in order to speed up marriage processes and encourage party reconciliation. Under Rule 6, “the court shall strive, in the first instance, to help and persuade the parties in reaching a settlement with respect to the subject matter of any suit or process to which this Order applies, consistent with the nature and circumstances of the case.” Rule 6 also says that other ways of settling disagreements can be used to settle family issues.

Additionally, every lawsuit or process before a family court must follow the same settlement procedures, according to Section 9 of the Family

Courts Act of 1984. According to Section 9, “in every suit or proceeding, Family Court shall endeavor to assist and persuade the parties to reach a settlement with respect to the subject-matter of the suit or proceeding in the first instance where it is possible to do so consistent with the nature and circumstances of the case.” As a result, Section 9 implies that family-related disputes may be resolved through arbitration.

For example, Sections 23 and 28 of the Hindu Marriage Act of 1955 and the Special Marriage Act of 1954 both the sections provide that a court cannot award a divorce decision unless it is certain that the parties have not conspired or colluded with one another and that there is no chance of reconciliation. These rules also mandate that courts plan for children's maintenance and custody while taking their welfare into account. As a result, arbitration of divorce cases may be against these clauses and taken away from courts of their judicial powers.

Mediation, negotiations, and conciliation are proactive methods used to resolve marital disputes. Indian courts acknowledge and authenticate these procedures. Indian Courts and various legislative acts discussed above, prioritize Alternative Dispute Resolution methods above traditional court proceedings. This strategy not only preserves the integrity of marital relationships, but also reduces the pressure on the legal system. If the court permits Alternative Dispute Resolution (ADR) in marital problems, it should be mandated as an essential provision in Prenuptial Agreements, as is also proposed by research. By integrating Alternative Dispute Resolution (ADR) into

prenuptial agreements, individuals can efficiently and promptly settle conflicts without the need for litigation, while also minimizing costs.

9. Case Laws

The following are a few case laws where courts have given consideration to resort to ADR methods for resolving a marital dispute, before reaching Advocates and Court. In a recent case, in October, 2023 a Delhi Family Court, while deciding a divorce Case, ruling emphasized the need to establish mandatory prenuptial agreements that must be signed under the direction of a recognized authority. Counseling the couples about the likely problems that marriages may face for a variety of reasons would be part of this process. In addition, the Court suggested making it mandatory to notify agreement violations at the time they happen.

This opinion is also supported by some legal precedents where courts ruled that resorting to Alternate Dispute Resolution, before reaching courts, shall be mandatory. For instance, the Supreme Court **ruled Baliwinder Kaur v. Hardeep Singh [(2007) 3 SCC 755,]** that reconciliation as a type of ADR is required in divorce proceedings and that courts should attempt to reach an amicable agreement between the parties before granting divorce. The court further stated that "maintaining the institution of marriage and its integrity should be the paramount aim."

The Supreme Court of India underlined the value of alternative dispute resolution (ADR) procedures in marriage conflicts in the case of **Jagraj Singh v. Birpal Kaur**. The court emphasized that before granting any relief, it is the court's responsibility to make all reasonable efforts to facilitate the parties'

reconciliation under Section 23(2) of the Hindu Marriage Act.

The Supreme Court of India heard the case of **Gaurav Nagpal vs. Sumedha Nagpal** on November 19, 2008. The Supreme Court stressed the importance of using Alternative Dispute Resolution (ADR), in a child's custody case in divorce. In this judgment, to overcome communication gaps and stop people from rushing to the courts, the Supreme Court ruled for bringing about conciliation. This is now coming as part of a larger trend where courts are pushing parties to settle conflicts using alternative dispute resolution (ADR) techniques like arbitration or mediation rather than going to court. Hence when court also favors bringing ADR in family disputes, rather than litigation and courts. Hence we propose ADR shall be an indispensable clause in Prenuptial agreement.

The Prenuptial Agreement with ADR clauses for Conflict Management shall be considered as a written manifestation and a legal instrument notifying intention of Court for referring Matrimonial Disputes for ADR. With a prenuptial contract, long and nasty legal battles may be avoided through including ADR clauses. It enables couples to make these decisions ahead of time in a more cooperative and non-adversarial environment.

