RESOLUTION OF FAMILY DISPUTE THROUGH ALTERNATIVE DISPUTE RESOLUTION

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The goal of resolving conflict in a relationship is not victory or defeat. It’s reaching understanding and letting go of our need to be right.

ABSTRACT

This article helps to focus on the trend towards the resolution of family dispute through Alternative Dispute Resolution. Alternative Dispute Resolution is the best mechanism to resolve the family dispute, and helps to maintain the sanctity of the relationship. This article has been divided into six major categories which are further divided into various sub-topics. The existing article is based on secondary data for the analysis and to draw concrete conclusion. It uses a unidirectional approach towards explaining the benefits of using Alternative Dispute Resolution methods in family dispute. The first heading is Introduction which consists of statement of problem and significance of study. The second topic elaborates the concept of family, family dispute, Alternative Dispute Resolution and related laws. Third heading deals with the need and role of Alternative Dispute Resolution. Further this article explains the contemporary issues and challenges faced in Alternative Dispute Resolution methods; in its fourth heading. The last head of this article gives conclusion of the research and certain valuable suggestions to encourage the resolution of family dispute through Alternative Dispute Resolution.

KEYWORDS

Family, Alternative Dispute Resolution, Dispute, Lok Adalat

INTRODUCTION

Family Dispute arises when there is conflict in the reasoning of the members of the family. Family conflict is differences in the thinking, which may vary from relationship to relationship like amongst couples, children and parents or between any other members of the family. Conflict takes a wide variety of forms. It may be verbal, mental, physical or sexual etc. All the interpersonal conflict, when arising between the members of the family is a family dispute. When the conflict arises in a family, it requires legal resolution. They may stay out of the court or in the court, whereas if the matter is related to child, the best interest of the child shall be the paramount consideration.

The processes which are actually prevailing in the present society by virtue of law are actually unable to provide the desired result of unification of families, which shall be the main objective of any dispute resolution methods related to family dispute; instead they tend to enhance the already existing conflict. Whenever the family dispute arises we need to resolve it by alternative methods. The statutes like Family Courts Act,1984, The Code of Civil Procedure,1908, The Legal Services Authority Act,1987, etc. also provides for resolution of family dispute through Alternative Dispute Resolution methods. Alternative Dispute Resolution helps us for the amicable resolution of the family dispute; changes in the family law system encourage the parties to resolve their dispute by making proper arrangement to come to an agreement. The family dispute should not be viewed in terms of failure or success of legal action. The amicable resolution of family dispute is the social need.
FAMILY DISPUTE, ADR AND ITS CHARACTERISTICS

Family

“Family is a group of people who shares a very personal level of relationships.”

There are three ways by which families contains relationships: Consanguinity (related to birth), Affinity (related to marriage), Co-residence (living together). The word family is derived from Latin word “famulus” which means ‘a servant’. According to Cambridge dictionary “Family is a group of people who are related to each other such as mother, a father, and their children.”

According to Black’s Law Dictionary “Family is a group of people connected by blood, by affinity or by law especially within two or three generations.”

The meaning of the word family is different from the facts and circumstances and other factors of the society. Family is the smallest and basic unit of the society. Family has tremendous influence on the life of an individual from birth to death. Family is a universal institution. All society whether modern and ancient, primitive and civilized having a form of family.

“Order XXXII-A Rule 6 of the code of civil procedure defines the word family as follows:-

For the purposes of this Order, each of the following shall be treated as constituting a family, namely-

(a) (i) a man and his wife living together,
(ii) any child or children, being issue or theirs; or of such man or such wife,
(iii) any child or children being maintained by such man or wife;

(b) a man not having a wife or not living together with his wife, any child or children, being issue of his, and any child or children being maintained by him;

(c) a woman not having a husband or not living together with her husband, any child or children being issue of hers, and any child or children being maintained by her;

(d) a man or woman and his or her brother, sister, ancestor or lineal descendant living with him or her;

(e) any combination of one or more of the groups specified in clause (a), clause (b), clause (c) or clause (d) of this rule.

