

A CURRENT SCENARIO OF MATRIMONIAL DISPUTES SETTLES THROUGH  
ALTERNATIVE DISPUTES RESOLUTION

**Author's Name :**Kiranben G Solanki

Research Scholar

**Affiliation:**Parul Institute of Law, Faculty of Law, Parul University, Vadodara

**E mail ID:** [solanki.kiran7@gmail.com](mailto:solanki.kiran7@gmail.com)

**Mobile no.:** +91 9157966796

A current scenario of matrimonial Disputes Settles through Alternative Disputes Resolution

Abstract

Conflict among human is inevitable part of every society and disputes are also common between people. Main causes of dispute arisen are deferent personalities, opinions, gender disparities, egos, disagreements of each other. For resolution such kind of disputes every society should have develops a legal system. Mainly the principles of natural justice with the rule of law should be applied to provide justice in civilized society. Each aggrieved person is supposed to go court for justice. The legal system bound to trying to resolve the issues with legal ideal that wherever there is a wrong must be a remedy for maintain social satisfaction. In ancient India, effective justice delivery system was in existing. The kings used to conduct their “Darbars” for deliver justice. After that in British era, the modern justice delivery system was established. But nowadays we can see the present judiciary system is not able to cover increasing burden of civil litigations. Matrimonial disputes are also kind of civil litigation. In current era, due to modernization of society and adoption of western culture marital disputes increase in very high numbers day by day. For reduce backlog of family court and to save matrimonial institute the Indian judiciary takes a liberal attitude toward Alternative disputes methods. This study mainly focused alternative solution of matrimonial issues and to examine the methods of alternative disputes resolutions.

Key words: Matrimonial disputes, Alternative resolution, Justice

## **OBJECTIVE OF THE STUDY**

1. To discuss how the current scenario of Alternative Disputes Resolution in India.
2. To discuss various form of ADR.
3. To examine the impact of Mediation and Conciliation on Marital disputes.

## **RESEARCH QUESTIONS**

1. How does the ADR Mechanism developed?
2. Whether the mediation and conciliation is adequate tools for solving matrimonial disputes outside of court?

## **METHODOLOGY**

The researcher would be adopted doctrinal research methodology. Researcher has analyze the various court judgments and some research work of scholars, and other resources like books, journals, and web resources have been used to carry out the research.

## **INTRODUCTION**

*“Justice too long delayed is justice denied”*

- *Martin Luther King*

In India, Due to complex legal procedure judiciary has much backlog of court cases. Some injured person with expectation of justice come to the court but court procedure is much time consuming because multifaceted workload of judiciary. We have fast track court or time duration to disposal of civil matter but still we can't reach our goal. That's why the term “Justice delayed is Justice denied” is come true in many cases. For the solution of this situation the Indian Judiciary effectively adopts “Alternative Disputes Resolution” methods in many legal problems i.e. commercial disputes, Contractual disputes, Family Disputes etc.

ADR describe as – “the alternative Disputes Resolution can be defined as a technique of disputes resolution through the intervention of a third party whose decision is not legally binding on the parties”<sup>1</sup>

The ADR term includes mediation, conciliation and arbitration. The mediator and conciliator do not decide disputes himself, but they provide facilitation and help to the parties to identify the common ground of their disputes. Arbitration contemplates an imposed decision. As arbitration process settles the disputes outside the courts it is considered as ADR. As it brings the parties to the negotiating table, identifying problems, establishing facts, clarifying issues, developing the option of settlement and ultimately solving the disputes through award which is binding to the parties.<sup>2</sup>

#### HISTORICAL DEVELOPMENT OF ADR IN INDIA

From the vedic period, the alternative justice method existing in India. In Hindu society, institution and beliefs developed slowly but surely and definite form was given to them. There is evidence that many significant beliefs and doctrines of our days are well established in the ancient Indian through.<sup>3</sup> During Mauryan dynasty, there were two kinds of court. One is civil court and another is criminal court. The civil court known as “Dharmastheya” and criminal court known as “Kantakashodhna”. And during this time period every city had a police station to assist courts. Then in Gupta era, the disputes were supposed to be solved in local level like village court. In case the dispute was not solved the local level then it comes before special council. And during these eras there are some specified bodies come in practice like-

- Kula (assembly of family members)
- Srenis (Corporation of the persons which engaged in same profession)
- Gana (local or area Assembly)
- Panchayat

---

<sup>1</sup>Alternative Dispute Resolution, S.R.Myneni, Asian Law House 3<sup>rd</sup> edition. P.n.13

<sup>2</sup> Ibid p.n.14

<sup>3</sup> Alternative Dispute Resolution System(ADR), Dr. AnupanKurlwal, Central Law Publication. P.no.60

The 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<sup>4</sup>.

