

Alternative Dispute Resolution: A Mode to Solve Personal Disputes

Abstract

Personal disputes involving personal situations are disruptive, upsetting and can become disproportionately emotional. It is an unfortunate fact that we have seen a rise in the number of such disputes over the last 3 or 4 years. Often they involve family companies, family trusts, jointly owned property, farms, and challenges to wills, disputes between neighbors or the knock on effects of divorces, fraud or dishonesty by spouse¹. Generally people they approached the ordinary court but the procedure of the court is time consuming and lengthy therefore alternative mode of dispute resolution is emerging as a popular mode to solve personal disputes. Alternative Dispute resolution has certain modes such as mediation conciliation, negotiation and arbitrations. Family dispute are sorted out through mediation, and conciliation modes. In India certain legislations such as Civil Procedure Code has the provisions to settle dispute through such mode as well as law Commission also recommended that court should follow the alternative modes to solve family disputes.

In this research paper researcher would try to give an overview about alternative methods to solve personal disputes.

Keywords: ADR, Conciliation, Disputes, Family, Mediation.

Introduction

In India joint family is the basic unit of the social fabric. Whenever there were any families disputes, elder person solved that dispute through conciliation and played role of mediators but with advancement of society educationally as well as economically joint family is disintegrating into nuclear families. In Indian society general view is that whenever there is any dispute the ordinary courts are place to solve that dispute. But with the passage of time public realized that the procedure under ordinary court is very time consuming therefore, public as well as legal luminaries they emphasized on the alternative method to solve the dispute through mediation and conciliation which are generally known as the alternative dispute resolution mechanism include mediation, conciliation, negotiation and arbitration. Family dispute generally solved through the mediation and conciliation. Family disputes include the difference of opinion on any matter relating to family persons, children, property and any matter incidental thereto.

If we look at the development of this method 6000 years back, at the dawn of civilization when habitation was growing at river banks, was devoid of urbanization, where the creator was presumed to be the head of humanity. With the dawn of industrialization, man walking into orderly society, State and Nation, dependence on law for orderly conduct gained momentum. Then came the horizon of the social dispute resolution mechanism. With Indian Courts piling up cases for millennium, alternative dispute system had to be found. Thus this system took birth. Once the dispute was resolved, there was no further challenge.²

The Constitutional mandate began with Justice V.R Krishna Iyer and Justice Bhagawati's Committees report. Based on that report Lok Adalats and Legal Aid Camps, Family Courts, Village Courts, Mediation Centers, Commercial arbitration, Women Centres, Consumer Protection Forums etc which are but various facets of effective Alternative Disputes Resolution Systems.³

Objective of Study

1. To study an overview of Alternative Dispute Redressal
2. To study the role of Alternative Dispute Resolution in settlement of personal disputes

Review of Literature

Literature for the paper has been mainly taken from the books of various authors deals with arbitration and conciliation Paranjpayee N.V.

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(Law relating to arbitration and conciliation in India, 2009) in this book author has explained about the section 89 settlement of dispute out the court. This also discussed about the lok adalats as a part of the Alternate dispute redressal.

Singh Avtar (Law of Arbitration and Conciliation including ADR system 2007) author has explained in detail about the arbitration conciliation. Author explained very efficient manner about negotiation and mediation. Author also included ADR as well as Lok Adalats and Family courts in his book.

Alternative Dispute Redressal

The Supreme Court in *Guru Nanak Foundation v Rattan Singh and Sons*² and in *Trustees of the Port of Madras v Engineering Construction Corporation Ltd*³ observed, time consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal, more effective and speedy for resolution of disputes avoiding procedural claptrap and this led them to the Arbitration Act, 1940. However, the way in which the proceedings under the Act are conducted and without exception challenged in courts, has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the Act have become highly technical, accompanied by unending prolixity, at every stage providing a legal trap to the unwary. Informal forum chosen by the parties for expeditious disposal of their disputes has by the decisions of the courts, been clothed with 'legalese' of unforeseeable complexity. This case amply demonstrates the same.⁴ Alternative Dispute Resolution is an attempt to devise machinery which should be capable of providing an alternative to the conventional methods of resolving disputes. An

Alternative means the privilege of choosing one of the two things or course offered at one's choice. It does not mean the choice of an alternative Court but something which is an alternative to court procedures or something which can operate as court annexed procedure.⁵

The very reasons of origin of alternative dispute redressal are tiresome processes of litigation, costs and inadequacy of the court system. In the last quarter of the previous century, there was phenomenal growth in science and technology. It made a great impact on commercial life by increasing competition throughout the world. It also generated a concern for consumers for protection of their rights. The legal system did not give any response to the new atmosphere and problems of the commercial world. Thus adr emerged as a powerful weapon for resolution of disputes at domestic as well as international level. It is developing as a separate and independent branch of legal discipline⁶.