Explanation: For the avoidance of doubts, it is hereby declared that the provisions of rule 6 shall be without any prejudice to the concept of “family” in any personal law or in any other law for the time being in force.

The definition provided under code of civil procedure is subject to any concept of family under personal laws and any other law for the time being in force.

Family Dispute

When there is a difference in the opinion of the members of the family and it became conflict which requires legal resolution is a family dispute. Dispute means a conflict or controversy, one that has given rise to particular law suit. Now in modern society family dispute become worldwide incident, because of the concept of nuclear family, husband and wife living independently having no or very petite (little) concern with the other family members. Nuclear family resulted in rapid increase, in the matrimonial and family dispute before the courts.

1 https://study.com/academy/lesson/what-is-family-definition-characteristics-types.html (visited at 09:07 p.m. 27 Jan 2020)
2 https://dictionary.cambridge.org/dictionary/english/family (visited at 08:53 p.m. 27 Jan 2020)
3 637, Black’s Law Dictionary, Eighth edition, Thomson Reuters, Minnesota

4 ORDER XXXII A RULE 6, The Code of Civil Procedure 1908
According to Black’s Law Dictionary “Domestic Dispute means a disturbance usually at a residence and usually within a family, involving violence and often resulting in a call to a law- enforcement agency.”

**Causes of family dispute**

**Breaking in joint family structure**- Every person having their own opinion and when there is a difference of the opinion in couples, and there is no middle man between them the petty difference became big one and reached to court.

**Illiteracy**- Illiterate man has the feeling of perfection. That man never understood the things properly. The ratio of dispute in uneducated people is higher.

**Lack of mutual understanding**- Two person of opposite sex, with different attitude and behavior marry each other, and when they are not capable to understand each other the conflict between them arises. Lack of mutual understanding is hence the root cause of family dispute.

**Poverty and unemployment**- When the person are unemployed and not financially stable, and not capable to fulfill the basic needs of their family the conflict in the family is arises which with the passage of time becomes a dispute.

**Other reasons**- There are some other reasons like harassment and cruelty between the family members, dowry, extra marital affairs bi-gamy and drinking habits, drug addiction etc. which results into family disputes.

**Alternative Dispute Resolution and its Core Characteristics**

ADR is the procedure of settlement of dispute outside the court, ADR includes Arbitration, Mediation, Negotiation, Conciliation. The process of ADR is less expensive and expeditious ADR allows the party to come to an agreement mutually. It is a type of compromise between the parties. It is a form of non adjudicatory method of resolution of dispute.

According to Black’s Law Dictionary “Alternative Dispute Resolution is a procedure for settling a dispute by means other than litigation, such as arbitration or mediation.” ADR methods do not involve the appearance of the parties, calling of witnesses etc. It is the method recognized by the law. ADR and litigation cannot be run together.

**Characteristics of ADR**

- ADR is informal method; there are not a lot of rules and procedure to be followed as in case of litigation.
- It helps the parties to keep the matter in between the parties. It is confidential in process.
- Litigation is a time consuming and very costly process. ADR is cheaper than litigation.
- Unlike litigation ADR is faster.
- ADR helps the parties to maintain their relationship as pre-dispute by keeping matter secret, which is very necessary in matrimonial cases.
- Unlike the rigid process of litigation the process followed in ADR is very flexible. “the agreement may contain a wide range of novel outcomes which would not normally form part of a court agreement and which may provide Solutions that better suit each party’s needs.”
- In ADR parties are free to decide the Mediator, Arbitrator, Conciliator and parties are also allowed to decide the venue.

**STATUTES REGARDING ADR IN INDIA**

The Arbitration and Conciliation Act,1996 has been enacted in order to encourage the parties for amicable settlement of dispute through ADR and it have various provisions to ensure the functioning of arbitral tribunals and to check that all the arbitrary awards are finalized.

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5 522,Black’s Law Dictionary, Eighth edition, Thomson Reuters, Minnesota
6 86,Black’s Law Dictionary, Eighth edition, Thomson Reuters, Minnesota
Under The Code of Civil Procedure, 1908 the court is empowered to refer the dispute for the resolution outside the court by the virtue of Section 89. Order XXXII A deals with suits relating to matter concerning family and can also order for Examination of the parties under Order X. Indian civil laws are of a great help when it comes to resolving the dispute outside the court and bringing harmony between the parties to the suit.

