

A HISTORICAL DEVELOPMENT OF ADR MECHANISM IN INDIA: WITH THE PERCEPTION OF FAMILY DISPUTES

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ABSTRACT

The thought of ADR is not new to the Indian culture. The study of literature enables us to know that the settlement of conflicts by arbitration or any other mechanisms has been adept in India from the ancient time for resolving disputes regarding family, trade, or a social group or any other. The study of prehistoric legal background unveils the role of individuals i.e. arbitrators in Panchayats.

along with many systems practiced in India, the Panchayat system is the most important one. The meaning of panchayat defines as 'Pancha' means five, and so, Panchayats consisted of five mature personnel in the rural community led by the town headman. The Panchayat system is an early on form of pre independence in India, which also performed the major role of dispute resolution. After that, the King started to hire the village headman, and also he started to obtain suggestion from the headman about the organization. Gradually, a structure of appeal was developed, wherein the parties were permissible to appeal to the King in opposition to the decisions of Panchayats. Today Panchayat system has established by the constitutional sanction to resolve disputes about specific subject matters like matrimonial disputes, trade etc.

Key words: Disputes, Resolution, ADR Mechanism

Introduction:

From the premature era, instances of the use of different types of ADR in India, legal developments in this field started in the nineteenth century. One of the first legally recognized ADR mechanisms in India is arbitration. The origin of the law of arbitration in India owes to Act VIII of 1859, which codified the procedure of civil courts.

The British government passed Arbitration Act, In the year 1899 which was grounded on the model of the English Act of 1899. In the year of 1925 the Civil Justice Committee suggested numerous changes in this law. On the basis of the recommendations by the said Committee the Indian Parliament approved the Arbitration Act of 1940. The Act as its preamble specifies associating and amending Act and was comprehensive code in so far as the law relating to arbitration was concerned. Though there was a opportunity of arbitration deprived of the interference of a court, most of the arbitration was with the involvement of a court.¹

Arbitration process in Ancient India

As per the Hindu Law, one of the initial known treatise that indications regarding arbitration is "*Brhadaranayaka Upanishad*". Arbitration is dominant in India right from the Vedic era. Rishi Yajnavalkya has referred to some Arbitration bodies like *Sreni*, *Puga* and *Kula* and they

¹ Available at <https://viamediationcentre.org/readnews/MTUy/ADR-in-India-Development-and-Scope#:~:text=One%20of%20the%20first%20legally,the%20English%20Act%20of%201899.>

collectively known as *Panchayat*. Some of the disputes were referred to a small group of aged men of community known as 'PANCHAYAT' and the senior most is named as *Sarpanch*, Member are know as '*Panchas*', the judgement taken by them are binding on the parties. So, earlier the disputes were resolved through "Panchayati Raj system". the disputes which were referred to the Panchayats were well standard and received belief in the awards passed by them. That is the Privy Council laid down in the case of **Vytla Sitanna vs. Marivada Viranna**².

Arbitration at the commencing of British rule

The comparatively modern and first Arbitration law was enacted in India in as early as 1772 by **Bengal Regulation of 1772**, during the British rule. Thereafter Arbitration in India was renowned as dispute resolution and for the first time when India Arbitration Act, 1899 was enacted which applied to only Three presidency town: Madras, Bombay and Calcutta. **Bengal regulation 1781** provided that the judge can endorse to the parties to submit to arbitration of one person to be reciprocally agreed upon by the parties. However, there was no compulsion.

The Legislative Council of India, 1834 and then **Code of Civil Procedure Act, 1859** were approved with the object of presenting the procedure of civil courts but this code was not made applicable to the supreme court. This was substituted by passing the civil the **Civil Procedural Code, 1877**. This code of 1877 and 1879 and the third civil procedure code was enacted in 1882, which swapped the previous code. Legislative Council passed the **Indian Arbitration Act, 1899**. It was based on model of **English Act of 1899**. This act applied to the cases where if subject matter submitted to arbitration were the subject of suit.

FAMILY DISPUTES AND FAMILY LAW WITH THE PERCEPTION OF ARBITRATION

What is Family Disputes?

All families at sometimes experience complications which can be named as a family dispute. Such disputes range from matters such as conflicts between husband and wife, relationship breakdowns of marriages, children's welfare, financial support for children, wife and parents, spousal property settlement. Etc.

The Family Courts Act defines family disputes as under:

- A disputes between parties to a marriage for decree of nullity, restitution of conjugal rights, judicial separation or dissolution of marriage.
- A declaratory suit with respect to the matrimonial status of a persons.
- A suit regarding spousal property.
- A suit seeking for an injunction
- A declaratory suit for the legitimacy of any person.
- A suit for financial support or maintenance for family members.
- A suit of the guardianship or custody of a minor.

