

THE EVOLUTION OF FAMILY MEDIATION: A GLOBAL
PERSPECTIVE ON LEGAL FRAMEWORKS

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Abstract: This article offers a thorough examination of the global evolution of family mediation, emphasizing the principal international legal frameworks that have influenced its growth and execution. As family mediation receives growing acknowledgment as an alternative to conventional litigation for settling familial conflicts, its incorporation into diverse legal frameworks globally has emerged as a topic of considerable interest. This study analyzes the influence of international legal instruments on family mediation practices, investigating the various approaches and integrations of this dispute resolution method across different nations. The study emphasizes the increasing inclination towards mediation in family law issues and assesses its efficacy in resolving intricate familial disputes across various cultural and legal frameworks.

Keywords: Family mediation; Alternative dispute resolution; International legal frameworks; Comparative law; Cross-border family disputes; Hague Convention; UNCITRAL Model Law; Mediation legislation; Family law reform; Cultural competence; Online dispute resolution; Access to justice; Child-focused mediation; Mediator training; Enforcement of mediated agreements

Introduction

In recent decades, family mediation has become a significant approach for settling disputes in family law, gaining prominence throughout global legal systems. This transition to alternate dispute resolution methods indicates an increasing acknowledgment of the shortcomings of adversarial strategies in handling delicate familial issues. The evolution of legal frameworks to adapt to this transformation has made the impact of international legal instruments on the advancement and implementation of family mediation increasingly evident.

The proliferation of family mediation can be ascribed to multiple factors, such as the demand for more economical and time-efficient dispute resolution methods, the intention to alleviate the emotional burden on families, and the acknowledgment that collaborative strategies frequently yield more enduring results. International organizations and national governments have addressed these demands by formulating and enforcing legislative frameworks that control and facilitate family mediation activities.

This article seeks to examine the worldwide development of family mediation, emphasizing the legislative frameworks that have influenced its expansion and application across many jurisdictions. Through the analysis of pivotal international mechanisms, like the Hague Convention and the UNCITRAL Model Law, in conjunction

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with national law and case studies, we want to deliver a thorough comprehension of the present status of family mediation globally. This research will examine the legal advantages and obstacles of family mediation in contrast to traditional litigation, providing insights into its efficacy in resolving familial conflicts.

This study will conduct a comparative analysis of family mediation laws across various legal systems, emphasizing the distinct techniques adopted by different nations in incorporating mediation within their family law frameworks. Through the analysis of case studies demonstrating effective implementation and the identification of best practices, we seek to enhance the continuing dialog regarding the future of family dispute resolution and the prospects for increased international standards in this domain.

Main analysis:

Upon examining the intricacies of family mediation within a global framework, it is clear that, despite notable advancements, obstacles persist in reconciling methodologies across various legal systems and cultural practices. This paper aims to elucidate these obstacles and examine possible avenues for improving international collaboration in family mediation.

The roots and evolution of family mediation can be linked to diverse cultural and legal traditions worldwide. Although informal mediation procedures have been prevalent in numerous civilizations for centuries, the formal acknowledgment and incorporation of family mediation into legal frameworks is a comparatively recent development. The contemporary notion of family mediation emerged in the mid-20th century, especially in Western nations, as a reaction to the constraints and deficiencies of conventional adversarial methods for resolving family disputes [1].

In the United States, the foundations of contemporary family mediation were laid in the 1970s and 1980s, driven by a growing dissatisfaction with the adversarial nature of divorce proceedings and their impact on children and families. Pioneers such as O.J. Coogler and John Haynes began developing structured approaches to mediation specifically tailored to family disputes [2]. This period saw the establishment of the first mediation centers and the gradual recognition of mediation as a viable alternative to courtroom litigation in family matters.

Simultaneously, other nations commenced the exploration and implementation of family mediation approaches. In the United Kingdom, the initial family mediation services were instituted in the late 1970s, with entities such as the National Family Conciliation Council (now referred to as National Family Mediation) significantly contributing to the advancement and promotion of mediation services. In the 1990s, the Australian family law system had substantial reforms that prioritized alternative conflict resolution approaches, such as mediation, reflecting a broader transition towards a less adversarial framework in family law [4].

