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Editor In chief – Assistant professor Dr. Taru Mishra

Publisher & Founder – Vaibhav Sangam Mishra

Frequency – Quarterly (4 Issue Per year)

ISSN : 2583-6323 (Online)

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ALTERNATIVE DISPUTE RESOLUTION (ADR) MECHANISMS IN FAMILY LAW.

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ABSTRACT :

In the world, India is the second largest population country where all religions and faiths are present and therefore each religion is governed by its laws in matters of family affairs. It is clearly evident that the ratio of married people is higher resulting in an increase in family discrepancies, separation, preservation of child, alimony, settlement of marital assets and child guardianship creates further risk for the Indian judiciary, which requires complex and specialized approaches to resolve family issues. All disputes or conflicts can be resolved through litigation or non-litigation by identifying alternatives in the form of ADR procedures. time is valuable in recent days men and women both are working it is very difficult to pending cases in courts Alternative dispute resolution processes are being encouraged due to many inherent advantages like less time, fewer costs, easier procedures, better communication, etc.

Keywords: ADR, FAMILY COURTS ACT, 1984, HINDU MARRIAGE ACT, 1955, SPECIAL MARRIAGE ACT, 1954.

INTRODUCTION :

India has thousands of years old legal system and different populations based on different religions and beliefs in their lives with different population lives with its influence on the importance of the family system the percentage of married people also increases but family disputes matters are regulated differently based on religions also in the legal system by different religions through personal laws, As a result, the fact that family disputes are not resolved in time and the fact that the Indian judicial system takes a long time in family matters is the basis of which one often hears "justice delayed is justice denied".

The process of resolving family or matrimonial disputes like divorce, maintenance, settlement of marital assets, child custody, alimony, education, and financial support for children and any aspect of the family can be complex and expensive, it cannot be said how specific time it will take hence it is a diversification strategy or any aspect of the family now. practically universally

realized. The sufferings of the already aggrieved parties are compounded and if justice is done to one it becomes a burden on the other party by the time any relief comes from the court, the parties are psychologically and financially damaged and past the age of rehabilitation in life. A social problem requires legal action as a remedy but not a simple solution. Above all, courts and lawyers should be engaged in solving family disputes with consideration of humanitarian values.

The need for special procedures for solving family problems is not important here whether it is universally acceptable i.e. by the method, which is an adversarial system should be modified and replaced by a less formal process because this system is used in common law countries where two advocates represent their parties before an impartial person or group of people, usually a court or jury, who attempt to determine the truth accordingly the approach of a court engaged in this work requires a less formal and more dedicative investigative and investigative process. In other words, it is not treated as litigation in which the parties with their lawyers are engaged for not competing to win their parties but a trial in which It is necessary to work together to remove the enmity between the two parties, the main role of social workers, lawyers, welfare officers, and psychiatrists are be engaged in finding a solution. Family matters are all sensitive matters and the Family Courts in India direct the formation of sensitive family matters The movement to establish family courts in India was started by the late Durgabhai Deshmukh, a prominent social activist from Maharashtra, who first spoke of the need for special family courts and for their purposes she took up the idea with the then High Court judges, Justice M.C. Chagla and Justice P.B. Gajendra Gadkar discussed with and a similar proposal was made to Jawaharlal Nehru, who was the prime minister resulting in the passage of the establishment of and Family Courts Act in the legislature in 1984 of family courts in India.¹

The Law Commission of India in its report had also stressed that in dealing with disputes concerning the family the court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial it means for ensuring justice should be simple, speedy, cheap, efficient and substantial. Over time, the efficiency of the system was increasingly assumed to be inherent in the system itself. Docket explosion and heavy pendency of cases at

¹ Legalservicesindia \ <http://www.legalservicesindia.com/article/129/ADR-&-FDR.html> (Last Visited 21\12\2022)

trial and appellate stages is a global concern for all concerned with the administration of justice.²

Setting up more courts, increasing the number of judges, and finding some alternatives may not solve the problem by themselves. When the Time comes to identify a substitute in the form of ADR strategies. Disputes are classified as litigation or non-litigation and based on un-resolvable cases more cases are likely to rise in this society, although the world is moving forward, the legal system is not yet developed, so the ADR system was introduced in India. And mostly how it affects family disputes

Alternative dispute resolution processes and their mechanisms are being encouraged by arbitrators and arbitration procedures these days as they play a major role in resolving family disputes, as they have many inherent advantages in family matters and better communication and better procedures through time-saving, lower costs.

