

Analysis and Development of Arbitration of ADR

Running Title: *Role of Arbitration in Family Dispute*

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Abstract: *Today the understanding of the institution of marriage and its importance in society has changed. Marriage is no longer viewed as a lifelong commitment. As the principle of equality had replaced the institution of order as a family law it provided further reasons for family strife and it became socially acceptable to leave marriages that were unbearable or simply unfulfilled. There is uncertainty in humans life in modern era and many people's life has come to a standstill in weeks and months. However, some things have not changed and the relationship unfortunately continues to deteriorating serious family dispute still there is need to resolved.*

Keywords: family law mediation: Arbitration Act 42 of 1996; Way of resolving disputes; Benefits of arbitration; Court review of arbitral award.

1. Introduction

"Discourage litigation persuade yours neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser-in fees and expenses, and waste of time. As a peace maker the lawyer has a superior opportunity of being a good man. There will still be business enough"

By Abraham lincoin

Arbitration is a form of dispute resolution. It is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute, which is enforceable by the court. Arbitration primarily entails parties opting for a private, out-of-court settlement.

Defined under section 2 (1) (a) it covers any arbitration whether it is admistered by any permanent arbitral institution or not. it also covers arbitration based on voluntary agreement by the private parties or by operation of law.

Family Dispute Involves

- Family dispute include any conflict between people who are related in some way, or who are part of a family or have been part of a family in the past. this can include;
- Within families, such as between couples, parents and children, siblings
- Between separated couples and their families
- Between famlies, such as adult siblings and their families, grandparents and their childrens family, blended or step famlies.

Pendency of cases rising across courts; over four and a half crore cases pending at present

Between 2010 and 2020, pendency across all courts grew by 2.8% annually. As of September 15, 2021, over 4.5 crore cases were pending across all courts in India. Of these, 87.6% cases were pending in subordinate courts and 12.3% in High Courts. Between 2019 and 2020, pending cases increased by 20% in High Courts and 13% in subordinate courts. Note that in 2020, normal functioning of courts was restricted due to the COVID-19 pandemic. Therefore, while new cases in 2020 were much less than in preceding years, pendency increased because disposal rate was even slower

than the rate of new cases filed over 4.70 crore cases are pending in various courts in the country, including 70, 154 in the supreme court, lok sabha was informed on Friday. The total number of cases pending in the 25 high courts stood at 58, 94, 060 as on march 21 this year. The pendency in the apex court was recorded on march 2nd this year.

Arbitration played vital role in modern era.

Objective

- To study about family dispute resolution in india.
- To analysis the role of arbitration in family dispute.
- To solve the problem of family dispute with the help of arbitration.

Research design and Mathodlogy of the study

The study namely Role of Arbitation in family dispute by using the secondary data. Data has been collected from internet resources, books and journals.

What does "Arbitration" stand for

Mediation is another way of resolving disputes (ADR). The purpose of the consultation is for the parties to reach a voluntary agreement which has been drafted into an agreement. In this process a third party (Arbitrator) assists the parties to reach an agreement by assisting the parties to find a solution. in their ongoing conflict and self-determination.

Benefits of Arbitration in family dispute

Arbitration builds and involves the opportunity for self-development and social justice the growth of conflicting groups. Voluntary goal and development of the solution by the parties themselves is in line with the expectations of tangible justice. Additionally, mediation promises to reduce costs in a cost-effective and quick way to resolve disputes. compared to other methods, therefore, the parties may choose to mediate because they expect arbitration should be faster and cheaper than a trial. Another reason to choose arbitration in a trial may be privacy and a desire to maintain good relationship with another person which is very important in family disputes. Therefore, in the case of all of the above, choosing to mediate to resolve family disputes will meet a satisfactory result.

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Courts that encourage family disputes to mediate

In **B. S. Joshi & Ors. Vs State of Haryana and Anr**, wife, filed a FIR against the partner but later claimed their marriage with them, and that the FIR was imposed hastily and without consideration. The Supreme Court stated, "The courts must promote reconciliation, especially in marital disputes of this kind. "

In the case of **Manas Acharya vs State & Anr**, the court emphasized that the decision reached on mediation is valid and correct and that the decision reached at the time of mediation is binding on all parties.

In **Dr Jaya Sagade vs The State of Maharashtra**, the Maharashtra Government issued a circular stating that the party could choose to mediate instead of going to court.

Need of arbitration in modern era

The new ADR process in the country came from the USA to meet the needs and requirements of the people. It was a step taken to discover alternatives to the traditional system that seemed costly and time consuming, unpredictable, robust, damaging relationships, and limited scope. People are relying on the alternative to resolving disputes. One of the main obstacles to India's legal system is the failure to provide legal remedies to those in need, and it has failed to bring social justice to the victim. The ongoing case in the country is much bigger than the cases already settled. The reason may include an increase in the number of cases and the time frame for resolving cases on the judiciary. Other Dispute Resolution can help resolve minor disputes compared to serious cases so that the courts have ample time to review the case and render a judgment that will bring justice effectively and efficiently and deliver the right decision.

A simplified solution agreement includes the following steps:

First of all, the parties to the contract / agreement, add a mediation clause to their agreement / contract and in the event that any dispute arises between them, the other notifies the other party by issuing a notice of compensation.

This is followed by the response of the other party and the subsequent appointment of a mediator, a decision on rules and procedures, a place for discussion and language.

Once the trial is started, there is a formal hearing and written procedures.

The arbitrator, if the case so requires, issues temporary compensation followed by a final award binding both parties.

The sly part arises when one of the parties, unhappy with the award, challenges the court. This can be before an appeals court or a High Court depending on the matter.

2. Conclusion

In family law dispute, arbitration is a smart, informal approach that often protects the parties' privacy. Mediation is increasingly common in family law cases. The parties can

not only resolve disputes through consultation, but also receive advice from a mediator who is most familiar with certain situations.

It also means that both participants are satisfied as the mediators respond to their views and try to find a consensus that is acceptable to all. Their advice may be second-guessing. In addition, if participants are not satisfied with the outcome of the negotiations, they have the opportunity to go to court.

This article highlights the importance of mediation in family disputes.

Mentions Important legislations related to mediation in Family disputes.

It also states important judgements where SC has encouraged arbitration.

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