As family mediation gained traction, its benefits became increasingly apparent. Research began to demonstrate that mediated agreements tended to be more durable than



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court-imposed decisions, and that parties who participated in mediation reported higher levels of satisfaction with the process and outcomes [5]. These findings contributed to a growing momentum for the integration of mediation into family law systems worldwide.

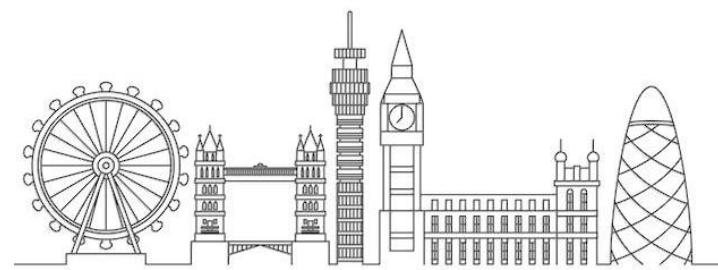
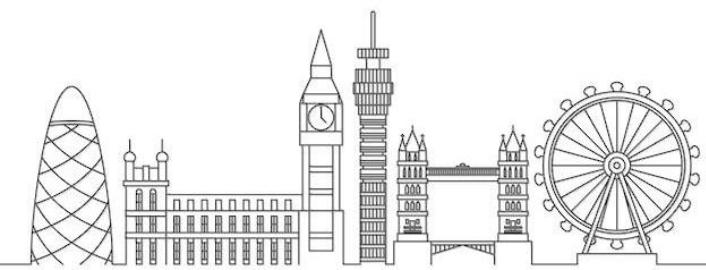
The development of family mediation has not been without challenges, however. Critics have raised concerns about power imbalances between parties, the potential for coercion, and the adequacy of safeguards for vulnerable individuals in the mediation process [6]. These concerns have shaped the evolution of mediation practices and the legal frameworks governing them, leading to the development of screening processes, ethical guidelines, and specialized training for family mediators.

The international legal community has played a significant role in shaping the development of family mediation through various instruments and conventions. One of the most influential international legal frameworks in this context is the Hague Convention on the Civil Aspects of International Child Abduction of 1980. While not directly focused on mediation, this convention has had a profound impact on the use of mediation in cross-border family disputes [7]. The convention's emphasis on amicable resolutions and the need for expeditious procedures has led to an increased reliance on mediation in cases of international child abduction and custody disputes.

Building on this foundation, the Hague Conference on Private International Law has actively promoted the use of mediation in cross-border family disputes. In 2012, the Conference published the "Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: Mediation," which provides comprehensive guidance on the use of mediation in international child abduction cases [8]. This document has been instrumental in standardizing approaches to cross-border family mediation and has influenced national practices in many countries.

Another significant international instrument is the UNCITRAL Model Law on International Commercial Conciliation (2002), which, although primarily focused on commercial disputes, has had a broader impact on the development of mediation laws worldwide, including in the realm of family law [9]. The Model Law provides a framework for the conduct of mediation and has been adopted or influenced legislation in numerous jurisdictions, contributing to a more harmonized approach to mediation globally.

The European Union has also been at the forefront of promoting family mediation through various directives and regulations. The EU Mediation Directive (2008/52/EC) aimed to facilitate access to alternative dispute resolution and promote the amicable settlement of disputes, including family matters, by encouraging the use of mediation and ensuring a balanced relationship between mediation and judicial proceedings [10]. While the directive primarily focused on cross-border disputes, its influence has extended to domestic mediation practices in many EU member states.



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Notwithstanding these global initiatives, the execution and governance of family mediation varied markedly among various jurisdictions. An analysis of family mediation laws demonstrates a varied array of methodologies, indicative of the distinct legal traditions, cultural values, and governmental agendas of many nations.

In the United States, family mediation rules and practices differ by state; however, there is a prevailing tendency towards promoting or requiring mediation in familial conflicts. California has been a leader in court-connected mediation programs, implementing mandated mediation for child custody and visitation issues since the 1980s. [11]. The success of such programs has led many other states to adopt similar approaches, although the degree of court involvement and the mandatory nature of mediation differ across jurisdictions.

In contrast, the United Kingdom has taken a less prescriptive approach. While mediation is strongly encouraged, it is not generally mandatory. The introduction of the Mediation Information and Assessment Meeting (MIAM) in 2014 requires parties to consider mediation before proceeding to court in family disputes, but participation in mediation itself remains voluntary [12]. This approach aims to strike a balance between promoting mediation and preserving party autonomy.

