



Comparative Study on Alternative Dispute Resolutions in Family Affairs and Lawsuits

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Abstract

The concentration of legal cases ,particularly family disputes in courts, is considered one of the major challenges facing the judicial system in Iran and many other countries worldwide. This issue has led to delays in judicial proceedings, hindered the realization of justice, increased costs for the government and court users ,reduced the speed of judicial proceedings ,reduced the efficiency and accuracy of judgments ,failed to achieve fair trials ,caused further problems within families, and more. This becomes even more critical in handling family matters and disputes, as the interests of vulnerable groups such as children are at greater risk .The above reasons and other reasons have made courts less suitable for protecting individuals' rights and resolving disputes, particularly in family cases. Consequently, there is a growing global tendency among individuals to resolve their disputes through non-judicial methods or alternative dispute resolution (ADR) mechanisms that are not supervised by government entities .The private sector and governments have also started various measures to promote and introduce these non-judicial methods and encourage disputing parties to use them more frequently .Therefore, privatization, and specifically ADR as a subset of privatization, is considered one of the effective frameworks for resolving disputes and reducing the burden on judicial authorities. In this regard, the question arises: how can the resolution of family matters and disputes be directed toward privatization ?The present study aims to examine and explain, through a comparative approach and using a documentary-library method, how family matters and disputes can be privatized within the ADR system .The findings reveal that alternative dispute resolution (ADR) methods offer various advantages. Among the most significant benefits are their speed and cost-effectiveness compared to the increasing expenses and slow pace of judicial proceedings, their private and confidential nature, the autonomy of the parties during the process, flexibility and diversity of methods, and the amicable and peaceful resolution of disputes .ADR encompasses arbitration, mediation, negotiation, and conciliation, which are conducted in a friendly and confidential manner by institutions and organizations outside the judiciary .In these methods, the parties themselves determine



the rules and procedures for resolving the dispute, with the overall resolution process being based on their autonomy. If the proceedings are overseen by a private institution, in addition to the parties' autonomy, the rules and principles of the institution also govern the dispute resolution process. In other words, the privatization of family matters and disputes through alternative dispute resolution methods is rooted in restorative justice principles and ADR mechanisms can be regarded as tools of restorative justice, as they prioritize the repair and restoration of harm caused by any member of the family in the event of behavioral misconduct or damage to other members. The benefits of employing ADR methods in family matters and disputes have led many countries, including England and Wales, Australia, and India, to adopt these approaches. Measures such as establishing private and semi-governmental institutions and companies to provide alternative dispute resolution services, forming private entities under the supervision of public and governmental bodies, utilizing artificial intelligence and legal technology in ADR implementation and resolution of family matters and disputes, encouraging individuals to use these methods, and other similar initiatives have driven these countries toward privatization in this field. In contrast, ADR methods in Iran do not play a significant role in resolving disputes. Couples and families often resort to the judicial system to settle their conflicts for several reasons, such as the unfamiliarity with and perceived ineffectiveness of these methods, the absence of private arbitration and mediation institutions for family disputes, cultural factors, and more. For example, under current Iranian laws, arbitration in family matters and disputes is exclusively limited to divorce cases) except mutual divorce. (However, this method could be applied to all types of family disputes, such as alimony, child custody, and others. Additionally, the arbitration mechanisms within the courts lack sufficient effectiveness. This is mainly because most couples approach the courts with the primary goal of separation and are therefore reluctant to appoint arbitrators themselves. Furthermore, due to the high volume of cases, courts typically select arbitrators from a limited pool of individuals associated with arbitration units in family courts. These arbitrators often lack the motivation to mediate reconciliation between couples and are primarily focused on earning a livelihood. To solve the above problems in Iran's judicial system, it can be concluded that by creating a culture and introducing alternative dispute resolution methods) ADR (to society and clarifying the benefits of its use, establishing private and semi-governmental companies and institutions that offer ADR services, enacting legislation to support ADR methods and privatization, utilizing insurance capacities to reduce the costs of accessing private services, and adopting modern approaches, including legal technology, for implementing ADR methods, we can take an important step to reduce the cases of the judiciary and increase the accuracy of the proceedings to preserve the family foundation.

Keywords: Family affairs and lawsuits, Privatization, Arbitration, Alternative Dispute Resolutions (ADR), Mediation.