PERSPECTIVE OF INTELLECTUALS ABOUT REFORMS :

GANDHIJI'S: In my practice of law I need to understand human nature and to find the inner good in them and enter into their hearts. I notice that the foundation stone of society is family Therefore; the real work of a lawyer is to unite separated couples. This lesson evoked in me different perspectives that I had never known. It was so indelible that my twenty years of experience as a lawyer served in my practice in bringing hundreds of cases to private settlements. I lost nothing - not even money, certainly not my soul.³

LINCOLN: Never lose confidence in the litigation I say in my words. We're not losing because whenever you come up, convince them to compromise and show them how they're losing out on fees, costs, and wasted time.

Apart from reiterating the need for reforms in expediting dispute resolution, it also suggests that the country should have a strong mechanism for dispute resolution where cases have been pending for many years outside court. Legally, this process is known and practiced in the form of mediation, and negotiated conciliation

² Ibid

³ Greaterkashmir.com\ Gandhi as a lawyer\ <https://www.greaterkashmir.com/todays-paper/gandhi-as-a-lawyer/>
(Last Visited 21\12\2022)

WHAT ARE REFORMS HAVE TO BE INITIATED :

The system of marriage should not be seen as a conflict where the parties aim to defeat each other, which lawyers should not use as an opportunity to fuel disagreements between them whenever a disagreement arises. The parties are responsible for bringing about an amicable outcome. The family system should be viewed as sacred should be done.

The intervention of mediation is the only resolution of family disputes in India and it holds wide promise and strength it will surely have the potential to strengthen the system's capability to provide justice to all of these methods of Arbitration, Mediation, and Conciliation are necessarily making it compulsory in family disputes to preserve marriage system to some extent and will also direct the court's approach to given priority.

family courts are trying to solve all family disputes through compromise and collective agreement but they are not valid family courts need broad powers and discretionary power and all the discretionary power family courts have to deal with all such cases either in court or to appoint alternative methods to resolve the problems without delay and within time no higher cost then only to protect family system otherwise if all the burden on courts it effects to increasing pendency of cases.

FAMILY :

Family means a person living together and such husband and such wife or husband or their male child or female child or children maintained by the wife or female without husband or husband without wife or couples without children or children parents or children grandparents or their Ancestors. The family system is defined by the definition of family as the biological system established by our established legal sexual relationship to provide legal progeny and upbringing.

MEANING OF ADR :

ADR means Alternative dispute resolution it is invented to settle disputes outside of the court and this process is headed by the help of an unbiased third party. This pathway is generally accessible either or after efforts between the parties do not resolve any discrepancies or differences between themselves fail and reach a standoff.

IN INDIA EXISTING STATUTORY PROVISIONS FOR ADR :

The Legislature has mainly enacted several laws to provide speedy and efficient justice in India which are hereunder.

- Article 21 of the Constitution of India
- Arbitration and Conciliation Act, 1996
- Indian Code of Civil Procedure, 1908 under Order XXXIIA
- Section 89 to the Code of Procedure (CPC) r/w. R.I-A, I-B, and I-C
- Legal Services Authority Act, 1987
- Hindu Marriage Act, 1955 u/s.23 (2) and 23 (3)
- Special Marriage Act, 1954 S.34 (3)

EXISTING FAMILY LEGISLATIONS RAMPANT IN INDIA :

The judicial process is a judicial decision-making process that is disaffected to people's past events the focus is on the decision of the rights and responsibilities of the parties in the process and the outcome determines it is binding on the parties and procedures decisions are limited by the provision of relevant laws are made and the parties are unlikely to interact directly with each other legal proceedings involve court and litigation fees which are sometimes exorbitant in some cases

FAMILY COURTS ACT, 1984 :

an act to provide for the establishment of family courts to promote conciliation in disputes relating to marriage and family affairs and matters connected therewith and to enable the resolution of quick grievances.

