

A Critical Assessment of the Alternative Dispute Resolution System (ADR) : Its implementation in Resolving the Common Matrimonial Disputes in India

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I. INTRODUCTION

Abraham Lincoln is reputed to have said:

“Discourage Litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the normal winner is often the loser - in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough.”

This quote largely captures the predominant drawback is inherent in litigation and it is arguable that a shift from litigation will play a major role in enhancing the attainment of peace and justice in any society, Against this backdrop, this paper aims at emphasizing the gains of and continuing need for a paradigm shift from litigation. The drawbacks of the Court system in India are therefore addressed in clear terms and the achievements of the ADR initiatives within the short period of its adoption will be highlighted.

Similarly, the ritis of “Saptapadi” is regarded to be a most important custom of a Hindu wedding ceremony where in the newlywed couple takes seven steps together or seven round around the sacred fire, during the marriage solemnized. After the said 7th steps, the marriage of the couple is regarded to irrevocable. The vows made in the present of sacred fire are considered unbreakable, with Agnidev held asboth witnessing and blessing the couple’s union. And in according to the Vedas it is lords ritual of acceptance of soul.

- The first step is about the couple wishing to provide for their household, carry out their responsibilities and duties to one another, their tradition, and their families and stay in good shape.
- The second step is about developing their spiritual and mental powers.
- The third step revolves around wishing to increase their comfort and wealth by proper means and righteous.
- The fourth step is acquiring knowledge, harmony, and happiness by respect, mutual love, and trust.
- The fifth step is about being blesses contented family of heroic, virtuous, strong children.
- The sixth step is to bless them with long lives.
- The seventh step is to remain true companions and only committed to one another.

Therefore, in the Indian Society nobody wants to break the bondage of marriage and going to Court for divorce is taken as a last resort.

The Family Courts Act Explains Family Disputes as:-

- A suit or proceeding between the parties to a marriage for a decree of a nullity of marriage or restitution of conjugal rights or judicial separation or dissolution of marriage;
- A suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;
- A suit or proceeding between the parties to a marriage concerning the property of the parties or of either of them;
- A suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;
- A suit or proceeding for a declaration as to the legitimacy of any person;

- A suit or proceeding for maintenance;

II. BRIEF HISTORY OF ADR IN INDIA

As per the Bhradarnayaka Upanishad, various types of arbitral bodies viz., (i) the Puga (ii) the Sreni (iii) the Kula are referred to.

Judicial Outlook Of ADR System In Resolving The Matrimonial Disputes :-

- K. Srinivas Rao v. D.A. Deepa, the Hon'ble Supreme Court discussed the idea of pre-litigation mediation in the context of family disputes.
- Gaurav Nagpal v. Sumedha Nagpal, it was observed by the Hon'ble Supreme Court that the phenomenon of a large number of cases flooding the courts relating to divorce or judicial separation is very disturbing.
- B.S Krishna Murthy vs. B.S Nagaraj and Ors, where in the Hon'ble Justice Markanday Katju held that lawyers should advise their clients for mediation, especially where the dispute is family in nature.
- G.V. Rao vs. L.H.V. Prasad, the Hon'ble court held that marriage is a child-centric heterosexual institution in our society. However, if marriage as a unit breaks down, the adjustments of various relations are required rupturing the usual structure and peace of the family. So, the family laws and courts mostly encourage in matrimonial disputes for reconciliation and settlement by amicable agreement instead of litigation.
- Jagraj vs. Bir Pal Kaur, it was held by the Hon'ble Supreme Court that the intention of the parliament behind enacting section

Benefits And Limitations Of ADR System In Resolving The Matrimonial Disputes :-

- ADR system is one of the most essential and primary benefits of mediation as a mechanism for dispute settlement is that it can save a lot of time, cost, and also ensure confidentiality.
- There is a mutual consensus between the parties towards reaching a solution that is acceptable to both where they can exercise some control over the resolution. Mediation is generally less stressful than the court litigation, couples are not only the ones who experience financial loss; the government and the community also incur a loss. ADR promotes finality. There is no scope for any appeal or revision or further litigation in it.
- Chances also are that it can help to improve or restore the relationship because there are many such cases where the dispute is caused by trivial reasons.
- Mediation is also way more participative and parties get an opportunity to present their case in their own words. It leads to better compliance as the parties themselves have agreed and signed on the settlement

In general marriage was considered to be an indissoluble tie between the husband and the wife in India. With the emerging strains and challenges, we see a transformation in this view. This change is due to growing discontent among the younger generations, communication-gap, changing roles of husband and wife, and tensions of fast life.