10. Conclusion

Integrating Alternative Dispute Resolution (ADR) methods into a prenuptial agreement can initially facilitate spouses in cooperatively addressing and settling any conflicts that may emerge throughout their marriage. If these disagreements are not resolved, the ADR provisions can also help to

make the divorce procedure more efficient and friendly, if the couple decides to separate. Alternative Dispute Resolution (ADR) techniques are several approaches to settle issues without going to court or using litigation. Prenuptial agreements that include alternative dispute resolution (ADR) can give couples a clear framework for quickly and affordably settling conflicts. Prenuptial Agreements could prevent marital dissolutions by resorting to pre-defined dispute resolution techniques. Depending on the circumstances and viewpoints of the couple, prenuptial agreements may play a significant part in averting unhappy or dreadful marriages, but our country's legislative and judicial systems must first make them enforceable in Indian Courts.

In present study, it has been also suggested to retain custom of having a middleman, "Bicholia" in modern concept, as an ADR Agent viz Mediator, Negotiator or Conciliator. So, to not only give legal standing to this custom, but also making dispute resolution in marriages, smoother. Also, it is suggested to incorporate clause related to this in Prenuptial Agreement.

ADR techniques can be advantageous for settling marital conflicts in a number of ways, including speed, cost, privacy, co-operation, empowerment, etc. It is crucial to remember that the written agreement requires to detail the specific ADR process that will be followed. Prenuptial agreements may provide certainties, protection, privacy, respect, and other advantages. Using ADR to address marital issues anticipated by prenuptial agreements, in various legal and cultural contexts, depends on a number of variables, including the

legal system, social conventions, personal values, and the unique circumstances of each marriage. Therefore, before entering a relationship, the parties shall determine the method of dispute resolution among themselves in writing through a prenuptial agreement. Solving this issue and striking a balance between the interests of the parties and society, there is a need for a clear and consistent legal framework as well as a well-designed legal draft of same.

In order to prevent further occurrences of marital captivity and marital suicide, the legislature and judiciary should take a proactive role in this matter and provide appropriate guidelines and safeguards for ADR of family matters in India, as well as including them in advance in Prenuptial Agreements.

The recent Delhi court's judgment (Patiala House Family Court, Justice Harish Kumar) throws light over the requirement for prenuptial agreement, presenting a proactive approach to conflict settlement and challenging the established divorce procedure. These agreements, which encourage couples to go into marriage with clear expectations, can reduce conflict, safeguard assets, and eventually result in more effective and emotionally less intense divorce proceedings. However currently we need amendments in our legal framework looking for this policy's implementation.

References:

1. "Problems & benefits of using alternative dispute resolution." 29 Apr. 2022, <https://legal.thomsonreuters.com/en/insights/articles/problems-and-benefits-using-alternative-dispute-resolution>. Accessed 14 Oct. 2022.
2. "International Prenuptial Agreements: A Global