The Legal Services Authority Act, 1987 provides free and competent service to the poor and weaker section of the society. Under Chapter VI of the city authority can also organize Lok Adalats. Lok Adalat is one of the processes of ADR. It is an act made in compliance of Article 39 A of the Constitution of India which says that the state shall secure that the operation of legal system promotes justice and provide free legal aid.

The Special Marriage Act, 1954 and The Hindu Marriage Act, 1955 provides various relevant provisions which describes that wherever possible the courts shall make every endeavor to bring reconciliation between the parties.

The Family Courts Act 1984 have been formulated with the core object of establishing family courts with a view to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs and for the matters connected therewith.

NEED OF ADR

At present it is a well known fact the Indian judiciary is not able to deal with pendency of cases, Indian courts are clogged with the pendency of unsettled case laws. The situation is that even after establishment of fastrack court, there is no change in situation. To deal with such situation Alternative Dispute Resolution plays a very important role to resolve the conflict in a amicable manner.

Alternative Dispute Resolution provides scientifically developed technique to Indian judiciary to help and remove the backlog of cases in the courts. It provides various methods like Arbitration, Negotiation, Conciliation, Mediation, and Lok-Adalat.

“Justice delayed is justice denied”

Delayed justice is no justice: - There is a link between the justice and the time taken in delivering (giving) justice. If we are not able to give justice in proper time, it might be injustice. Hence it is a very important that justice should be rendered within the time and without delay.

The major reasons which lead to opt Alternative Dispute Resolution methods are:-

Weight of pendency

There is a need to finding alternative methods of resolution of dispute, due to the weight of pendency of cases. There are “Law Minister Ravi Shankar Prasad in a said 43.55 lakh cases are pending in the High courts and out of these, 18.75 lakh relate to civil matters and 12.15 lakh are criminal cases. He said 26.76 lakh of these cases are less than five years old, 8.44 lakh are pending for more than five years but less than 10 years and 8.35 lakh are over 10 year old.”

Adjournment

Adjournment permitted by the virtue of statute is one of the major reason for increase in delay and it unnecessarily extends the life of litigation. This leads to suffering of interest of litigants and hampers the minor understanding which exists between client and court. It may be benefit to both court and advocates but hampers the rights of client.

Time consuming process

Litigation is highly complicated process because of existence of lengthy trials and multiple loopholes. Any case is required to go through unrequired stage before it reaches the stage of trial. Arthur (2008), Edition of the New York Times in 23 March 1983, an experienced lawyer was explaining to young potential lawyers what they can expect in litigation practice. He said, “You spend years and years in pre-trial motion practice. I smother the other side with papers and they smother me with papers until we wear each other out and the judge knocks my head against his head and we settle. It takes around three or four years.”

Litigation is very costly

Earlier, litigation was considered a social act and practice where no money was involved but nowadays, with the changing social scenario, money have created its pedestal and become a part and parcel of any legal proceeding. Any general case extends up to months and the client has to associated fees. This makes it very heavy on the pockets to get justice. It is a developed norm that justice belongs to the wealthier.

Litigation burn the relationships

Relationships are based on trust and faith, and court may provide justice but may in return take the cost of relation. Its basic human instinct to win, and winning in court results in disturbances and differences which cannot be removed anyhow.

Alternative Dispute Resolution is a much better alternative than litigation in civil conflicts especially in matter related to family disputes which is opt in protecting relationship breakdowns.

CONTEMPORARY ISSUES AND CHALLENGES

In the country like India, resolution of family dispute through Alternative Dispute Resolution still faces various issues and challenges. Although in a wake of recent global movement towards modernization and westernization, the issues and challenges still persist in the resolution of family dispute through Alternative Dispute Resolution. Such issues may be attributing to various factors which may be cultural, legal, institutional, educational or infrastructural.

