

OUTSIDE COURT SETTLEMENT OF FAMILY DISPUTES IN INDIA :-ISSUES AND CHALLENGES

Mr. Yogesh Thakur
BBALLB(H.)
Law College Dehradun
Uttaranchal Univesity, Dehradun

Dr. Radhey Shyam Jha
Associate Professor
Law College Dehradun
Uttaranchal University, Dehradun

1. Introduction

Arbitration, Mediation, Conciliation are proficient elective methods for settling disputes. Without a doubt, these elective methods are more cost-effective and aren't tedious which are indeed vital for insurance of economic relationship. In Ramayana, Angadha, the son of Bali visited Ravana and conveyed the message of Lord Rama to select the way of peaceful settlement. Even in Mahabharata Lord Krishna decide to mediate between the Pandavas and Kauravas¹. Thus, it's appropriate to mention that since ancient time Arbitration, Mediation, and Conciliation were the methods for settlement of disputes outside the formal general set of law.

These alternative methods were perceived in India also as in several parts of the world. Consequently, settlement of disputes outside the extent of the formal general set of laws could be called as elective methods for settlement of disputes. However with regards to the law of arbitration the disputes are settled through a conciliator and mediator is fundamentally treated as an alternate method. However with regards to the law of arbitration the disputes are settled through a mediator is fundamentally treated as an alternate method. The settlement of issues and disputes outside the extent of the formal overall set of laws was winning in India before the approach of Mughal System. India is additionally considered as a nation of villages and among the provincial people the settlement of disputes wont to be settled by country erudite people and by prominent persons of the villages. But after the rule of the Britishers in India this framework decreased by the start of formal overall set of laws. It has been seen that settling the disputes by the elective methods like Arbitration, Mediation and Conciliation.

In simple sense, Alternative Dispute Resolution (hereinafter mentioned as "ADR") is used as a term for describing process of resolving civil disputes in situ of litigation and it contains, negotiation, mediation, conciliation, arbitration, expert determination and early neutral evaluation by a third party. As the name suggest, it simply refers to an alternate way to settle disputes and conflicts which a party or corporate entity might face between the parties at dispute

2. Family and Family Dispute

India is understood for its old legacy of a unified and balanced family framework. The gentle pattern of progress from joint families to nuclear families, and therefore the quick changing patterns within the social, cultural, economical and industrial situation are the developing difficulties to the organization of family in India. India keeps

a traditional general set of laws acquired from the provincial time, and different enactments by British are still essentially unaltered structures. In family disputes, religion and individual laws are to an excellent extent interlinked.

2.1 Family

The word 'Family' is gotten from the Latin word 'Famulus' which implies to a worker. In Roman law the word signified a gathering of makers and slaves and different workers just as individuals associated by regular plunge or marriage. Thus initially, family comprises of a man and a lady with a youngster or youngsters and workers. In simple terms, a family is define as a group of family members which operates as a unit. The common definition of family is a group which is made up of parents and their children living together.

2.2 Family Dispute

All the families at certain period of time experience conflicts and difficulties which can be named as a family dispute. These disputes includes matters such as issues and conflicts between husband and wife, breakdown of relationships, children's welfare, financial support for children and settlement of property. Family struggle alludes to dynamic resistance between relatives. On account of the idea of family connections, it can take a wide assortment of structures, including verbal, physical, sexual, monetary, or mental. Clashes may include various blends of relatives: it very well may be struggle inside the couple or among guardians and kids or, once more, between relatives. These disputes affects not only conflicting parties but also other members in family.

2.3 Types of Family Dispute

Families get into dispute over a wide range of subjects. Here are a few examples: Separation and Separation issues. This could be over property, account or youngster contact and can happen whenever especially when a relationship separates or later down the line if conditions change or one individual breaks the particulars of a court request or needs to shift the details of a court request on couple Relationship Issues. Where couples really need to improve or save their relationship, we can utilize our remedial intervention model to help reinforce the relationship or recuperate from an emergency.

1. Parenting
2. Grandparents Rights
3. Inheritance
4. Elder consideration
5. Extended family clashes
6. Family business and organizations
7. Estranged relatives

3.Outside Court Settlement

Let's acknowledge the circumstance of a case getting resolved without participating into the lengthy court system. Thought of this system is noteworthy from a disputant point of view however the Court lately are more arranged towards settling of cases outside of court. Alternative Dispute Resolution is that the need of great importance. It is more easy and convenient to resolve a case without lengthy proceedings of the court during a managed instrument instead for fight something very similar in the courtroom. The thought of ADR comes as a salvage to assist individuals privately addressing any outstanding issues. The foremost common sorts of ADR are Mediation, Conciliation, Negotiation, Arbitration, and Neutral Evaluation.