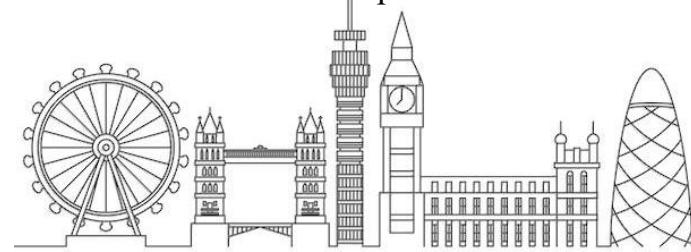
Australia has adopted a hybrid model, with mandatory mediation in certain circumstances. The Family Law Act 1975, as amended, requires parties to attempt family dispute resolution before filing an application for parenting orders, except in cases involving family violence or child abuse [13]. This approach reflects a strong policy emphasis on alternative dispute resolution in family matters while recognizing the need for safeguards in high-risk cases.

In continental Europe, approaches to family mediation vary. Germany, for instance, has integrated mediation into its legal system through the Mediation Act of 2012, which provides a framework for mediation across various areas of law, including family disputes [14]. The act emphasizes the voluntary nature of mediation and sets standards for mediator qualifications and conduct.

Japan presents a compelling case study in the incorporation of mediation within a non-Western legal framework. The Japanese method of family mediation, termed "chotei," is profoundly anchored in cultural traditions of harmony and consensus formation. Family court mediation is a compulsory initial procedure in several familial disputes, indicating a pronounced inclination towards conciliatory methods rather than confrontational litigation [15].

The various approaches underscore the difficulties in establishing a cohesive worldwide framework for family mediation. Although international instruments offer overarching concepts and recommendations, the precise enactment of family mediation rules predominantly depends on state policy.

The legal advantages of family mediation compared to traditional litigation are extensive and have been thoroughly documented in studies across multiple countries. A



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key advantage is the opportunity for more customized and innovative resolutions to familial conflicts. Mediation permits parties to investigate a broader array of alternatives and formulate agreements that more accurately represent their distinct circumstances and requirements, in contrast to judicial proceedings, which adhere to rigid legal constraints [16]. This flexibility can lead to more satisfactory and sustainable outcomes, particularly in complex family situations where rigid legal solutions may not adequately address the nuances of family dynamics.

A notable advantage is the maintenance of familial bonds. The contentious nature of litigation frequently intensifies friction and can cause irrevocable harm to relationships, particularly when children are involved. Mediation, emphasizing collaboration and communication, can preserve or enhance relationships between parties, which is especially vital in situations with ongoing co-parenting obligations [17].

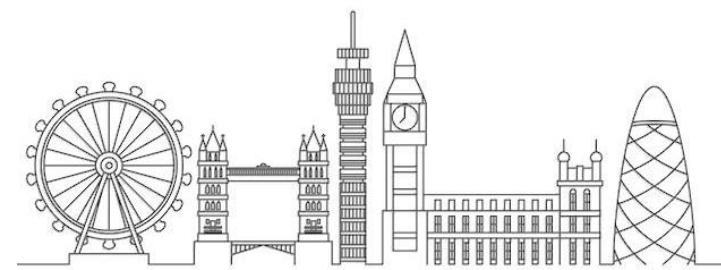
Cost-effectiveness and efficiency are also key advantages of family mediation. Studies have consistently shown that mediated disputes are generally resolved more quickly and at a lower cost than those that go through full court proceedings [18]. This not only benefits the parties involved but also reduces the burden on overburdened court systems, potentially leading to more efficient administration of justice overall.

Furthermore, mediation offers greater privacy and confidentiality compared to court proceedings. Family disputes often involve sensitive personal information, and the public nature of court hearings can be distressing for parties and children. Mediation provides a confidential forum for discussing these matters, which can encourage more open and honest communication between parties [19].

However, family mediation is not without its challenges and potential drawbacks. One of the primary concerns is the issue of power imbalances between parties. In cases involving domestic violence or significant disparities in financial or emotional resources, there is a risk that the weaker party may be coerced into unfavorable agreements [20]. While many jurisdictions have implemented screening processes and safeguards to address this issue, it remains a significant challenge in ensuring the fairness and equity of mediated outcomes.