Marriage is considered an important aspect of life as it provides emotional support, companionship a sense of belonging. Being in a loving and committed relationship can improve one's mental and emotional health. For that marriage is a sacred tie and considered as sacrament under Hindu Law. Also it is one of the necessary Samskaras irrespective of caste in India rather than a form of social contract since they believe that all men and women are created to be parents, and practice Dharma together as ordained by the Vedas. In Hindu Tradition the purpose of marriage is to fulfill together the four purpose as :-

Dharma (Righteous Actions), Artha (Earning and children), Karma (Necessary Desired) and Mokhya (Know your Source).

Need Of Alternative Methods To Resolve The Matrimonial Disputes:

"I realized that the true fiction of a lawyer was to unite parties... A large part of my time during the 20 years of my practice as a lawyer was occupied in bringing out private compromise of hundreds of cases. I lost nothing thereby- not even money, certainly not my soul."- Mahatma Gandhi.

Matrimonial disputes are not just the concern of a family, they are the concern of the whole country because, the termination of a marriage can be a traumatic and emotionally devastating experience for the spouses as well as the other family members involved which can have social, psychological, emotional and even economic repercussions.

These arbitral bodies, known as Panchayats, dealt with variety of disputes, such as disputes of contractual, matrimonial and even of a criminal nature.

The disputants would ordinarily accept the decision of the Panchayat and hence a settlement arrived consequent to conciliation by the Panchayat would be as binding as the decision that was on clear legal obligations.

Modes And Practices Of ADR In India:-

ADR can be broadly classified into two categories: court-annexed options (Mediation, Conciliation) and community based dispute resolution mechanism (Lok-Adalat). The following are the modes of ADR practiced in India:

- Arbitration
- Mediation
- Conciliation
- Negotiation
- Lok Adalat.

23 of Hindu Marriage Act, 1955 was to preserve the sanctity of marriage.

Statutory Provisions And Special Procedure :-

- Section 9 of the Family Courts Act clearly states that when a matrimonial dispute matter comes in court, first instance the court should try to assist and persuade the parties for settlement.
- The Code of Civil Procedure, 1908 contains “Section 89, which talks about powers given to the court to refer any case for arbitration, conciliation, Lok Adalat or mediation.”
- Hindu marriage Act, “Section-23 states that before granting any relief, it is a mandatory duty of the court in the first instance only to make every Endeavour to bring about a reconciliation between the parties.”
- Section 34(2) and 34(3) of the Special Marriage Act. And even if both the spouses have filed for a joint petition for divorce still attempt to reconciliation are taken by the court.
- The Legal Service Authority Act has set up various pre-litigation and during litigation legal aid cells to settle or resolve the dispute between parties in a dispute.

III. CONCLUSION

- In court litigation, couples are not only the ones who experience financial loss; the government and the community also incur a loss.
- The implementation of a non-adjudicatory, non-judicial mechanism for dealing with matrimonial breakdown would compel a basic reassessment of the society’s conception of divorce.
- The realities of contemporary divorce — the number of cases pending and the general dissatisfaction should prompt legislative bodies to make alternative mechanisms available for divorcing couples. Finally, mediation can also lead for settling of related or connected cases.
- Other areas of matrimonial disputes are in the form of denying education, exposure to child maltreatment or witnessing violence in the family, silent experience of harmful use of alcohol, attitudes accepting of violence and gender inequality.
- Though there are enough laws with an object to curtail violence against women in India, it is still continuing. Hence, a comprehensive study to evaluate the effectiveness of the present statutory provisions intended to curb the menace of Matrimonial Disputes, has become the need of the hour.
- The premarital counseling is required to be given through the Expert Family Counselor to teach couples information about married life, to enhance their communication skills, to encourage them to develop conflict resolution skills and to allow them to speak about certain sensitive topics.
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