- provision of S.9 in the act describes the duty of the court to make efforts at settlement, not only to provide a judicial remedy for the settlement of family disputes but also to ensure that separated families have access to the services of professionally trained inter-devotees who provide counseling and facilitation is worth noting that the main intention and idea the intention of the legislature behind the resolution of disputes and hence this act can be termed as comprehensive legislation on procedures for conciliation of family disputes in Indian matrimonial disputes

THE FAMILY COURTS ACT EXPLAINS WHAT DISPUTES ARRISE As

family conflict refers to sprightly opposition between family members because family relationships are complex nature of family conflicts it causes basic, physical, sexual, economic, and emotional distress furthermore they can take many forms parties may be at odds between their relatives' friends and siblings Such conflict may arise in such cases like

- a suitor proceeding between the parties to a marriage for a void marriage or restoration of conjugal rights or for judicial separation or dissolution of marriage.
- Suit for declaration of marital status.
- suit for dowry gifts and ceremonial
- Suit for basic needs like food, shelter, and clothes.
- Suit for maintenance of party and children and old parents.
- Suit for custody and guardianship of the child.
- Suit for declaration of validity of a marriage or marital status.
- Suit for an injunction due to circumstances arising out of a marital relationship
- A suit for a declaration of the legitimacy

DISPUTES SETTLEMENT OUT OF THE COURT USING ADR :

ARBITRATION: Arbitration in India is entered by the Arbitration and Conciliation Act, of 1996. As per sec.21, the arbitration process started before the arbitration procedures an agreement plays a role Sec.7 deals with an arbitration agreement is required that to be formed. This agreement lays down the terms and conditions on which the arbitration process is carried out both parties agreed to approach the same arbitrator Sec.11 deals with the appointment of the arbitrator and sec.10 dealt with a number of arbitrators to be appointed by one or more parties and to adjudicate the dispute the arbitrator act as a third party he should be neutral and both parties have referred the litigation or dispute to the arbitrator and the sec.24 dealt with hearings and written proceedings listen to arguments from both sides, collects evidence, and then decides on the outcome of the dispute challenging of award Sec.34 dealt with. the arbitrator goes on the merits of the case, and passes an 'arbitration award'

- **MEDIATION:** Mediation is a voluntary binding process in which an impartial and neutral mediator facilitates disputing parties in reaching a settlement. The mediator does not impose a solution but creates a conducive environment that can resolve their

disputes who is right but rather adds structure to communication between the disputing parties, so that they can, hopefully, eventually reach a resolution between themselves. This third party is referred to as the mediator. The mediator needs to properly communicate with both parties and use proper negotiation techniques, in order to make one party fully aware of the other party's perspective, through empathy and dialogue. The advantages are quick and responsive, no extra cost, harmonious settlement, creating solutions and remedies, confidential and informal mainly parties controlling the proceedings.

- **CONCILIATION:** conciliation in India is entered by the Arbitration and Conciliation Act, 1996. In conciliation one party initiating conciliation shall send to the other party a written invitation to conciliate if both parties accepted then conciliation proceedings shall commence otherwise the duration is 30 days both parties should elect here the third party, who is called the conciliator, talks to the parties involved separately so that the parties can arrive at a mutually acceptable solution through facilitating talks between the parties. Conciliation is provided for disputes arising out of the legal relationship.⁴
- **LOK ADALAT:** Lok Adalats have been given statutory status under the Legal Services Authorities Act, 1987. Lok Adalat has a non-adjudicatory process. Sec.19 speaks the establishment. Sec.18(1)jurisdiction of Lok Adalat and However, Lok Adalat is conciliatory and adjudicatory. Sec.22-B for permanent Lok Adalat, organized. The jurisdiction of the Permanent Lok Adalats is up to Rs. Ten Lakhs and Sec. 21 says the award of the Permanent Lok Adalats is deemed to be a decree of the civil court and is executable final and binding upon the parties.

HINDU MARRIAGE ACT- 1955 :

- Reconciliation under Section 23(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court to bring about a reconciliation between the parties and section 23(3) for the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do,

⁴Legislative.Gov.in\ <https://legislative.gov.in/sites/default/files/A1996-26.pdf> (Last Visited 21\12\22) / <https://blog.ipleaders.in/an-introduction-to-alternative-dispute-resolution/>

adjourn the proceedings for a reasonable period and after directed to report to the court as to whether reconciliation has been, affected or not.⁵

- Section 23 (1): This provision of the Act contains that before proceeding to grant any order/relief, in the first instance, the Court shall consider the reunion procedures in any nature and circumstances of each possible case to resolve their dispute amicably, and encourage and protect the union of the parties. In an appeal filed by Jagraj Singh v. Birpal Kaur in 2007,⁶ before proceeding to grant any relief in the first instance the court should be preferred to bring about reconciliation between parties.
- *13-B: This provision was added to this act in 1976 and Act mandates that in case of divorce by mutual consent, there has to be a composite period of 18 months of separation — one year provided waiving the statutory period and in Section 13B (1) and six months waiving the statutory period in Section 13B (2).*