References

Books

1. Behkish, Mohammad Mahdi (2002). *Eghtesad Iran dar Bastar Jahani Shodan*, Tehran: Nashr Ney [in Persian]
2. Dadmarzi, Mahdi (2011). *Hoquq Khanevadeh Eslami dar 38 Keshvar Jahan*, Qom: Daneshgah Qom [in Persian]
3. Darvishi Hoveyda, Yousef (2014). *Shivehaye Jaygozin Hal-o-Fasl Ekhtelaf*, Tehran: Mizan [in Persian]
4. E'ezazi, Shahla (2006). *Jame'e Shenasi Khanevadeh*, Tehran: Roshangaran [in Persian]
5. Marriott, Arthur (2003). *ADR in civil and commercial disputes. The handbook of arbitration and dispute resolution practice*, London: Sweet and Maxwell
6. Moeini Far, Heshmat-ol-Sadat (2011). *Dolathaye Refah va Siasathaye Hemayati Khanevadeh*, Tehran: Mizan [in Persian]
7. Newman, Peter (1998). *The New Palgrave Dictionary of Economics and the Law*, New York: Springer
8. Rahimi Boroujerdi, Alireza (1994). *Siasathaye Eghtesad Kalan va Eslahat Sakhtari*, Tehran: Markaz Motale'at va Pazhoresh Bazargani [in Persian]
9. Schwartz, Gerd (1989). *Privatization; Possible Lesson from the Hungaration Vase*, United Kingdom: Oxford University Press

Articles

10. Al-Omran, Roya, and Al-Omran, Seyed Ali (2011). *Khosousi Sazi va Siasathaye Kolli Asl 44 Qanun Asasi. Majaleh Eghtesadi Mahnameh Barrasi Masael va Siasathaye Eghtesadi*, 11(12), 73-88 [in Persian]
11. Bell, Felicity (2019). *Family law, access to justice, and automation. Macquarie Law Journal*, 25(19), 103-132
12. Cohen, Amy J. (2011). *The Family, the Market, and ADR. Law Journals at University of Missouri School of Law Scholarship Repository*. 6(1), 91-126
13. Edwards, Jo, Sandys, Amanda, Gaw, Jamie (2017). *Family dispute resolution: a practitioner's perspective. Family Law Journal*. 1245-1248
14. Emonson, Rhonda Maree, *Preparing for family dispute resolution in regional Australia: exploring the experiences of parents, family dispute resolution practitioners and lawyers: PhD Thesis*, James Cook University, 2019.
15. Gautam, Ritu, Pradeep, Kulshrestha, Avinash Krishan, Goswami (2021). *Mediation and Family Dispute Resolution Mechanism: A Case Study on Clinical Legal Education. Ilkogretim Online - Elementary Education Online*. 20(3)