A further possible disadvantage is the absence of explicit legal safeguards present in judicial procedures. Mediation agreements may be rendered legally binding; yet, the mediation process lacks the procedural safeguards inherent in litigation. This can be especially troublesome in situations involving intricate legal matters or where parties are oblivious of their legal rights [21].

The enforceability of mediated agreements may pose challenges, especially in cross-border conflicts. Although numerous countries possess methods for transforming mediated agreements into court decisions, the procedure can be intricate and varies considerably among jurisdictions. The Hague Conference on Private International Law has acknowledged this issue and is endeavoring to establish an international instrument to



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facilitate the cross-border recognition and execution of agreements in familial affairs [22].

Notwithstanding these obstacles, the global trend towards augmented utilization of family mediation within legal frameworks indicates that its advantages are typically seen as surpassing its disadvantages. Nonetheless, continuous study and policy formulation are essential to overcome obstacles and guarantee that family mediation can adequately meet the requirements of diverse families across different legal and cultural settings.

Examining specific case studies from various nations effectively demonstrates the successful integration of family mediation into national legal systems. These examples illustrate how different jurisdictions have tailored family mediation to their own legal and cultural circumstances, providing significant insights into best practices and prospective frameworks for other nations aiming to improve their family dispute resolution mechanisms.

Australia provides a compelling case study of a comprehensive approach to integrating family mediation into the legal system. The Family Law Act 1975, as amended in 2006, introduced significant reforms that placed a strong emphasis on non-adversarial dispute resolution, particularly in matters involving children [23]. The concept of "Family Dispute Resolution" (FDR) was introduced, requiring parties to attempt mediation before filing applications for parenting orders in the court.

The Australian model is notable for its systematic approach to implementation. The government established a network of Family Relationship Centres across the country, providing accessible mediation services and information to families [24]. Additionally, a certification system for FDR practitioners was introduced to ensure quality and consistency in mediation services. Research has shown positive outcomes from this approach, with a significant reduction in court filings for parenting disputes and high rates of satisfaction among participants [25].

In Europe, Norway offers an interesting example of a long-standing commitment to family mediation. Since 1993, Norway has required couples with children under 16 to attend mediation before being granted a separation or divorce [26]. What sets the Norwegian model apart is its emphasis on child welfare and its integration with broader family support services. Mediation is provided free of charge by the state, and mediators are typically professionals with backgrounds in psychology, social work, or law.

The Norwegian approach has been praised for its child-centric focus and its success in promoting cooperative co-parenting arrangements. Studies have shown high rates of agreement in mediation and positive long-term outcomes for children of divorced parents who participated in the process [27].

Singapore provides an example of how family mediation can be successfully integrated into a diverse, multi-cultural society with a hybrid legal system. The Family Justice Courts, established in 2014, have made mediation a cornerstone of their approach to family dispute resolution [28]. What is particularly noteworthy about the Singaporean

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model is its emphasis on cultural sensitivity and its integration of mediation with other support services.

The Singapore Mediation Centre and the Family Justice Courts collaborate to offer mediation services customized for Singapore's diverse populace. Mediators are educated to possess cultural competence and to manage intricate family dynamics within a multi-ethnic framework. The courts provide various support services, including counseling and financial advising services, alongside mediation to offer comprehensive assistance to disputing families [29].

These case studies demonstrate several key factors that contribute to the successful integration of family mediation into national legal systems:

1. Legislative framework: A robust legal foundation that recognizes and supports family mediation is crucial. This may include mandatory mediation requirements in certain cases, as seen in Australia and Norway.
2. Accessibility: Providing easily accessible mediation services, such as Australia's Family Relationship Centres or Norway's state-funded mediation, helps ensure that families can benefit from these services regardless of their financial circumstances.
3. Quality assurance: Implementing certification or accreditation systems for mediators, as in Australia, helps maintain high standards of practice.
4. Cultural sensitivity: Adapting mediation practices to local cultural contexts, as exemplified by Singapore's approach, is essential for effectiveness in diverse societies.
5. Integration with support services: Combining mediation with other family support services, as seen in all three case studies, provides a more comprehensive approach to family dispute resolution.
6. Child-focused approach: Prioritizing the well-being of children in the mediation process, as emphasized in the Norwegian model, can lead to better long-term outcomes for families.
7. Ongoing evaluation and research: Regular assessment of mediation programs, as conducted in Australia and Norway, allows for continuous improvement and evidence-based policy-making.

