



A SOCIO-LEGAL STUDY ON THE CONCILIATORY  
BODIES APPOINTED UNDER SECTION 106 OF THE  
LAW REFORM (MARRIAGE AND DIVORCE) ACT 1976:  
THE CONSTRAINTS AND SUGGESTIONS FOR REFORM

BY

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## **ABSTRACT**

Alternative Dispute Resolution (ADR) is promoted because of its advantages over litigation. There are many branches of ADR, among others are arbitration, mediation, negotiation, and conciliation. This study focuses on conciliation and reconciliation of matrimonial disputes handled by the Marriage Tribunal as a conciliatory body appointed under section 106 of Law Reform (Marriage and Divorce) Act 1976. The objective of this study is to analyze the problems faced by conciliatory bodies in terms of effectiveness, competency, enforcement and impact on the target groups. Another objective is to study the process of family mediation as practised in Australia, Singapore and New Zealand to be as models of reference. In order to prove the hypothesis, a special study has been carried out and questionnaires have been distributed to the respondents. This study adopts both qualitative and quantitative methods that are necessary for a socio-legal research. The qualitative method draws data from the principles, legal writings, legislations, Malaysian family laws, case law, and foreign family laws. The quantitative method employs the statistical tool, i.e, Statistical Package for Social Sciences (SPSS) for Windows Program Version 17.0 for data analysis. Two statistical procedures namely descriptive and inferential statistics were used to analyse the empirical data. The findings of this study prove that although majority of the respondents are quite satisfied with the reconciliation sessions and officers in charge, it still fails to reconcile the disputing parties. It indicates that the reconciliation process handled by the conciliatory body appointed by the government under the Law Reform (Marriage and Divorce) Act 1976 is not effective. Therefore, there is a need for the practice and the relevant law to be improved. This study has also examined the practice of family mediation in other jurisdictions which could be the model in order to establish family mediation in Malaysia.

## ملخص البحث

إن حل النزاعات البديل (ADR) يُرَوَّج له نظرًا لمزاياه مقارنة بالتقاضي. ADR له العديد من الفروع من بينها التحكيم، والوساطة، والتفاوض، والإصلاح. وتركز هذه الدراسة على الإصلاح وحل المنازعات الزوجية التي تَبَّتَ فيها محكمة الزواج كهيئة إصلاحية معيّنة بموجب المادة 106 من قانون الإصلاح القانوني (الزواج والطلاق) لعام 1976. والهدف من هذه الدراسة هو تحليل المشاكل التي تواجه الهيئات الإصلاحية من حيث الفعالية، والكفاءة، والتطبيق، والتأثير على الفئات المستهدفة. وثمة هدف آخر هو دراسة عملية الوساطة الأسرية كما تُمارس في أستراليا، وسنغافورة، ونيوزيلندا، لتكون نماذج مرجعية. ومن أجل إثبات الفرضية، لقد جرى تنفيذ دراسة خاصة حيث وُزِّعت الاستبيانات على المشاركين. وتعتمد هذه الدراسة على الأساليب النوعية والكمية، والتي تُعتبر ضرورية في البحث في المجال الاجتماعي القانوني. ويستقي الأسلوب النوعي البيانات من المبادئ، والكتابات القانونية، والتشريعات، والقوانين الماليزية المتعلقة بالأسرة، والسوابق القضائية، والقوانين الأجنبية المتعلقة بالأسرة. ويستخدم الأسلوب الكمي الأداة الإحصائية، أي الحزمة الإحصائية للعلوم الاجتماعية (SPSS) لبرنامج ويندوز النسخة 17.0 لتحليل البيانات. واستُخدم إجراءان إحصائيان هما الإحصاء الوصفي والاستدلالي لتحليل البيانات التجريبية. وتُثبت نتائج هذه الدراسة أنه على الرغم من رضا غالبية المشاركين بـمجلسات المصالحة والمسؤولين عنها، إلا أنها تبوء بالفشل في الإصلاح بين الأطراف المتنازعة. وتُشير إلى أن عملية المصالحة التي تديرها الهيئة الإصلاحية المعيّنة من قِبَل الحكومة بموجب قانون الإصلاح القانوني (الزواج والطلاق) لعام 1976، ليست فعالة. وبالتالي، هناك حاجة لتحسين الممارسة والقانون ذات الصلة. وفحصت هذه الدراسة كذلك ممارسة الوساطة الأسرية في ولايات قضائية أخرى، والتي قد تكون النموذج لإقامة الوساطة الأسرية في ماليزيا.