These are some issues which are emerges while we try to resolve the family dispute through Alternative Dispute Resolution

1) Defect in legal system influence the choice

With the emergence of the constitution of the land, and increasing literacy rate, there is a notable increase in level of political rights and social awareness. The developing Indian justice system is too heavy. There are innumerable cases which are pending at the desk of each court, but still, as people are aware of their rights, they think court system to be much better, ethical and legalized way of resolution of disputes. The court decision goes in favor of any one party, which Alternative Dispute Resolution leads to a consensus.

2) Cultural and Mental factors

Alternative Dispute Resolution is a concept since the British regime but there is an utter need of to make a reform to some old and traditional mechanism, as now the cultural and mental factors of any person play a very important role in selecting whether dispute is to be solved through Alternative Dispute Resolution or not. Some people have a sheer mentality to protect the relation more than winning a dispute.

3) Comparison between Alternative Dispute Resolution to litigation.

When we compared Alternative Dispute Resolution to litigation, the success rate of litigation is much higher than the success rate of dispute resolution through Alternative Dispute Resolution. In fact there is more cost and time involved in litigation process, but is considered as a waste less expenditure which is to be made to achieve justice. Alternative Dispute Resolution results in consensus and harmony, which as per some peoples, may violate or not result in justice.

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As more and more matters are resolved through higher judiciary appeals, people trust more in the acts and decisions of the court and because of less successful rates the faith in Alternative Dispute Resolution system is a little meager. The proof of faith in higher judiciary is the whaleish number of appeals that come before the high courts and Supreme Court of India from appellate tribunal bodies.

Another issue in front of Alternative Dispute Resolution mechanism is that in any circumstances, it cannot be a replacement to litigation. No matter Alternative Dispute Resolution is a fast-track method with fixed cost hearings but with a huge level of uncertainty. The only act in which Alternative Dispute Resolution is helpful is reducing the burden of the court.

Alternative Dispute Resolution tribunals have huge limits on discovery processes and are optionally permitted to call any person through summons and to study evidences cannot discover to such a depth to which courts can.

**Challenges:**

With very little exceptions, Alternative Dispute Resolution decisions are final and not appealable in any higher court, and sometimes may even surpass the scope of the arbitration clause, in case where such clauses are related to a specific dispute.

The arbitrator cannot give unlimited arbitrary awards, which are beyond his jurisdiction and is not ever permitted to issue orders for compelling any of his orders.

One of the major challenge in front of today’s society is that most of the people are unaware about the benefits and perks of Alternative Dispute Resolution over litigation, and as such is non prevalent in the society. Most of advocates also do suggest going for Alternative Dispute Resolution measures as it causes them less monetary benefits.

Alternative Dispute Resolution methods may not always lead to a final resolution, which simply means that one may invest his money as well as a time, and may not reach at any conclusion, and for better results, would move to court established by law.

The courts are under a power to order non binding Alternative Dispute Resolution mechanisms like judicial arbitrations, which means that if any of the party is not satisfied with the arbitrator’s decision, they may file a petition in trial court and proceed with ordinary court proceedings.

Generally, the person who is the arbitrator or mediator charges a fee for his services, which are divided among the parties equally or on ratio basis while a judge cannot charge any money for his service.

No matters how good the judgments of Alternative Dispute Resolution, they cannot be taken as judicial precedents, and so is the reason that parties cannot be compelled to enter into or continue any procedure.

**JUDICIAL APPROACH**

The mediation centre of the Delhi high court played a vital role in arriving at a settlement in the case of *Aviral Bhatla v. Bhawna Bhatla* where Comprehensive efforts were made to bring a settlement in the dispute relating to the matrimonial discord. The husband agreed to pay rupees 12 lakh in favor of his wife, quashing all the criminal and civil proceeding as a full and final settlement of all her claims.

In the case of *Gaurav Nagpal v Sumedha Nagpal* Justice Arijit Pasayat observed that section 13 of The Hindu Marriage Act, 1955 is wrongly interpreted to be as statute which is promoting breaking of homes rather than saving them. But such an interpretation cannot make the section invalid. Divorce can be adopted does not simply means that it is the most effective step. Every effort should be made by conciliation to bridge the communication gap which lead to such undesirable proceedings, due to which the families break. One should adopt ADR methods to resolve family disputes rather than going for litigation which would make it more complicated.