These case studies provide significant insights for other jurisdictions aiming to improve their family mediation systems. It is crucial to recognize that strategies effective in one nation may not be directly applicable to another owing to variations in legislative frameworks, cultural practices, and resource accessibility. These examples offer a valuable repository of concepts and best practices that can guide the establishment of family mediation systems globally.

As family mediation progresses worldwide, there is an increasing acknowledgment of the necessity for more international standardization and collaboration in this domain. The growing mobility of families across borders and the escalation of cross-border family disputes underscore the necessity of establishing harmonized family mediation procedures that function well across various legal jurisdictions.

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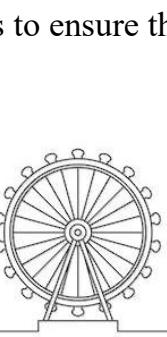
One of the key areas for future development is the creation of international standards for the training and accreditation of family mediators. While many countries have developed their own standards, there is currently no widely accepted international benchmark for mediator qualifications. The International Social Service (ISS) has been working towards addressing this gap through its project on "International Family Mediation" [30]. This initiative aims to develop a set of common standards and best practices for international family mediation, including guidelines for mediator training and certification.

Another area of focus for future development is the enhancement of cross-border enforcement mechanisms for mediated agreements. The Hague Conference on Private International Law has been at the forefront of efforts to address this issue. In 2019, the Conference adopted the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, which, while not specifically focused on family mediation, could provide a framework for the recognition of mediated agreements in family matters [31]. Future work in this area could lead to the development of a specialized instrument for the enforcement of cross-border family mediation agreements.

The use of technology in family mediation is another area poised for significant development. Online dispute resolution (ODR) platforms have already begun to transform the landscape of family mediation, offering new possibilities for conducting mediation sessions remotely and asynchronously [32]. The COVID-19 pandemic has accelerated this trend, with many jurisdictions rapidly adopting online mediation practices out of necessity. As these technologies continue to evolve, there is a need for international collaboration to develop best practices and standards for online family mediation, ensuring that it remains accessible, fair, and effective across different legal and cultural contexts.

Efforts to promote greater cultural competence in international family mediation are also likely to intensify in the coming years. As families become increasingly diverse and cross-cultural marriages more common, mediators will need to be equipped with the skills and knowledge to navigate complex cultural dynamics. Initiatives such as the "Cross-Border Family Mediators" network, supported by the European Commission, are working to develop training programs and resources to enhance cultural competence in cross-border family mediation [33].

The integration of artificial intelligence (AI) and machine learning technologies into family mediation processes represents another frontier for future development. While the use of AI in legal decision-making remains controversial, there is potential for these technologies to support various aspects of the mediation process, from scheduling and document management to predictive analysis of outcomes based on historical data [34]. As these technologies advance, it will be crucial to develop ethical guidelines and regulatory frameworks to ensure their appropriate use in family mediation contexts.





Furthermore, there is a growing recognition of the need to adapt family mediation practices to address the needs of diverse family structures. As societal norms evolve and legal recognition of non-traditional family forms expands in many jurisdictions, family mediation frameworks will need to adapt accordingly. This may include developing specialized approaches for mediating disputes in polyamorous relationships, LGBTQ+ families, or other family structures that may not fit neatly into traditional legal categories [35].

The intersection of family mediation with other areas of law, such as inheritance law and elder care, is likely to receive increased attention in the coming years. As populations age in many countries, there is a growing need for mediation approaches that can address complex family dynamics around issues such as estate planning, guardianship, and long-term care decisions [36]. Developing specialized training and protocols for mediators working in these areas could help to expand the application of family mediation principles to a broader range of family-related disputes.