## **APPROVAL**

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## **DECLARATION**

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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*Bowman v. Bowman* [1949] 2 All ER 127  
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*Chin Moi & Anor v. Chew Pen Hock* [1976] 1 MLJ 190  
*Chin Pei Lee v. Yap Kin Choong* [2010] 4 CLJ 843  
*Chua Mui Nee v. Palaniappan* [1967] 1 MLJ 270  
*Dorothy Yee Yeng Nam v. Lee Fah Kooi* [1956] MLJ 257  
*Hyde v. Hyde* (1866) LR 1 P & D 130  
*In The Marriage of Malyszko* (1979) (FC)  
*In The Marriage of Nuell* (1976)(FC)(per Fogarty J.)  
*In The Marriage of Philippe* (1978) (FC)  
*In The Marriage of Todd* (No. 2)(1976)(FC)  
*Jennifer Patricia Thomas v. Calvin Martin Victor David* [2005] 7 CLJ 133  
*Jeyasakthy v. Kandiah* [1996] 5 MLJ 612  
*Joseph Jeganathan v. Rosaline Joseph* [1989] 3 MLJ 109  
*Kiranjit Kaur Kalwant Singh v. Chandok Narinderpal Singh* [2010] 4 CLJ 724  
*Linnell v. Linnell* (1987) 4 NZFLR 502  
*Manokaram Subramaniam v. Ranjit Kaur Nata Singh* [2008] 6 CLJ 209  
*Melvin Lee Campbell v. Amy* [1988] 2 MLJ 238  
*Ngai Lau Shia @ Low Hong Sian v. Low Chee Neo* (1921) 14 SSLR 37  
*P v. S* [2015] 9 MLJ 400  
*Paramesuari v. Ayadurai* [1959] MLJ 195  
*Parsons v. Mathieson* [1991] NZFLR 262  
*R v. SRJ Devendra* [1920] 1 MC 51  
*Re D (Minors)* [1993] 2 All ER 693, CA (Eng).  
*Re Ding Do Ca* [1966] 2 MLJ 220  
*Re Divorce Petitions Nos. 18, 20 & 24 of 1983* [1984] 2 MLJ 158  
*Re Lee Gee Chong* [1965] 1 MLJ 102.  
*Re Lee Siew Kow* [1952] MLJ 184  
*Sivanesan v. Shymala* [1986] 1 MLJ 400  
*Six Widows* (1908) 12 SSLR 120  
*Tan Guan Hock v. Khor Chai Heah* [1990] 1 MLJ 422  
*Topohe v. Lavemberg (II)* (2003) SC Vic. 410  
*Vivian Lee Shea Li v. Sia Chong Liang* [2010] 10 CLJ 734  
*Zainudin Bin Mohamed v. Sharifah Alphia Binti Syed Ali* (AC No. 19/1997)SLR

## **LIST OF STATUTES**

### **Malaysia**

Law Reform (Marriage and Divorce) Act 1976  
Civil Marriage Ordinance 1952  
Christian Marriage Ordinance 1956  
Divorce Ordinance 1952  
Registration of Marriage Ordinance 1952  
Sabah Christian Marriage Ordinance 1919  
Sabah Marriage Ordinance 1959  
Mediation Act 2012  
Rules of Court 2012  
Legal Aid Act 1971  
Child Act 2001  
Mediation Practice Direction No. 5 of 2010  
Rules of High Court 1980  
Subordinate Court Rules 1980  
Legal Aid (Mediation) Regulations 2006