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9 (2009) 3 SCC 448
10 AIR 2009 SC 557
In the case of Bini v. Sundaran K.V.\textsuperscript{11} Kerala High Court held that, it is the duty of the court to make conciliation a mandatory thing, after the introduction of the Family Courts Act, 1984. Irrespective of the fact that the petition for divorce is liable to accepted under section 13 of the Hindu Marriage Act, 1955.

In K.Srinivas Rao v. D.A Deepa\textsuperscript{12}, Section 498-A of Indian Penal Code, 1860, is non-compoundable in its nature but if there are any possibilities of settlement through mediation, the court shall refer the dispute for mediation, where it can be nipped in bud in an equitable manner. In the case of Smt Padmavathi v. Shri M. Suresh Ballal\textsuperscript{13} Karnataka High court opined that the matrimonial matters must be seen with human angle and sensitivity by the court. If there is any issue which affect conjugal right it should be handled carefully. Sub-section (2) of section 23 of The Hindu Marriage Act, 1955 shows the intention of the parliament that at first instance court requires to make reconciliation between the parties and if no step is taken by the court, regarding reconciliation, it will be taken as omission and taken into account.

In the leading case of K.S.Sunil v Sherly\textsuperscript{14}, the validity of the award passed by the Lok Adalat under Section 21 of the Legal Service Authority Act, 1987 was challenged. The court observed that the Lok Adalat established under Section 19 of The Legal Service Authority Act, 1987 have a function to assist the parties to come to an agreement and not to decide the case or cannot enter into a finding. The Bench of K. Abraham Mathew, J. observed that “When the award cannot be challenged in a suit or execution proceedings or even in appeal the Lok Adalat should make sure that its proceedings are transparent and not vitiated by procedural illegalities or irregularities. Its proceedings should inspire confidence in the public, failing which the very existence of the institution will be at peril. To ensure its credibility, the Lok Adalat shall comply with the procedure prescribed by the statues scrupulously.”

\textbf{CONCLUSION AND SUGGESTIONS}

When we conclude the paper we came to know that resolution of family dispute through Alternative Dispute Resolution is a peaceful and amicable method, by which there is a chance of reconciliation of parties rather than as in litigation which stretch the dispute. Alternative Dispute Resolution helps to save the pre dispute relationship. Alternative Dispute Resolution consist various options by which parties try to resolve their dispute and make arrangements for future, such as family counseling, direct negotiation, mediation, conciliation and arbitration. We should make certain amendment in existing family law system for the resolution of family dispute through Alternative Dispute Resolution. Abraham Lincoln’s quotes “Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser — in fees, and expenses, and waste of time. As a peace-maker the lawyer has a superior opportunity of being a good man. There will still be business enough.”\textsuperscript{15}

Following are some suggestions which may increase the usage of methods of alternative dispute resolution in resolving o family disputes:

- We have to adopt certain new amendments in the statute dealing with Alternative Dispute Resolution so the people are able to understand the concept of Alternative Dispute Resolution and trust Alternative Dispute Resolution. We should also adopt some provisions regarding the abidingness of the award given by the Alternative Dispute Resolution mechanism.
- We should develop parallel Alternative Dispute Resolution institution in all parts of the country.
- In all courts there must be Alternative Dispute Resolution centers, which would decide that case should be resolved through litigation or by Alternative Dispute Resolution (and by which method).
- The presently existed Alternative Dispute Resolution centers are mostly concentrated to commercial Dispute, which is not be the case and includes other relevant disputes also.
- One should aware the people about the benefits of Alternative Dispute Resolution. We should perform street plays in the prevalent local language of the locality.

\textsuperscript{11} AIR 2008 Ker 84
\textsuperscript{12} AIR 2013 SC 2176
\textsuperscript{13} ILR 2012 Kar 3926
\textsuperscript{14} 2016 SCC OnLine Ker 12168
\textsuperscript{15} http://www.adrtoolbox.com/library/adr-quotes/ (visited on 08 Feb 2020, 10:18 a.m.)