Arbitration is one of component of ADR employed for the foremost part by corporate sector. Mediation is for the foremost part wont to settle issues identifying with family matters and disputes. Conciliation may be a sort of arbitration yet it's not so formal in nature. It's the way toward working with a neighborly resolution of disputes between the entities, whereb the persons in the dispute take help of conciliator who meets them personally to resolve their issues. Neutral Evaluation is another form of ADR presented in India in 2007.

3.1 Outside court settlement in civil matters (Section 89 & ORDER XXIII, Rule 1) CPC

Section 89 of the CPC tells us about the outside court settlement with the help of methods for Alternative Dispute Mechanism. Conciliation, Mediation, Negotiation, Lok Adalat are the new instruments of the equity administering framework. It's to be perceived that, it won't be right to deduce from the arrangement that if the disputing parties concur they will remove the case totally from court. All things considered, the case are going to be managed consistent with the arrangements of the significant ADR Act 23.

Order XXIII Rule 1 of CPC discusses withdrawal of suit or a portion of the claim during it's proceeding. The order of CPC tells us about the out of court settlement without naming it.

- Make it clear that you notice your reasonable intention of outside court settlement under the steady gaze of the court proceeding.
- Under Order XXIII Rule 1 of CPC when a suit is removed for an outside of court settlement, defendants are blocked from starting a new proceeding of the matter removed.
- Outside court settlement are often extinguish by the court. Court have power to do that slightly below exceptional conditions.
- Within the case of **Ghulam Nabi Dar v State of J&K²⁴**, the parties decided for an outside court settlement. The proposed settlement was subsequently discovered to be unethical and malafide. The disputing parties recorded a Civil Miscellaneous Appeal (C.M.P) to crush down the results of settlement.

3.2 Outside Court Settlement in Criminal matters

Most of the criminal matters are concerned about private wrong are often resolved outside of court. The classes of these offenses are named as computable or combined offenses. Thus just compoundable offenses are often resolved outside of court.

In the case of **Gian Singh v. State of Punjab** and another it had been said that the offenses emerging from business, monetary, mercantile, civil issue, partnership, relating with marriage or dowry are often selected outside of court settlement. The court views that the offense must not be of serious nature to harm the overall public on large extent.

4. Techniques of Outside Court Settlement

The various techniques used for outside court settlement of family dispute are defined in following points :-

4.1 Arbitration in Family Disputes

All the issues and matters which comes under the subject-matter of civil litigation affects the rights, or in simple words all the issue between disputing parties in relation to private rights or obligations which can be taken into cognizance by a Civil Court within the meaning of Section 9 of the Civil Procedure Code 1908 is also referred as arbitration. Therefore this makes resolution of family disputes suitable for arbitration. However, this dispute resolution may be done within the procedure set by the law. The arbitrator cannot give a judgement on divorce or for an annulment but he can help in certain other things like he can suggest the way to divide property. In these circumstances, it is essential to remember a note of two important provisions of the Code of Civil Procedure:

- Section 89 of the Code of Civil Procedure: Defines settlement of issues and matter outside the Court.
- ORDER XXXII A 6 of the Code of Civil Procedure: Defines suits concerning matters related to the Family.

4.2 Mediation in Family Conflicts and Issues

To safe guard the institution like family, issues which may be resolved within the family or a marriage which may be repaired must be resolved and mediated by sewing and patchwork instead of simply isolating ties by getting to the court and separate from each other. In today's era, nuclear families trend is followed by society and such nuclear families in the country are suffering from crimes like gang rape, robbery, honor killing of whole family, threat and abduction of females, etc.

One of the best alternative for dispute resolution strategy in matters relation to family and matrimonial issues is mediation. This method is most useful because it focuses on simple and consistent process to resolve disputes between the parties. This method of resolving dispute saves time and it also reduces chances of any ill feeling and alienate those relationships which could begin as an end in case the parties prefer to choose court proceedings. This is

often rationale why the method of Mediation for resolving family disputes has been used by Indian and by most of foreign countries some of which includes England, Canada and USA.

Most of time family disputes are resolved through mediation because of their unique nature in comparison to other conflicts between different parties. The family dispute includes matter of law and facts but most important is the emotions of the parties to each other and to the dispute. Mediation act as an alternate dispute resolution method which aims to help the parties by resolving their dispute and lead them to an agreement which may be beneficial for both of the parties and also fulfill their requirements. Mediation is a kind of win-win situation for both the parties in dispute it provides a middle way while in comparison to normal court proceedings it saves time and money.