#### *ADR in Mughal Age*

The muslim ruler in India they impose Islamic Law on Indian Society which was *Shari'ah* and *hedaya*. Both mention arbitration provision. It is significant to note that during mugal rule provision of arbitration was detected in fusion form. There were mainly three kinds of court existing in the Mughal era. First is religious court also known as kazi's court which dealing with marriage, inheritance divorce etc. matter. Second municipal court is dealing with revenue and right related to land. Then secular court is dealing with those matter which is non-religious or administrative object.

#### *Root of modern ADR system in British era*

ADR picked up leap in the India, with the establish of the East India Company. The British government gave statutory form to the law of arbitration by circulating regulations in the three presidency towns in India i.e. Calcutta, Bombay and Madras. Bengal Resolution Act, 1772 and Bengal Regulation Act, 1781 provided arbitral provision to the parties to submit the dispute to the arbitrator, appointed after mutual agreement and award of arbitrator shall be binding on both the parties. These remained in force till the Civil Procedure Code 1859 is passed. And it extended in 1862 to the three Presidency towns. After enacted Civil Procedure Code section 89 is give fully encourage to ADR procedure.

#### *Post independent period*

---

<sup>4</sup>ADR in India: Legislations and Practices, By S.ChaitanyaShashank, Kaushalya T. Madhavan, KIIT School Of Law, KIIT University

The root of alternative dispute resolution is found in Indian constitution. Article 14 and article 21 of the Indian Constitution are deal with the equality before law and right to life and liberty which is include right to speedy trial too. In directive principles of state, the state has obligation of state to promote equal justice and free legal aid to all the citizen of India. Article 39-A<sup>5</sup> stated – “ the procedure of the legal system which promotes justice, on the basis of equal opportunity and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or any other disabilities.”<sup>6</sup>

### MODES OF ADR PRACTICING IN INDIA

ADR can be broadly classified into two categories: court based resolution options i.e. Mediation, Conciliation and community based dispute resolution mechanism like Lok-Adalat which is very popular nowadays. The following are the modes of ADR practiced in India:

1. Arbitration
2. Mediation
3. Conciliation
4. Negotiation

1. Arbitration

Arbitration is most often rapid resolution compared to litigation. Arbitration has a formal procedure and substantive rules to follow. The process consists of a defined simple procedure where disputants argue their case before an arbitrator. Arbitration is a flexible and confidential adjudication process. The process end with the settlement which known as award. And an award can be appealable against. Arbitration can be voluntary or contractual.

2. Mediation

---

<sup>5</sup> The directive principle was inserted by 42<sup>nd</sup> amendment act 1976

<sup>6</sup> Constitution of India, DrD.K.Basu, Asian Law Publication.

Mediation is a part of conflict management of the Alternative Dispute Resolution method under Section 89 of the Code of Civil Procedure Code. The emerging concept of mediation centers is rising rapidly.<sup>7</sup> Settlement through mediation means that process which done by the mediator who appointed by parties themselves or by the court, it is chooses according to nature of case. The dispute resolve between the parties to the suit by the application of the provision of the mediation rules 2003. The process of mediation is facilitating discussion between aggrieved parties directly or indirectly by communicating with each other through mediator.

### 3. Conciliation

Conciliation is less formal from arbitration. The process of conciliation does not require an presence of any prior agreement between the parties. Any party can request the other party to appoint a conciliator. Normally, there will be one conciliator but the parties have freedom to agree that there should be two or three conciliators. The conciliator and parties keep confidential all matters relating to conciliation proceedings. He should take positive action to help the parties reconcile their interests and concerns and try to find an acceptable compromise.<sup>8</sup>

### 4. Negotiation

Negotiation-communication for the purpose of influence is the pre-eminent mode of dispute resolution. In Compared to processes of using mutual third parties service, it has the advantage of consenting the parties themselves to control the process and get the solution of disputed matters. Essentials of Negotiation are:

