**EFFICACIES OF ALTERNATE DISPUTE RESOLUTION WITH SPECIAL FOCUS ON MATRIMONIAL DISPUTES**

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**ABSTRACT**

“*Discourage litigation. Persuade your neighbours to compromise whenever you can. As a peacemaker the lawyer has superior opportunity of being a good man. There will still be business enough*”. By Abraham Lincoln

The term Alternative Dispute Resolution has been in trend in current time. Nowadays nobody wants to drag conflicts to the court and nor they wish to go for litigation, instead they are more for a harmonious out of court settlement. It is because the process of alternate resolution of dispute is more cost effective, speedy and private. But still not all legal issues could be solved through this, there are certain limitations regarding the nature of the dispute to be resolved through such alternate institutions instead of the court. On a rough opinion it could be the criminal offences or suit involving a tint of criminal law.

But still there has been a debate going on around the world especially India, that whether such methods can be used for resolving the marital issues or conflicts. Marital conflicts though similar to civil cases or some low gravity criminal cases, but are not entirely the same and involve a much of privacy and confidentiality of a couple and a family. When such matters are taken up into court, the private relationship of the husband and the wife is peeled before the public which could hurt the feelings of the either spouse or result into more estranged relations and depreciation of the reputation of the families. It is so because the foundation of a family unit is through marriage only and such scared thing being dragged in court could be terrible.

For such above reasons the parties may find the alternate mechanisms of dispute settlement more favourable to their circumstances and will be able to express them more openly due to absence of strangers. They even have various methods under this one head, so that the parties can decide to go for which method of settlement. These different type of instruments would be Arbitration, Mediation, Conciliation, Negotiation and Lok Adalats, which are prevalent in India.

Also sometimes the court believes the “phase of reconciliation” i.e. the process where before going into Litigation, the court itself suggest for the alternate method so as to protect the family from breakdown. In family disputes more specifically in Matrimonial disputes, no court wants to break the peace of a family until unless they are in dire need of it. So the courts are of the opinion that if through proper application of the alternate method of resolution the dispute is dismissed, then it’s a win-win situation for both the parties and the court as it decreases the burden of the court and create harmony between the parties by amicably resolving their matter. For this there are even certain laws added in favour of application of such methods in the Indian legal framework, which helps ADR in its application for such issues.

Thus the aim of this paper is to give a crisp idea about the different types of alternate solutions of settling the disputes of matrimonial nature. It will give a brief idea of the effect of every type of instrument and its scope on such issues.

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**KEYWORDS**- ADR, Parties, Matrimonial Disputes, Conflict(s) & Dispute(s), Resolution

**INTRODUCTION**

Before getting deeper into the influence of ADR in the Indian legal system and its special effect on family law matters, we firstly need to identify the proper meaning of the two terms i.e. ADR and Matrimonial Disputes.

**Meaning of ADR**

ADR refers to “ALTERNATE DISPUTE RESOLUTION”

All around the globe there is one similarity between all the countries that they all have a proper set of rules or regulations called as the legal frame work of that specific country. These legal systems make rules for the governing of the residents of that country. It provides that for legal conflict both the parties i.e. the complainant and the defendant had to approach the court for the resolvement of the issue.

But due to this the work of the courts became wider and wider, because people started to reach the court for even such trivial things which could have been settled through proper way of communication between the two parties and thus it resulted into the increased burden of work and decreased pace for resolving all the conflicts.

So for lessening the burden of the courts and speedy settlement of the issues, the mechanism of ADR was coined.

Basically ADR is a method of dispute resolution without approaching the court for litigation. It usually involves a 3rd party, which helps them to settle the matter. It can be either done voluntarily or on the direction of the court. There are different instruments of ADR for resolving the conflicts in the legal world.

What usually makes ADR as an important part of the legal system is that since many decades the ratio of the pendency of cases to the dismissal of the case is very high in context of India. Due to this the cases are in trial since longevity and no justice is served to the aggrieved ones. So the courts are in dire need of this instrument to lessen the work for them as the number of the judicial officers and their court is outnumbered by such high increase of cases.