### **Australia**

Matrimonial Causes Act 1959  
Family Law Act 1975

### **Singapore**

Women's Charter 1961  
Maintenance of Parents Act 1995  
Administration of Muslim Law Act 1968  
New Zealand  
Family Courts Act 1980  
Marriage Act 1955  
Family Protection Act 1955  
Domestic Violence Act 1995  
Care of Children Act 2004  
Adoption Act 1955  
Family Proceedings Act 1980  
Care of Children Act 2004  
Family Proceedings Amendment Act 2013  
Family Dispute (Resolution Methods) Act 1980

## **Other Countries**

Mediation Act 2004 of Republic of Trinidad and Tobago

Mediation Act 2004 of Malta

Mediation Act 2004 of Bulgaria

International Conciliation and Arbitration Act 1993 of Bermuda

Matrimonial Causes Act 1973 of England

Family Law Act 1996 of England

Children Act 1989 of England

## LIST OF SYMBOLS

$n$	number of elements in a population distribution
$p$	probability value
SD	standard deviation
$\alpha$	alpha
$\chi^2$	chi-square
K-W Test	Kruskall-Wallis Test
U-Test	Mann-Whitney Test

## LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
ADRJ	Alternative Dispute Resolution Journal
AIFS	Australian Institute of Family Studies
AIKOL	Ahmad Ibrahim Kulliyah of Laws
All ER	All England Law Reports
AMINZ	Arbitrators' and Mediators' Institute of New Zealand
AMLA 1966	Administration of Muslim Law Act 1966
ANIC	Australian National Imams Council
AWAM	All Women's Action Society
CFRC	Child Focused Resolution Centre
CLJ	Current Law Journal
EIP	Early Intervention Program
et al.	(et alia): and others
F.M.S.	Federated Malay States
FDR	Family Dispute Resolution
FIANZ	Federation of Islamic Associations of New Zealand
FLA 1975	Family Law Act 1975
FLJC	Family, Land Acquisition, Judicial Review and Companies Act
FMSLR	Federated Malay States Law Report
FRAL	Family Relationship Advice Line
FRC	Family Relationship Centre/Family Resolution Chambers
FRO	Family Relationships Online
i.e.	that is
IAMA	The Institute of Arbitrators and Mediators Australia
Ibid	(Ibidem): in the same place
Id	(idem): the same below
IUM	International Islamic University Malaysia
KLRCA	Kuala Lumpur Regional Centre for Arbitration
KPI	Key Performance Indicator
K-W Test	Kruskall-Wallis Test
LAA 1971	Legal Aid Act 1971
LAD	Legal Aid Department
LEADR	Leading Edge Alternative Dispute Resolvers
LRA 1976	Law Reform (Marriage and Divorce) Act 1976
MCA	Malaysian Chinese Association
MLJ	Malayan Law Journal
MMA 2012	Malaysian Mediation Act 2012
MMC	Maintenance Mediation Chambers
MMC	Malaysian Mediation Centre
MPA 1995	Maintenance of Parents Act 1995
NADRAC	National Alternative Dispute Resolution Advisory Council
NGO	Non-Government Organization
NRD	National Registration Department
NUS	National University of Singapore

NZFLR	New Zealand Family Law Report
NZLR	New Zealand Law Report
NZLS	New Zealand Law Society
PDR	Primary Dispute Resolution
PEMALIK	<i>Pertubuhan Memupuk Asas Ikatan Keluarga, Kuala Lumpur &amp; Selangor</i>
PKR	Parti Keadilan Rakyat
SLR	Singapore Law Report
SMC	Singapore Mediation Centre
SMU	Singapore Management University
SPSS	Statistical Package for the Social Sciences
SRJK (C)	Sekolah Rendah Jenis Kebangsaan (Cina)
SRJK (T)	Sekolah Rendah Jenis Kebangsaan (Tamil)
SSLR	Straits Settlements Law Reports
U.S.A.	United States of America
UiTM	Universiti Teknologi Mara
UK	United Kingdom
U-Test	Mann-Whitney Test
WAO	Women Aid Organization
PLKN	Program Latihan Khidmat Negara