1. Communication process;
2. Resolves conflicts;
3. Voluntary exercise;
4. Non-binding process.<sup>9</sup>

---

<sup>7</sup> Available at <https://lawtimesjournal.in/judiciary-promoting-adr/>

<sup>8</sup> Supra note 1 p.no. 43

<sup>9</sup> Supra note 4

## ADR: EFFECTIVE RESOLUTION METHOD IN MATRIMONIAL DISPUTES

We can see the main types of alternative disputes resolution is Arbitration, mediation, conciliation, negotiation exist in India. But before few years ago on the basis of justice V.R.krishnaIyer and Justice B.N.Bhagwati's committees' report the indian judiciary launched one more form of ADR under Legal Service Authority act 1986 which is known as Lok-Adalat.<sup>10</sup> Normally in India, arbitration procedure is not in practice in matrimonial disputes. Matrimonial disputes mainly solve through mediation and conciliation. Through the ADR Method both the parties have mentally satisfied, because mostly there is always win-win situation due to collaboration it is possible. In collaboration either "you win, I win" situation or another is "compromise" where "both win some or both lose some".<sup>11</sup>

In the current scenario, a number of cases of matrimonial disputes are coming onward. The numbers of petitions involving marital disputes are increasing a judicial burden of the court. ADR provides for a legal structure for defining issues involving private parties. Matrimonial litigation is extremely burden to the civil courts. The Indian society has various forms of marriage as well as religious beliefs. Each religion has their own customary laws regarding family matter. Therefore the whole procedure is very complex in itself. Mediation procedure is a facilitatethat helps the parties to reach for a settlement in dispute. In this process, parties get more flexible and get friendly environment unlike courts, which are less friendly in nature, it is free from multifaceted procedures, easy to understand and, therefore, parties cooperate with each other pleasantly. Mediation assists as very supportive dispute mechanism in the case where, divorce are due to cruelty, unsound mind, some communicable or dangerous diseases etc. in cases like these, such matter can be communicated and admitted easily and effectively because their acknowledgments will not go outside the room.<sup>12</sup> The procedure of mediation is mostly private and confidential mechanism, compare to court.

---

<sup>10</sup>Supra note 3 p.no. 64

<sup>11</sup> Supra note 1 p.no.23

<sup>12</sup> Available at <https://blog.ipleaders.in/mediation-important-divorce-cases/> visited 25/4/2020, 10:44am



Matrimonial disputes are different from the any ordinary commercial and property matter disputes. In this matter some factors like sentiments, emotions, social factors, responsibilities, personal duties, and the mindset of the parties regarding the marriage. It makes the matrimonial disputes distinct and different from others.

We know that mediation is voluntary process; where parties can jointly resort to litigation of civil or criminal nature. And this option more preferred by people because-

- It promotes the interest of the entire family
- Reduces economic and emotional cost.

The family court Act 1986, section 9 also promotes the settlement outside court. And every magistrate has to try to settle matrimonial disputes through alternative disputes resolution mechanism.

In the case of *Gaurav Nagpal vs Sumedha Nagpal*<sup>13</sup> the Supreme Court observed: *'It is a very alarming phenomenon that large numbers of cases are coming to the courts relating to divorce or judicial separation. The provisions relating to divorce in HMA categories situations in which a decree for divorce can be sought for. Because such a course is available to be adopted, should not normally provide encouragement to persons to seek divorce, unless the marriage has irreversibly broken. Efforts should be to bring about conciliation to bridge the communication gap which lead to such undesirable proceedings. People rushing to courts for breaking up of marriages should come as a last resort, and unless it has an unpredictable result, courts should try to bring about conciliation. The emphasis should be on saving of marriage and not breaking it. As noted above it is more important in cases where the children bear the brunt of dissolution of marriage.'* In other case *K. Srinivas Rao vs D.A. Deepa*<sup>14</sup> the apex court said that pre-litigation mediation should be encouraged. In words of the court *'If all mediation centres set up pre-litigation desks/clinics by giving sufficient publicity and matrimonial disputes are taken up for pre-litigation settlement, many families will be saved of hardship if, at least, some of them are to*

---

<sup>13</sup> AIR 2009 SC 557

<sup>14</sup> (2003) 5 SCC 226

*be settled.’ And also said ‘at the earliest stage when the dispute is taken up by the Family Court or by the court of first occurrence for hearing, it must be referred to the mediation centres. Matrimonial disputes particularly those relating to divorce, custody of children, maintenance, etc. are preeminently fit for mediation.’*