Secondly in litigation the court fees along with the fees of the counsel needs to be paid, which is a very high amount depending upon the time of the case in the court while ADR is very cost effective and provides speedy justice of the parties and that to in a favourable manner. It helps the parties to get out of such a cumbersome procedure of litigation keeping in consideration the nature of the matter because criminal offences i.e. non-compoundable offences are not to be solved through ADR.

**What are Matrimonial Disputes?**

We all know that institution of a FAMILY is MARRIAGE between a man and a woman who after that creates existence of one unit of family in the society[[1]](#footnote-1). It is such an institution which cannot be hindered by anyone that easily because it has its moral sentiments joined with the society and proves to be an example of civilization, but sometimes there are conflicts which arise between a married couple regarding the base of their marriage or because of the wrongful behaviour of either of the partner towards the other. Such is termed as a Matrimonial Dispute.

They majorly are of two types, i.e. 1. Dissolution of Marriage 2. Maintenance of the spouse and Children, where further they are divided into different parts based on the circumstances of the couple.

They are usually of civil nature covered under the concept of Family Law, until any grave injury has been suffered by any of the spouse. When the element of injury involves such a dispute, it takes up a face of a criminal case and is dealt with that sort of approach.

**Effect and Scope of the two terms on each other**

As mentioned earlier that matrimonial disputes are such conflicts which breakdown the peace of a family and is against the morals of the society, so when such matters are confronted by the court, then the foremost thought which comes into mind of the presiding officer of the court is that, rather than going for separation through litigation how about the couple go for a harmonious resolution of the matter and reconciliation between them. It is so because the family laws in India do not support the dissolution of marriage and promote for resolvement by different methods of law, so as to protect the family from rupturing from its usual self[[2]](#footnote-2). These different methods of laws could be said as the ADR methods.

They are the best methods for resolving such private matters because they are done in confidential manner and can either be proposed by the parties itself or the court may direct for the same.

As said earlier that ADR usually follows cases which are civil in nature, then the matrimonial disputes can also be covered under the scope of ADR. It will help the parties to reach an amicable way of resolving the matter or the conflict between them. This process will be considered legal only with the help of some laws relating to it in the Indian Legal system.

**INDIAN LAWS W.R.T. ADR FOR MATRIMONIAL DISPUTES**

There are various provisions in different laws of India which supports the Alternate methods of resolution so that the procedure regarding it can be of legal nature. These provisions are –

1. Arbitration and Conciliation being mentioned under the Arbitration and Conciliation Act, 1996
2. Civil Procedure- Alternative Dispute Resolution, 2006
3. Civil Procedure- Mediation Rule, 2003
4. Legal Services Authority Act, 1987 established Lok Adalats for informal setting up of the civil natured suits.
5. Order X Rules I-A, I-B, and I-C of the Civil Procedure Code, 1908, holds the provision for the Settlement of Disputes outside the court premises.
6. Order XXIII about the withdrawal and adjustment of suits of Civil Procedure Code, 1908
7. Order XXXIIA of Civil Procedure Code, 1908; specific Rule 6 explaining the scope of family.
8. Section 89 of Civil Procedure Code was incorporated to empower the courts of civil nature to refer the matter to ADR and describes the term Judicial Settlement.
9. Section 23 (2) & (3) of the Hindu Marriage Act, 1955 and the Section 34 (3) & (4) of the Special Marriage Act, 1954 etc. of the Personal Family laws
10. The provisions of the Family Courts Act, 1984 specifically Section 9, because it is the obligation of the family court to promote reconciliation.

**DIFFERENT WAYS OF ADR**

There are majorly four types of Alternative Dispute Resolution.

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

But one more type of instrument can be added in the list in context of India and i.e.