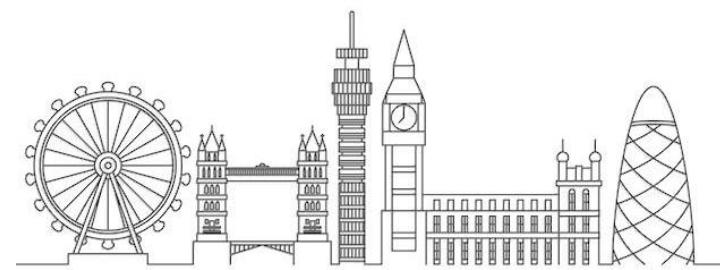
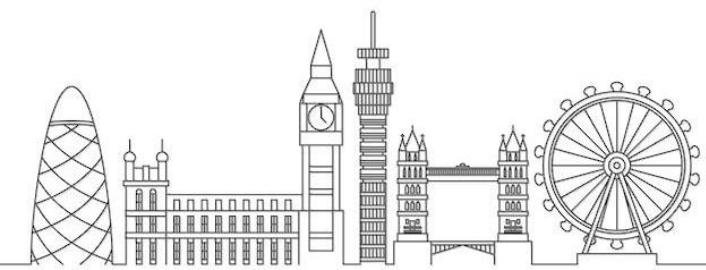
International efforts to promote access to justice through family mediation are also likely to intensify. Organizations such as the World Bank and the United Nations Development Programme have recognized the potential of mediation to improve access to justice, particularly in developing countries where formal legal systems may be overburdened or inaccessible to many citizens [37]. Future initiatives in this area may focus on developing low-cost, community-based family mediation models that can be implemented in resource-constrained settings.

As family mediation continues to evolve, there is also a need for more robust and comprehensive research on its long-term impacts. While numerous studies have demonstrated the immediate benefits of mediation in terms of cost savings and participant satisfaction, there is a need for longitudinal research to assess the durability of mediated agreements and their impact on family relationships over time [38]. Such research could inform the ongoing development of best practices and help to refine mediation approaches to better serve the needs of families.

The future standardization of family mediation at an international level will likely require a delicate balance between harmonization and flexibility. While there is value in developing common standards and practices, it is equally important to maintain the adaptability of mediation processes to local legal and cultural contexts. Future efforts in this area may focus on developing framework principles that can guide the implementation of family mediation across different jurisdictions while allowing for necessary local adaptations [39].

Conclusion

In summary, the global growth of family mediation illustrates a complex and dynamic terrain influenced by various legal traditions, cultural values, and policy agendas. Family mediation has become acknowledged as a significant alternative to conventional



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litigation for settling familial conflicts, leading to its incorporation into legal systems globally in diverse manners and to differing extents.

The establishment of international legal frameworks, including the Hague Conventions and the UNCITRAL Model Law, has been significant in advancing mediation in transnational family conflicts and shaping national policy. These international instruments have facilitated an increasing alignment in family mediation practices across jurisdictions, although notable discrepancies persist.

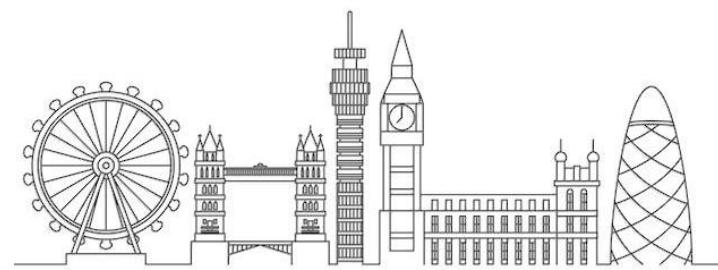
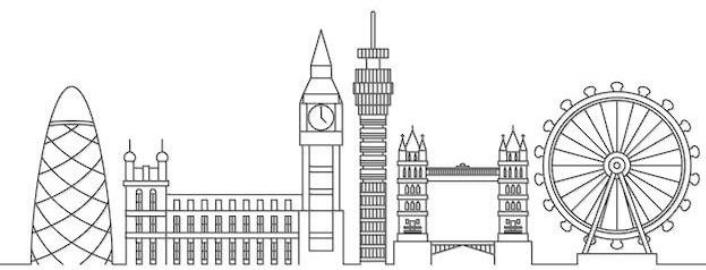
A comparative review of family mediation legislation across many countries demonstrates a range of methods, from obligatory mediation mandates to more discretionary ones. Every approach possesses distinct advantages and obstacles, mirroring the specific legal and cultural environments in which they function. Case studies from Australia, Norway, and Singapore illustrate the successful integration of family mediation into national legal systems, providing useful insights for other jurisdictions aiming to improve their family conflict resolution processes.