Concept of Family Law Arbitration

Family Law arbitration is a process where husband and wife, or ex-husband and ex-wife, agree to submit one or more disputes arising out of their present or prior relations as spouses and/or their

² AIR 1934 PC 105

relations as parents of the same child or children, to a neutral third party or parties for a resolution that will be final and binding for both the parties.

However, family law arbitration is not delimited to spousal matters alone. It also involves finding a solution to issues such as custody of children and their welfare, maintenance and other auxiliary issues.

THE CONCEPT OF FAMILY ARBITRATION IN INDIA

The Indian Parliament in order to maintain a secular religions and to protect of various religions, Indian Government has enacted some family laws which are applicable to the different religious communities defined in the respective enactments themselves:

- Hindu Marriage Act, 1955, which is an act to amend and codify the law relating to marriage between Hindus. It applies to Hindu, Jain, Sikh or Buddhist i.e., anyone who is not a Muslim, Christian, Parsi or Jew.
- moreover, with respect to personal problems, Hindus are regulated by the Hindu Succession Act 1956³, The Hindu Minority and Guardianship Act 1956⁴ and the Hindu Adoptions and Maintenance Act 1956⁵
- The Special Marriage Act 1954 provide a special form of marriage in particular cases, for the registration of such marriages and for divorces under this act.
- The Parsi Marriage and Divorce Act of 1936 regulate the law concerning to marriage and divorce between the Parsis in India.
- The Indian Christian Marriage Act 1872 is an act that combines and amends the law regarding the formalization of the marriages of Christians in India and the Indian Divorce Act, 1869 states the law relating to divorce and matrimonial grounds relating to Christians in India.
- The Dissolution of Muslim Marriages Act 1939, The Muslim Women (Protection of Rights on Divorce) Act 1986 The Muslim Personal Law (Shariat) Application Act 1937, and The Muslim Women (Protection of Rights on Divorce) Rules 1986, applies to Muslims living in India.
- For the settlement of all matrimonial and other supplementary disputes a person of any religion can approach the nominated judicial forum as prescribed by the relevant legislature. There is prearranged system of civil and criminal judicial courts inside every state in India which mechanism under the overall jurisdiction of the respective high court in the state.
- Additionally, the Family Courts Act 1984 seeks to deliver for the establishment of family courts with a view to promote conciliation in and to protected speedy settlement of disputes relating to marriage and family matters. ⁶

³ an act to amend and codify the law relating to intestate succession among Hindus

⁴ an act to amend and codify certain parts of the law relating to minority and guardianship among Hindus

⁵an act to amend and codify the law relating to adoptions and maintenance among Hindus.

⁶ Available at <https://blog.ipleaders.in/suitability-adrs-particular-types-disputes//>

Alternate Methods of Resolution

Notwithstanding the existence of a well-organized and established order of judicial courts in India, suits in India including those of family matters suffer a setback owing to excessive delay. Judicial proceedings, due to complex procedures, loopholes in the law and increasing costs take a long time to resolve. These are not only causes inconvenience to the parties complicated but also results in a backlog of cases and overloading of the courts.

litigation does not always lead to a satisfactory result. While it is costly, it often ends up in unpleasantness. Alternative dispute resolution systems are not only cost and time effective; they domain the relationship between the parties by inspiring communication and collaboration.

At this stage, it is essential to make a note of two important provisions of the Code of Civil Procedure:

1. Section 89 of the Code of Civil Procedure: Settlement of disputes outside the Court
2. ORDER 32-A of the Code of Civil Procedure: Suits Relating to Matters regarding the Family.

In order to enacted the 129th Report of the Law Commission of India⁷, all courts were delegated that once the issues were framed, disputes should be referred either to as arbitration, conciliation, mediation or judicial settlement for resolution. It was felt that only in the event of failure of these alternate dispute resolution methods, should hearing proceed. In harmony with this goal, Section 89 was worded so as to provide parties with an opportunity to opt for an amicable and out of court settlement.⁸

CONCLUSION

Hence, although not necessary, giving alternate modes of dispute resolution a chance in the solution of family matters is the norm of Indian legal system. This exercise should essentially be given all the support that it can be given. opting for out of court settlements shows beneficial not only to the disputed parties but also to the general public and society. The parties are aided through reduced costs and time lost, while the courts are less burdened. This allows for the speedy recompense of other suits. The current scenario has only the problem of pending cases in India. The courts are overburdened with files and people are having a hard time attainment the courts because of the several reasons. It is high time that the promotion of ADR mechanisms should be encouraged and the government can develop the state of ADR in the country by training mediators, laid down suitable guidelines, including legal support, etc. Also, ADR mechanism can be attached with the digital platform and transmission of ADR online can come in handy as it will encourage fruitful communication between the parties all the way making it easier for obtaining an amicable solution for the dispute. It is upon all the stakeholders to take a all-inclusive approach for achieving the appropriate alterations required in the process of alternate dispute resolution mechanisms and establish a peaceful, quick, and cost-effective resolution technique.

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