1. Lok Adalat and the Judicial Settlement

All these methods are kind of similar because they belong to one major head but still their certain differences among them which are discussed after the discussion of all the types. So the different methods of ADR are as follows –

**ARBITRATION**

Arbitration is one of the most applied method of ADR. In this type of form of dispute resolution, a 3rd party is involved on the consent of the parties, which helps in resolving the dispute. Such a person is called as the Arbitrator.

It’s a type of out of court settlement, where the arbitrator after knowing and understanding the situation of both the parties deliver a legalized binding award called the Arbitral Award and dismisses the matter. It can be done privately or the court can also direct for the same.

There are many different types of Arbitration but majorly it is divided as the Voluntary Arbitration and the Compulsory based on the reference of the matter of the Arbitral Tribunal.

The others are- Institutional, Ad-Hoc, Fast-Track, Statutory Contractual, Domestic or International, Foreign, Commercial and Investment Arbitration.

The scope of Arbitration in India is now established properly in regards to the settlement of commercial, industrial or contractual disputes. And it follows the provisions of the Arbitration and the Conciliation Act, 1996.

So from this we can draw a rough opinion that it can be used for different types of civil cases such as the matrimonial disputes, which may fall in the categories of Statutory, Contractual and Domestic Arbitration.

The above conception was legalized by the court in a case, where it held that "every matter for which the civil court as per section 9 of the Civil Procedure Code can take cognizance and which involves disputes of private nature then such can be referred to the arbitrator”[[3]](#footnote-3).

Arbitration in matrimonial disputes can be given only for the sake of deciding any money transaction between the husband wife or the ex-husband and ex-wife regarding the suit of maintenance or child custody between the couple or the direction for the money of alimony and the division of assets after the divorce. But the Arbitrator cannot announce an award regarding the annulment or dissolution of marriage.

The benefits of Arbitration in such disputes could be that it is private and confidential. Also here the award so passed in legally binding on both the parties, so if either of them violates them, then can be taken to the court for the same. It helps in reaching a satisfactory result in speedy manner which would not have been possible in case of litigation.

**MEDIATION**

Mediation is the second most applied method of ADR for resolving any issue.

At its core Mediation implies the process of a third party bringing the parties in mutual harmony. The third person listen to both the parties, identify the arguments of facts and try to mediate the matter between the two parties so that they could reach a mutual understanding and the issue is resolved without the involvement of the court.

It can be said as a friendly way of solving the conflict between the parties. Here the third party so involved is called as the Mediator and his most important duty is to settle the matter in an informal way of proceedings unlike the Arbitration and has to relate the thoughts of each party to the other so that they could harmonize each other's circumstances and conclude the matter in a friendly manner.

The different ways of referring Mediation could be the Court Referred/Mandate, Private/ Voluntary, Evaluative, Facilitative and Transformative Mediation. It even has one way where it has a combination of both the Mediation and the Arbitration called the Med-Arb or vice-versa Mediation.

Mediation can be said the best way for resolving the matrimonial disputes because it helps both the husband and wife to reach a conclusion in an effective way and zero outs the probability of ill relationship among the two.

Here the disputants are made to come in agreement in a way favorable to each of them. Here the mediator does not impose his / her decision over the parties and just acts as a catalyst between the two.

The process of Mediation in Matrimonial disputes is more beneficial because it does not include any legal procedure to be followed, but is resolved with the help of morals emotions and feelings of the parties. Here no legally binding award is passed.

There are many cases which shows the efficacy of Mediation in Matrimonial Disputes in proper proportion but there are also some which states that even criminal cases like Domestic Violence can also be referred for Mediation

* In this case Supreme Court witnessed an impulsive act of one spouse to file FIR (First Information Report) against the other, which later was recognized as a fake FIR, so for eliminating the scope of such cases the court suggested that the matrimonial disputes must first go for the process of reconciliation through Mediation and still the matter is not resolved then the parties must approach the court for the same[[4]](#footnote-4).
* The Maharashtra Government in one case said that "a party can opt for mediation without going to the court and only the cases related to the domestic violence should be the first filed and then the parties can go for mediation" because the Indian Penal Code has no provision regarding the mediation in criminal cases[[5]](#footnote-5).
* This a landmark case where the court emphasized over the provision of section 89 of the Civil procedure code, and held that the it is an obligation on the court to give a proper chance of settlement to the parties before the litigation[[6]](#footnote-6).
* In this case the court opined that even if in the criminal cases mediation is proposed then it may go for it. And the court even set the compulsion for all the courts to refer all cases covered under the scope of ADR for the same at pre-litigation stage, specifically the divorce cases[[7]](#footnote-7).

