



Mediation and Conciliation to Resolve Personal Disputes: An Overview

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ABSTRACT: *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.*

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

I. Introduction

In contemporary era alternative dispute resolution is most acceptable alternative to solve family disputes. In India joint Hindu 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 which generally 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.

As we know the conflicts are the part of human life but most important is how to manage those conflicts. Alternative Dispute Resolution is an alternative litigation which generally falls into broad categories (a) Court-annexed option and (b) Community based dispute resolution mechanism.ⁱ The court annexed option includes mediation and conciliation where third party act as neutral and assist parties of dispute to reach on amicable solution. This option has certain methods such as neutral evaluation, a summary jury trial, a mini trial and other techniques can be used.ⁱⁱ In community based dispute resolution has a formal court system such as Lok Adalats, village level people court established in 1980s used. In this method trained mediators sought to resolve common problems of the people.ⁱⁱⁱ

This resolution method has binding and non binding forms e.g Negotiation Mediation and conciliation are non- binding form because these depends upon the willingness of the parties whether they want to settlement of dispute or not. In binding form this method parties are bound to follow the decision of third party. It is also important to know the mandatory process and voluntary process in ADR. In mandatory process judicial system requires the parties to negotiate, conciliate, mediate or arbitrate prior to court action. In voluntary process submission of dispute to ADR is depend upon the will of the parties.

The Alternative Dispute resolution can be used in all matters which are capable to resolve under law, by agreement between the parties. This method used especially in civil, commercial, industrial and family disputes.

There are five different methods used in ADR can be summarized as(a) Arbitration(b) Conciliation(c) Conciliation(d)Mediation(d)Judicial Settlement and lok Adalat.^{iv}

Conciliation and Mediation are interchangeable terms. Conciliation is voluntary proceedings where parties are free to agree to solve their dispute through conciliation. Conciliators main efforts to settle dispute between parties and conciliator consider the legal position of the parties their financial status and personal interest.^vConciliator is always a neutral party and facilitates negotiation between the parties and assists them to understand their interest in order to arrive at mutual acceptable agreement.^{vi} Through conciliation various disputes such as commercial, financial, family, real estate, employment, industrial, property, insolvency, insurance, service, paternity, labour disputes etc can be settled down.^{vii}

II. Legislative Provisions

The Indian Constitution's preamble itself laid down the goal of alternative Dispute resolution which enjoins the state: "to secure to all the citizens of India, justice-social, economic and political-liberty, equality and fraternity".^{viii}

In Civil Procedure Code has the provision for the use of alternative methods to solve family dispute^{ix} as well as order X, Rule 1A^x.1B^{xi} and 1C^{xii} 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 89 also emphasized that all matrimonial proceedings should be solved by the alternative dispute resolution mechanism.

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.^{xiii}

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.^{xiv}

There is a specific legislation on the arbitration and conciliation i.e Arbitration and Conciliation Act,1996, “ Act deals with reference to ‘Conciliation’ by agreement of parties”^{xv} further “permits the Court to refer a dispute for conciliation even where parties do not consent, provided the Court thinks that the case is one fit for conciliation.”^{xvi} sec. 72 of the Act,1996 deals with suggestions being submitted to the conciliator by each party for the purpose of settlement. Sec. 73, which is important, states that “the conciliator can formulate terms of a possible settlement if he feels there exist elements of a settlement.”

III. Advantage and Disadvantages

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 of Hindu Marriage Act,1955 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.

IV. Conclusion

Every effort has two faces positive and negative. We should always concentrate on the positive face with due regards of negative aspects also. Positive face is always a hope of betterment. As we know conflicts are basics of human life but we should try to sort out conflicts with maximum fairness and minimum pain. Ordinary courts may take more time to solve any family dispute and during long pendency of the case cause disharmony in the partners’ as well as very negative effect on the children’s. therefore, we can conclude that Alternative Dispute Resolution is alternative litigation which has certain limitations in spite of that such methods could be more fruitful and helpful to solve dispute in short time and in healthy way.

ⁱ http://www.fdrindia.org/old/publications/AlternativeDisputeResolution_PR.pdf

ⁱⁱ <http://www1.worldbank.org/publicsector/legal/ADR%20Workshop.pdf>

ⁱⁱⁱ Supranote, i

^{iv} http://shodhganga.inflibnet.ac.in/bitstream/10603/44117/9/09_chapter%203.pdf

^v <http://www.dispute-resolution-hamburg.com/conciliation/what-is-conciliation/>

^{vi} <http://www.ficci-arbitartion.com/htmlwhatisconciliation.htm>

^{vii} Supranote iv

viii The Preamble of Indian Constitution

ix The Civil Procedure Code 1908, Section 89

x Direction of the court to opt for any one mode of alternative dispute resolution

xi Appearance before the conciliatory forum or authority

xii What is mediation?-find law adr available at .findlaw.com › Learn about the Law › Arbitration and Mediation › Mediation. Accessed on 08-02-2018

xiii *ibid*

xiv *ibid*

xv The Arbitration and Conciliation Act, 1996 section 62

xvi The Arbitration and Conciliation Act, 1996 section 89