# CHAPTER ONE

## INTRODUCTION

### 1.0 BACKGROUND OF THE STUDY

Alternative Dispute Resolution (ADR) is settlement of disputes outside courts. It is a term believed to be coined by the corporate world to signify any process to resolve dispute without court trial which brings bad publicity, acrimony, high cost and high technicality.<sup>1</sup> ADR in its technical meaning refers to those devices which are intended to solve disputes, mainly out of court, or by non-judicial devices, that have emerged as alternatives to the ordinary or traditional types of dispute settlement procedures.<sup>2</sup>

Dispute resolution outside of courts is not new; societies the world-over have long used non-judicial, indigenous methods to resolve conflicts.<sup>3</sup> What is new is the extensive promotion and proliferation of ADR models, wider use of court-connected ADR, and the increasing use of ADR as a tool to realize goals broader than the settlement of specific disputes. ADR processes may have application across many diverse areas that include commercial, legal, social, environmental, international and political settings.<sup>4</sup> Disputes that fall within the sphere of ADR processes may range from those within the judicial and administrative system or where a litigated solution is neither inappropriate, nor desired, or

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<sup>1</sup> Syed Khalid Rashid, *Alternative Dispute Resolution in Malaysia* (unpublished book- Kuala Lumpur), 2000, at 1.

<sup>2</sup> Mauro Cappelletti, *Alternative Dispute Resolution Process within the Framework of the World-Wide Access to Justice Movement*, *The Modern Law Review*, vol. 56, No.3, 1993, at 282.

<sup>3</sup> Stephen B. Goldberg, Frank E.A. Sander, Nancy H. Rogers, *Dispute Resolution: Negotiation, Mediation and Other processes*, 2<sup>nd</sup> Edition, Little Brown and Co., New York, 1992 at 3-12.

<sup>4</sup> See Tania Sourdin, *Alternative Dispute Resolution*, Puddingburn Publishing Services Pty Ltd, Hunters Hill, NSW, 2002 at 2.

unavailable.<sup>5</sup> For this reason, it is said to be impossible to construct a concise definition of ADR processes that is accurate in respect of the range of processes available.<sup>6</sup> The application of ADR in commercial, business and family matters is widely accepted and recognized throughout the world.

ADR gathered momentum in the 1960s in the United States and since then it has established itself firmly in the judicial system and within the law schools and a vast literature on it has emerged.<sup>7</sup> The excessive delays, costliness and technicalities of the adversarial litigation system and the ill will and hatred it generates between the combating litigants have been the main factors which helped ADR to emerge.<sup>8</sup> With the introduction of ADR mechanism in countries like Australia and New Zealand in the last decade, disputes have been resolved more expeditiously and at a relatively minimal cost and time.<sup>9</sup> Recently, ADR has gained popularity in Malaysia since it has the support from the government, and many institutions have practised ADR in the settlement of disputes.

Malaysia has always been subjected to the influence of various religions and races.<sup>10</sup> Family law is one aspect of law that treats Malaysians differently according to their race, religion and custom. It was never the intention of the legislature to segregate them according to their creed.<sup>11</sup> It is actually a result of history and the development of Malaysian society. There was always a variety of family laws in Malaysia and this has

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<sup>5</sup> See Mohammad Naqib Ishan Jan, Ashgar Ali Ali Mohamed, *Mediation in Malaysia: The Law and Practice*, Lexis Nexis, 2010 at 2.

<sup>6</sup> Ibid.

<sup>7</sup> Above, Syed Khalid Rashid, at 1.

<sup>8</sup> Above, Syed Khalid Rashid, at 2.

<sup>9</sup> Faridah Abraham, "Realizing the Potential of Women in Building Effective Family Mediation and Community Mediation Programmes", Paper presented at the Workshop on Empowering Communities Through Mediation in Malaysia, 16-18 June 2009 at Vistana Hotel, Kuala Lumpur.

<sup>10</sup> For further details, see Ahmad Ibrahim, Ahilemah Jones, *The Malaysian Legal System*, Kuala Lumpur: Dewan Bahasa dan Pustaka, 1987, at 7-32.

<sup>11</sup> Zaleha Kamaruddin, *Divorce Laws in Malaysia*, Malayan Law Journal, 2005 at vii.