The significant features of this process are that it involves the intervention of a third person who works without following the pattern of the adversary system and whose final solution is not legally binding on the parties. ADR has started gaining ground as against litigation and arbitration. There are many disputes which are simply beyond the reach of litigation, for example, division of family businesses or

a dispute involving a family business and those concerned with it or working for it, or all matters involving joint interests.⁷

ADR is supposed to provide an alternative not only to civil litigation by adjudicatory procedures but includes also arbitration itself. It can be defined as a technique of dispute resolution through the intervention of a third party whose decision is not legally binding on the parties.⁸

Alternative Dispute Redressal and Legislative Provisions

"it is settled law that free legal aid to the indigent persons who cannot defend themselves in a court of law is a Constitutional mandate under Article 39-A and 21 of the Indian Constitution."

In Civil Procedure Code has the provision for the use of alternative methods to solve family disputeⁱ as well as order X, Rule 1A⁹.1B¹⁰ and 1C¹¹ which provides the option to parties to settle disputes through such methods. After the amendment in the civil procedure code an order XXXIIA was inserted and section 89¹²: Section 89 of the Code of Civil Procedure States that:

1. Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the court may reformulate the terms of a possible settlement and refer the same for
 - i. *arbitration*;
 - ii. *conciliation*
 - iii. *judicial settlement including settlement through Lok Adalat; or*
 - iv. *mediation.*
2. Where a dispute had been referred-
 - i. For arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act.
 - ii. To Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;
 - iii. For judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;
 - iv. For mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.]

CPC (Amendment) Bill 1999 clause 7 "provides for the settlement of disputes outside the court. The provisions of clause are based on the recommendations made by Law Commission of India and Malimath Committee. It was suggested by Law Commission of India that the Court may require

attendance of any party to the suit or proceedings to appear in person with a view to arriving at an amicable settlement of dispute between the parties and make an attempt to settle the dispute between the parties amicably. Malimath Committee recommended that it should be made obligatory for the court to refer the dispute, after issues are framed, for settlement either by way of arbitrations, conciliation, mediation, judicial settlement or through Lok Adalat. It is only when the parties fail to get their methods that the suit could proceed further"¹³

Under The Hindu Marriage Act, 1955 and The Special marriage Act, 1954 also have provisions to solve the family disputes through conciliation under section 23 (2) and section 34(2).

In the mediation and conciliation Rules, 2004 has provisions that the High Court and Districts and Session Judges has the power to prepare the panel for the appointment of mediators.¹⁴

The Legal Services Authorities Act, 1987 brought about the establishment of Lok Adalat system for settlement of dispute cheaply and expeditiously and also in the spirit of compromise by give and take formula.

Arbitration and Conciliation Act, 1996 encourages arbitrators, with the agreement of the parties to use mediation, conciliation or other procedures at any time during the arbitration proceedings to encourage settlement

In 129th report of the Law Commission of India also recommended that it should be obligatory on the court to refer the dispute to alternate mode when court framed the issues.

These alternative modes have certain advantages as well as disadvantages such as such modes are less time consuming as well as ventilate the difference of opinions between the members and parties to reach on certain solution. These methods are helpful to solve the dispute of divorce due to various reasons given under section 13 based on fault grounds. in disadvantage of these methods are generally more flexible therefore parties are not bound by any constraints. Some time lack of interest of the officer or mediator reduces the chances of the settlement of disputes. When dispute include more than one party it become more complicated to solve methods through such method.

Conclusion

Ordinary court took time to solve the personal dispute which generally creates the adverse effect on the parties, their families and children. Alternative Dispute Resolution always emphasized on the mediation conciliation and negotiation which leads to the solution of the problem or assisted the parties to reach into the conclusion which is better for their future. Generally in personal disputes in case of divorce Family Courts follow this method without engaging any lawyer and final separation is the last resort for the courts. Therefore, this method is good option to solve personal disputes.

References

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3. (1995) 4 Scale 742. *In this case the Madras High Court had set side an award of a domestic arbitral tribunal in a commercial dispute. The Supreme Court reversed the judgment of the High Court and upheld the award.*
4. *Avtar Singh, Law of Arbitration and Conciliation(including Alternative Dispute Resolution System),(Lucknow, Eastern Book Company, 2007) 469*
5. *Ibid*
6. *Id at 471*
7. *Id at 472*
8. *ibid*
9. *Direction of the court to opt for any one mode of alternative dispute resolution*
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12. *Settlement of disputes outside the court*
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14. *Ibid*