- Perspective." 11 Sep. 2022, <https://bnblegal.com/article/international-prenuptial-agreements-a-global-perspective/>. Accessed 14 Oct. 2022.
3. "International Prenuptial Agreements: A Global Perspective." 11 Sep. 2022, <https://bnblegal.com/article/international-prenuptial-agreements-a-global-perspective/>. Accessed 14 Oct. 2023.
4. "Divorce – not so much a curse! - The Times of India." <https://timesofindia.indiatimes.com/readersblog/idiosyncrasies/divorce-not-so-much-a-curse-45234/>. Accessed 13 Oct. 2022.
5. "Accidental Deaths & Suicides in India 2020 - NCRB." https://ncrb.gov.in/sites/default/files/ADSI_2020_FULL_REPORT.pdf. Accessed 13 Oct. 2023.
6. Kumar, V. (2018). Quest For Prenuptial Agreement in Institution of Marriage: A Socio-Legal Approach, *Journal of the Indian Law Institute*, 60(4), 406–426. Available at <https://www.jstor.org/stable/26826987>/Accessed 14 Oct. 2020
7. Deaths, A. (2021). suicides in India. National Crime Records Bureau, Ministry of Home Affairs, Government of India. New Delhi.
8. Leeson, P. T., & Pierson, J. (2016). Prenups. *The Journal of Legal Studies*, 45(2), 367–400. <https://www.jstor.org/stable/26458535>
9. "Delhi court while granting no-fault divorce to couple - Bar and Bench." 31 Oct. 2023, <https://www.barandbench.com/news/make-prenuptial-agreements-mandatory-delhi-court-granting-no-fault-divorce-couple>. Accessed 1 Nov. 2023.
10. "Marriages going haywire!: Delhi court calls for mandatory pre-nup" 1 Nov. 2023, <https://www.hindustantimes.com/cities/delhi-news/time-to-make-pre-nuptial-agreements-mandatory-delhi-court-101698824421039.html>. Accessed 3 Nov. 2023.
11. Goswami, B. (2020). Evaluation of Applicability of Judicial Intervention in Arbitration Proceedings: Arbitration and Conciliation Act, 1996. *Supremo Amicus*, 19, 179.
12. "Section 89 CPC- Settlement of Dispute Outside of Court." <https://districts.ecourts.gov.in/sites/default/files/Section%2089%20CPC.pdf>. Accessed 13 Oct. 2022.
13. Alternative Dispute Resolution in Indian Family Law. https://www.iafl.com/media/1129/alternative_dispute_resolution_in_indian_family_law.pdf. Accessed 13 Oct. 2022.
14. ADR Mechanisms in Family Disputes - Locutor." 2 Oct. 2020, <https://lawcutorcom.wordpress.com/2020/10/02/adr-mechanisms-in-family-disputes/>. Accessed 13 Oct. 2023. "Delhi family courts emphasizes making prenuptial agreements mandatory" 02 Nov. 2023, [Jai Maa Saraswati Gyandayini e-Journal |Jan 2024 |](https://timesofindia.indiatimes.com/life-

</div>
<div data-bbox=)

- style/relationships/love-sex/delhi-family-courts-emphasises-making-prenuptial-agreements-mandatory-before-marriage-all-you-need-to-know-about-prenups/photostory/104910406.cms.
15. Alternative dispute resolution in Indian family law. https://www.iafl.com/media/1129/alternative_dispute_resolution_in_indian_family_law.pdf. Accessed 13 Oct. 2022.
 16. Roberts, M. M. (2014). *Mediation in family disputes: principles of practice*. Ashgate Publishing, Ltd.
 17. Atwood, B. A., & Bix, B. H. (2012). A New Uniform Law for Premarital and Marital Agreements. *Fam. LQ*, 46, 313.
 18. Thompson, S. (2017). Prenuptial Agreements and the Presumption of Free Choice: Issues of Power in Theory and Practice.
 19. Alternative dispute resolution in Indian family law. https://www.iafl.com/media/1129/alternative_dispute_resolution_in_indian_family_law.pdf. Accessed 13 Oct. 2022.
 20. Time to make 'pre-nup pact' compulsory, says Delhi court. 1 Nov. 2023, <https://timesofindia.indiatimes.com/city/delhi/time-to-make-prenup-pact-must-delhi-court/articleshow/104870242.cms>. Accessed 2 Nov. 2023.
 21. Balwinder Kaur vs Hardeep Singh on 18 November 1997. <https://indiankanoon.org/doc/1178667/>. Accessed 13 Oct. 2021.
 22. Tyagi, N., & Tyagi, N. (2021). Matrimonial Litigation, Its Aftermath, and ADR Mechanisms in Focus. *Women, Matrimonial Litigation and Alternative Dispute Resolution (ADR) Transforming Indian Justice Delivery System for Achieving Gender Justice*, 67-116.
 23. Jagraj Singh vs Birpal Kaur on 13 February 2007 - Indian Kanoon. <https://indiankanoon.org/doc/1026997/>. Accessed 2 Nov. 2023.
 24. Gaurav Nagpal vs Sumedha Nagpal, (2008) 13 SCC 703
 25. Quest for prenuptial agreement in institution of <https://www.jstor.org/stable/26826987>. Accessed 14 Oct. 2022.
 26. Alternate dispute resolution mechanism - nios. https://nios.ac.in/media/documents/SrSec338New/338_Introduction_To_Law_Eng/338_Introduction_To_Law_Eng_L15.pdf. Accessed 14 Oct. 2022.
 27. "Make prenuptial agreement compulsory": Delhi family court as it grants" 01 Nov. 2023, <https://indianexpress.com/article/cities/delhi/prenup-agreement-marriage-delhi-court-divorce-9008942/>.