When Police complaints filed for maintenance, divorce or any other matrimonial disputes are to be held with sensitivity, perception and patience. The handling of the matrimonial disputes in the form of offence under Section 498 A of the Indian Penal Code, 1860 have essentially to be handled in a different way. The accused are not guilty of a criminal offence and are not within the ambit of typically definition of a criminal. It is the job of the investigating officer to see through frivolous complaints.<sup>15</sup>

In the case of *JagrajVsBir Pal Kaur*<sup>16</sup> it was held by the Supreme Court that the aim of the parliament behind ratifying section 23 of HMA was to preserve the sanctity of marriage. Therefore, every step towards the reconciliation of parties has to be carried out by the courts. The main difference between the police, the judge and the mediator is that, the police is trained to investigate or frame a charge, a judge is to pay his attention on what is right or wrong but a mediator/ counselor is to focus on rebuilding and remain non-judgmental all through.

#### *Mediation and Conciliation process:*

No fix bunch of rules exists to regulate mediation unlike arbitration or conciliation. There are two initiative method in practice regarding refers to mediation.

- Refer by the parties
- Refers by the court (civil procedure code 1908, section 89)

Under Hindu Marriage Act 1955, Section 23 and Special Marriage Act are provides mandatory reconciliation procedure for parties. Section 23 (2) HMA states that grant or relief before proceeding under it, there shall be a responsibility of the court in the first instance, in every case

---

<sup>15</sup> Supra note 9

<sup>16</sup> Appeal (civil) 711 of 2007

to make every effort to bring about reconciliation between parties where relief is sought on most of the fault grounds for divorce specified in Section 13.<sup>17</sup>

In the case of *M/S. Afcons Infra. Ltd. & Anr vs M/S Cherian Varkey Construction*<sup>18</sup>, the Supreme Court has said that while denoting to Section 89 by the Court, the court has the preference to determine for any of the five methods. However, the practical application of the rule says that *'after the pleadings are complete and after seeking admission/denials wherever required, and before framing issues, the court will have recourse to section 89 of the Code.'* Court will consider and acknowledge the nature of the dispute and refer to the parties to five options available and according to the first choice of the parties refer the party to that mode.

## CONCLUSION

*"Discourage trial; encourage your neighbours to compromise whenever you can. Point out to them how the normal winner is often a loser in fees, expense, cost and time"* -Abraham Lincoln

The Alternative Disputes Resolution is needs to be carried forward with greater speed. This will significantly reduce the backlog of the courts and providing speedy justice at the step of door, without extensive cost being involved. With the initiation of the alternate dispute resolution, that is new path for the people to settle their disputes. The concept of LokAdalat quickly has acquired good popularity among the public and this has really given rise to a new force to ADR and there is no doubt it will reduce the pendency of court. There is an urgent need for justice dispensation through ADR mechanisms. Matrimonial dispute mainly deal with emotions, sentiments and other mental factors. Therefore, the court procedure is not fit for all means. The Indian judiciary should have Setting up of Mediation and conciliation centers in all districts of each state. These Mediation and conciliation centers would function with an efficient team of mediators or conciliator who are selected from the local community itself.

---

<sup>17</sup>Hindu Law, B.M.Gandhi, eastern book company. P.n. 260

<sup>18</sup>Arbitration Petition (L.) NO.752 OF 2013

## REFERENCES

1. Alternative Dispute Resolution, S.R.Myneni, Asian Law House 3<sup>rd</sup> edition. P.n.13
2. Ibid p.n.14
3. Alternative Dispute Resolution System(ADR), Dr. AnupanKurlwal, Central Law Publication. P.no.60
4. ADR in India: Legislations and Practices, *By S.ChaitanyaShashank, Kaushalya T. Madhavan, KIIT School Of Law, KIIT University*
5. The directive principle was inserted by 42<sup>nd</sup> amendment act 1976
6. Constitution of India, DrD.K.Basu, Asian Law Publication.
7. Available at <https://lawtimesjournal.in/judiciary-promoting-adr/>
8. Supra note 1 p.no. 43
9. Supra note 4
10. Supra note 3 p.no. 64
11. Supra note 1 p.no.23
12. <https://blog.ipleaders.in/mediation-important-divorce-cases/> visited 25/4/2020, 10:44am
13. AIR 2009 SC 557
14. (2003) 5 SCC 226
15. Supra note 9
16. Appeal (civil) 711 of 2007
17. Hindu Law, B.M.Gandhi, eastern book company. P.n. 260
18. Arbitration Petition (L.) NO.752 OF 2013.