The legal advantages of family mediation compared to traditional litigation are well-documented, encompassing enhanced flexibility in solution formulation, maintenance of familial bonds, financial efficiency, and heightened confidentiality. Nonetheless, obstacles persist, especially in rectifying power disparities, guaranteeing the enforcement of mediated accords, and tailoring mediation methodologies to varied familial configurations and cultural environments.

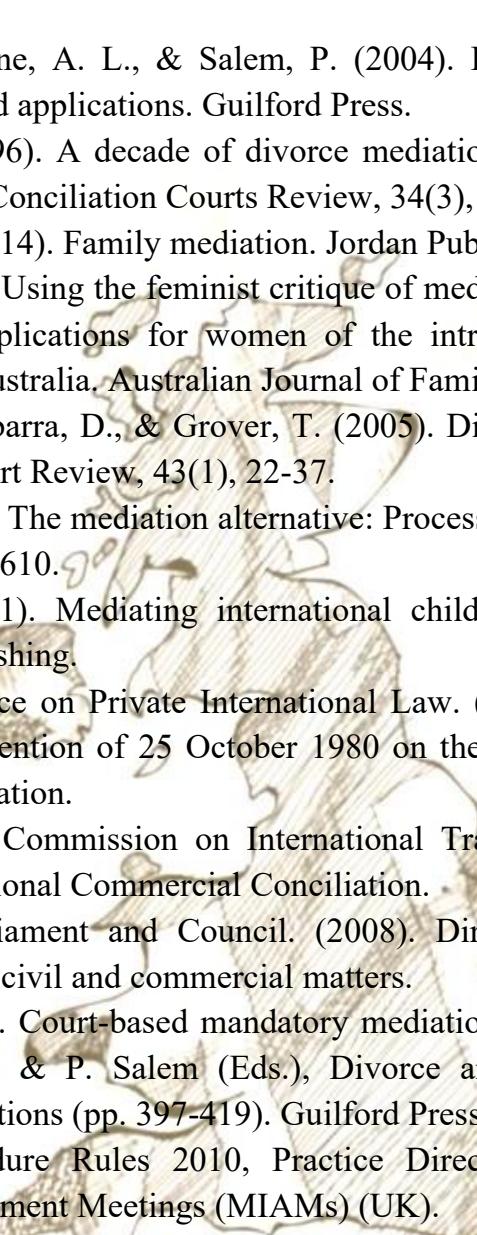
The future of family mediation is primed for continued advancement and innovation. Future focal points encompass the establishment of international standards for mediator training and accreditation, the improvement of cross-border enforcement mechanisms for mediated agreements, the incorporation of technology and AI in mediation processes, and the adjustment of mediation practices to accommodate changing family structures and societal norms.

As family mediation progresses, there is an increasing acknowledgment of the necessity for enhanced international collaboration and standards in this domain. Nonetheless, this standardization must be reconciled with the necessity for adaptability to address varied legal and cultural settings. The continuous advancement of family mediation globally presents the opportunity to enhance access to justice, foster more amicable responses to familial conflicts, and ultimately better address the needs of families in an increasingly linked world.

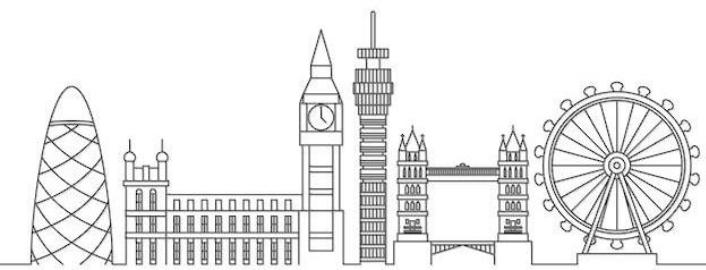
The emergence of family mediation signifies a substantial transformation in the legal systems' attitude to family disputes, transitioning from adversarial processes to more collaborative and integrative conflict resolution methods. As this discipline evolves, it will be essential for policymakers, legal practitioners, and scholars to collaborate in enhancing family mediation techniques, assuring their responsiveness to the evolving requirements of families in the 21st century.



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