From these incidents the process of mediation benefits both the parties in reformulation of their thoughts and there will be sincerity and neutrality in the conclusion whatever being mediated by the mediator from their dispute.

Here one role of the mediator is extremely high, that he needs to make the parties speak up in front of him because no one is comfortable in discussing their private grievances to a third person. Secondly he must at very last reach a conclusion or solution favorable to both the parties or they would have to approach the court again and the process of Mediation will be useless.

**CONCILIATION**

Conciliation is a process of setting of conflicts or disputes without approaching the court. It’s a type of ADR which is less formal then Arbitration. But is similar to mediation because no such award is passed in it.

So it can be said that Conciliation is a mixture of Arbitration and Mediation because here an expert is appointed like the arbitrator, but the procedure is like mediation so that the parties could settle the matter (not an agreement) but no award is announced for the same.

Conciliation follows an informal way of settlement so it can be used for matrimonial disputes also. Here the disputants will figure out a solution workable in the referred circumstances besides deciding the right and wrong of each other.

The court in a case held that the provision of Section 23 of the Hindu Marriage Act, 1955 is a compulsory provision for the judges to follow and refer the matrimonial case for conciliation[[8]](#footnote-8). And the same was held in the case of “Jagraj Singh v. Bir Pal Kaur, JT 2007 (3) SC 389 by the Apex Court”.

In same regards, the Supreme Court also held that the High courts must follow the same thing for the ADR rules so established. It may alter its application according to the facts of the case[[9]](#footnote-9).

**NEGOTIATION**

Negotiation is a process similar to Mediation which helps in solving the disputes with a “give and take” relationship. To understand it in simpler way it can be said as a sort of compromise between the two parties.

But there’s no statutory recognition given to it under the Indian Legal System so it cannot be used for the matrimonial disputes legally. But the parties can before be reaching the court amicably through proper communication solve the issue.

**LOK ADALATS AND JUDICIAL SETTLEMENT**

Judicial Settlement is basically a final solution just like a compromise concluded from such an institution which was appointed by the court for the resolution of the matter or the Lok Adalats which are established under the Legal Services Act. 1987. They are called as the “People’s Court”

Lok Adalats are ADR mechanism forum where the cases pending or before the litigation are referred for settlement. It announces the award in the dispute which is non-appealable, but the parties can approach the court for the same.

Judicial settlement done beside the Lok Adalat has been witnessed already, but for Lok Adalats also according to the Legal Services Act and other measures it can be applied for matrimonial issues. Through Lok Adalat, the judges try to go for the reconciliation of the parties, but if failed then on basis of mutual divorce the amount for maintenance and the alimony is decided between the parties. Many matrimonial disputes have been resolved by the Lok Adalats. Also no court fees is to be paid for the same.

Thus it can be said as the best way for resolvement of matrimonial disputes in India along with Mediation.

If we talk about the difference between all the ways, then except Arbitration and the Lok Adalats, all are informal and not legally binding. Also in these two the privacy matters are based on law and others have it on trust between them and the facilitator.

**CONCLUSION**

It would be wrong to deny the fact that now ADR has become a very important part of the legal system of India. But unfortunately it is not promoted much so that every person can exercise it. There are so many benefits of ADR i.e. it is not rigid, cost effective, help the poor people in serving justice, no records are there of such meetings. I.e. confidential and even provides speedy justice, but then also its efficacy cannot be seen in India. It is still a blur shadow over the courts in India. To strengthen it the best way would be the mandate of ADR before the litigation for cases covered under it and reach the ADR era of legal society of India.

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