16. Hadi, Solmaz, and Hajipour, Morteza (2016). Barresi Shivehaye Jaygozin Hal-o-Fasl Ekhtelaf az Manzar Hoqouq Iran va Feqh Imamieh. *Faslnameh Elmi Pajouheshi Feqh va Mabani Hoquq Eslami*, 9(1), 87-110 [in Persian]
17. Higgs Howarth, Shelby, Catherine Caruana (2017). Appendix A: Mandatory mediation in family law – a review of the literature. *Journal of Social Welfare and Family Law*. 2(10), 1-28
18. Javid, Mohammad Javad, and Mohajeri, Maryam (2018). Mabani Modakheleh Dolat dar Nahad Khanevadeh dar Nezam Hoqouqi Iran. *Faslnameh Shoraye Farhangi Ejtemai Zanan va Khanevadeh*, 21(82), 7-34. [in Persian] Doi: 10.22095/JWSS.2019.92498
19. Jomati Consultants LLP (2019). The legal sector in Wales. a rapid review. A report by Jomati Consultants LLP
20. Kay, Thompson (1986). Privatization; a Policy in Search of a Rationale. *The Economic Journal*. 96 (381), 18-32
21. Ministry of Justice (2022). Call for Evidence on Dispute Resolution in England and Wales. Response to consultation carried out by the Ministry of Justice
22. Moslehi, Ali Hossein, and Sadeghi, Mohsen (2004). Negahi be Shivehaye Jaygozin Hal va Fasl Ekhtelaf (ADR). *Majaleh Nameh Mofid*, 10(46), 123-150 [in Persian]
23. Motiwal, O. P. (1998). Alternative Dispute Resolution in India. *Journal of International Arbitration*. 15(2), 117-127
24. Najafi Abrandabadi, Ali Hossein (2003). Az Edalat Keyfari Classic ta Edalat Tarimi. *Majaleh Daneshgah Oloum Eslami Razavi*, 2(9&10), 3-38 [in Persian]
25. Pal, Arjun (2017). The Impact of Mediation in India. O.P. Jindal Global university. 1-6
26. Rezaei, Seyed Alireza, Maboudi Neyshabouri, Reza, Ansari, Azam, va Khodabakhshi Shalamzari, Abdollah (2022). Ta'ayin-e Maghar dar Ravesh-haye Jaygozin-e Bar Khat Hal-e Ekhtelaf. *Nashriye Elmi-ye Motale'at-e Hoqq-e Tatbighi-ye Mo'aser*. 13(28), 111-139. [in Persian] Doi: 10.22034/LAW.2022.47258.2965
27. Sadeghi, Mohammad (2018). Mozakerat Pish az Aqd dar Nekah; Az Mahiyat ta Ta'sir Hoqouqi. *Dofaslnameh Feqh va Hoquq Khanevadeh*, 23(69), 31-52. [in Persian] Doi: 10.30497/FLJ.2018.71124
28. Sadeghi Movahed, Khadijeh, Bagheri, Ahmad, Sadri, Seyed Mohammad, and Amirpour, Heydar (2019). Edalat Tarimi, Bayestegi va Zarurat Hakemiyat An dar Hozeh Khanevadeh ba Tekieh bar Mabani Feqhi. *Majaleh Feqh va Mabani Hoquq Eslami*, 52(1), 107-126. [in Persian] Doi: 10.22059/JFIL.2019.265308.668564



29. Shariat Kermani, Aref, and Sabahi Geraghani, Moein (2021). Naqsh Davari dar Kahesh Da'avi Khanevadegi ba Takid bar Asnad Beyn-ol-Melali. *Faslnameh Elmi Motale'at Beyn-ol-Melali Polis*, 12(45), 184-205 [in Persian]
30. Shoarian, Ebrahim va Nikzaman Asl, Sanaz (2020). Ruykardha va Zavabet-e Hakem bar Tafsir-e Movafeqat-nameh-ye Davari-ye Dakheli va Beynolmelali. *Nashriye Elmi-ye Motale'at-e Hoqoq-e Tatbighi-ye Mo'aser*. 11(21), 151-188. [in Persian] Doi: 10.22034/LAW.2020.12634
31. Tavassoli Jahromi, Manouchehr (2001). Negahi be Shivehaye Jaygozin Hal Ekhtelaf (ADR) dar Moghararat Jadid Otagh Bazargani Beyn-ol-Melali. *Majaleh Hoqouqi Daftar Khadamat Hoqouqi Beyn-ol-Melali Jomhuri Eslami Iran*, 19(26-27), 382-365. [in Persian] Doi: 10.22066/CILAMAG.2002.18077
32. Vijeh, Mohammad Reza, and Boroujerdi, Leili (2016). Motale'eh Tatbighi Qavanin va Barnamehaye Tose'ei Dolat dar Hozeh Khanevadeh (Mored Motale'eh: Keshvarhaye Iran va Malezi). *Motale'at Tose'eh Ejtemai Iran*, 8(3), 19-33 [in Persian]

Rules

33. Qanun A'in Dadrasi Dadgah-haye Omoumi va Enqelab dar Omour Madani, Mosavab 2000 [in Persian]
34. Qanun Hemayat Khanevadeh, Mosavab 1974 [in Persian]
35. Qanun Hemayat Khanevadeh, Mosavab 2012 [in Persian]
36. Qanun Madani, Mosavab 1928 [in Persian]

Websites

37. Admiral Law (2019), Making a Claim, <https://admirallaw.co.uk/claims-process>
38. Carbon Law Partners (2019), Family Law, <https://carbonlawpartners.com/services/family-law/>
39. Family Mediation Council (2020), What is Family Mediation? <https://www.familymediationcouncil.org.uk/family-mediation/>; <https://www.familymediationcouncil.org.uk/about-us/>
40. Family Mediators Association (2015), About Family Mediation, <https://thefma.co.uk/about-family-mediation/>; <https://thefma.co.uk/miams/>