One of the most important feature of mediation is that it helps disputing parties to determine the whole process by themselves and then find a solution in form of agreement, instead of reaching the same to them by a third party who is unknown to both of them. This third party may impose a situation which may not be accepted to them or not accepted by one party. Other important feature of mediation is the mediators who are professionally skillful and use their skills and tactics to start a dialogue between the disputants and then help the parties to reach an agreement which may be beneficial to both of them. The role played by mediator in assisting disputants by talks and negotiation, this leads them to a mutual solution founded by themselves and accepted by them most of time. Mediation is like equity which is conceived as justice without law.

Mediator is third party whose duty is to facilitates negotiations between the parties at dispute and then develops a comforting environment for both the parties so they can freely put their points of disagreement and accept each other's points of dispute. This helps them to understand the problem between them and help to find out an effective solution to their problem.

4.3 Conciliation in Family Disputes

Conciliation is an old traditional method used by many societies it is easily seen deeply rooted in their culture mainly in Asian culture. In India family disputes are mainly heard and resolved by the elders in the family, these elders acts as conciliator to parties in dispute. Even today elders of family and villages still plays such role in resolution of disputes. Panchayats in villages also perform same function and these are favoured above courts because of their easy accessibility and fast resolution of disputes. Conciliation can be found in Family Courts, Hindu Marriage Act, Civil Procedure Code, etc. for resolution of family disputes. Counsellors do conciliation of parties and when feasible also do reconciliation an mutual settlement to resolve the dispute.

Section 23(2) of Hindu Marriage Act 1955 also states that court must give a chance to reconciliation between parties in dispute whenever they get chances to do so. Court's duty is to resolve and provide justice which must be beneficial to parties and in this conciliation comes out as one of the best alternate for outside court settlement of family dispute.

Section 89 of Civil Procedure Code (Amendment Act of 1999) also states that court may try to find out chances for settlement, if available then formulate the terms of settlement and invite observation of parties in dispute. Conciliation in family dispute is very affective because it provides conflicting parties to make an agreement

according to their need in which both disputants can fulfill their needs. In comparison to adversarial system one party is right and one is wrong this leads to bitterness for losing party while conciliation helps to achieve favourable result for both parties in dispute in simple effective and efficient manner.

5. Challenges for Outside Court Settlement in Family Disputes

Alternate dispute resolution is considered as a game changer to resolve dispute between parties and it is helping in reducing the burden of cases on courts with proper delivery of justice. But when it comes to real applicability in India only Metropolitan Courts are practicing it. Rural Courts and legal practitioners still believe in standard proceeding procedure of litigation by which this is like a taboo for rural society.

When we study urban areas this method has still lacunas. In family dispute of husband and wife, woman still can't justify her problems in front of third party because of her modesty and impartial treatment in family as compared to her husband. When a dispute is because of man's cruelty or sexual abuse to her, third party can't help her out because there is no method to provide her safety and privacy of her statements. Sometimes man uses money and power to represent themselves innocent try to influence agreement of settlement more beneficial to them. Women accept this because of weak financial condition or threat of life to them or to their loved ones. Concept of Outside Court settlement is spreading in Nation but its speed is not satisfactory when we compare to rapid emerging of disputes.

6. Conclusion

In current scenario outside court settlement are accepted by corporate sector as well as parties alternate dispute resolution mechanisms but when we compare it to small cities or rural courts, legal practitioners are not using outside court settlement methods. Regional Laws are also emerging as a problem to practice outside court settlement. Mediation can not be practiced in divorce cases because sometimes reasons behind it is dowry, adultery, domestic violence or sometimes low physical relationship and care between parties. Parties did not participate in mediation and conciliation because of privacy in their matrimonial life and sometimes threat of husband against his wife. The current practices of outside court settlement need new tactics to solve issues with more efficient and effective way. In matrimonial cases privacy and safety of parties are main issue which must be tackled in more effective way, private record of statement and easy paper work with simple proceedings may be effective.

References :-

1. Available at : <https://lawtimesjournal.in/conciliation-and-mediation-an-effective-family-dispute-resolution/> last visited on May 1. 2021 at 10:00am (IST).
2. Available at: <http://www.legalserviceindia.com/legal/article-1715-mediation-in-family-and-matrimonial-disputes.html> last visited on May 2. 2021 at 10:30am (IST).
3. Available at : <https://blog.ipleaders.in/arbitration-matrimonial-family-matters/> last visited on May 3. 2021 at 11:00am (IST)
4. Available at: <https://www.peacefulsolutions.org.uk/family-mediation/family-disputes/> (Visited on April 22, 2021).
5. a) Ghulam Nabi Dar v State of J&K, (2013) 3 SCC 35
b) Gian Singh v. State of Punjab and another (2012) 10 SCC 303
6. The Code of Civil Procedure, 1908 Publication LexisNexis.
7. Lewis Coser, The functions of social conflict, (The free press, 1956) p.8.