SPECIAL MARRIAGE ACT-1954 :

- **Section 34(2) of the Special Marriage Act in this provision seeks to bring reconciliation between the parties and in this section to grant any relief under this Act it shall be the duty of the court in the first instance, to bring reconciliation in every case where it is possible so to do consistently with the nature and circumstances of the case and**
- Section 34(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties
- **Section 28 of the Special Marriage Act in this provision speaks to divorce by mutual consent divorce by mutual consent is available. However, it is not granted instantly and a joint motion made by both parties in the first instance has to wait for 6 months courts should try to bring reconciliation if it fails for granting a divorce.**

⁵Legalserviceindia/ <https://www.legalserviceindia.com/legal/article-2604-resolving-conflicts-of-family-disputes-during-covid-19-through-mediation-a-positive-approach.html> Last Visited (21\12\2022)

⁶ Jagraj Singh v. Birpal Kaur in 2007

CASE LAWS :

- ❖ *Baljinder Kaur vs Hardeep Singh*⁷–The appellant challenged the judgment of the lower court that her husband cheated on her in filing the divorce petition stating that she had never sought a divorce from her husband summary of the appeal petition while the Supreme Court speaks of the duty-bound role of the lower court. In order to effect a settlement, the court should focus on bringing reconciliation between the parties, stating that the primary objective is to preserve the system of the prenup and its sanctity in the first instance.
- ❖ *Mohinder Pal Kaur vs. Gurmit Singh*⁸ - In this case, the parties filed a 13-B(2) divorce petition within 6 months of marriage, but the petition was already pending the 1st motion for 6 months. Efforts to resolve the parties through compromise were unsuccessful. The law says that at least 6 months should elapse from the date of filing the mutual consent divorce petition before passing the divorce decree. But in this case, it said, if the petition is pending for more than 6 months and efforts for reconciliation between the parties have failed, then a decree of divorce can be declared in 2nd motion.
- ❖ *Love Kumar vs. Sunita Puri*- In this appeal case both parties filed a divorce petition but one party did not appear before the court during the conciliation process due to which the court passed the divorce decree. When the case came up for trial in the High Court, the trial court's judgment and decree were set aside; And the role of lower courts in family disputes is to act as a bridge to mutual agreement between the parties and not to entertain the decrees of the parties. Courts should never rush to pass a divorce decree here.
- ❖ *Gaurav Nagpal vs. Sumedha Nagpal*⁹- *In this case the Hon'ble Apex Court speaks in the first instance should try to reconcile both parties to bridge the gaps so that people have faith in the courts.*

CONCLUSION:

⁷ *Baljinder Kaur vs Hardeep Singh*

⁸ *Mohinder Pal Kaur vs. Gurmit Singh*

⁹ *Gaurav Nagpal vs. Sumedha Nagpal*

In the author's view, the modern era hears too much about family matters, with husbands and wives pending in court over minor issues that have a huge impact on their children and their future. Basically, the family is the first and foremost system and important ingredient. Family system has a lot of role in nurturing society structure. Family system plays a vital role in social development and it channels every other institution in society. Possible solutions in this 21st century include attempts to take matters related to family discrepancies in an urgent manner to resolve issues and reunion using mechanisms of ADR.

This topic will help you summarize the benefits of using ADR mechanisms and how family disputes pending in court can be resolved out of court in a timely manner. India is a secular country with a large population of different religions and every state in India has family dispute cases pending in court, so over time the Indian legal system has developed individual laws to suit the different religions practiced in India.

The author says that the non-recognition of the role of ADR in family disputes and its benefits has resulted in pending court cases over the years and is an urgent need today in the current social system where millions of Indians live in India. , to create an effective legal infrastructure for ADR mechanisms in resolving marriages celebrated in India, but also alienated abroad. The author recommends improving citizen participation in ADR mechanisms. If family mediation can be used properly, citizens should start dissuading themselves from using traditional court litigation. Article 21 of the Constitution conferring the right to a speedy trial is not merely fiction; The right should be given due respect. There is an urgent need to establish ADR mechanisms in urban areas and ADR in rural areas in family matters is considered a necessity to reduce the burden on courts.

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