

**Directorate of Distance Education
NALSAR University of Law, Hyderabad**

Reading Material

**Post-Graduate Diploma in
Family Dispute Resolution**

1.3 Family Disputes and Alternative Dispute Resolution Mechanism

By:

Prof. (Dr.) Y. F. Jayakumar

M.A., M.L., Ph.D.

Professor (Retd.) & Former Dean, Faculty of Law
Osmania University, Hyderabad

(For private circulation only)

TABLE OF CONTENTS

Module	Topic	
1.	Introduction to Family Disputes	5-22
	Definition & Meaning of Disputes	
	Different Kinds of Disputes	
	Family Disputes & Causative Factors	
	Breakdown of Marriage	
	Testamentary & Intestate Property Issues	
	Child Care and Custody	
	Judicial Separation & Divorce	
	Maintenance	
2.	Judicial Process & Family Disputes	23-50
	Resolution of Disputes through Judicial Process	
	Procedure for conduct of civil proceedings	
	ADR Methods	
	Arbitration	
	Conciliation	
	Mediation	
	Negotiation	
3.	Family Disputes & ADR Methods	51-66
	ADR Methods under legal rules	
	The Family Courts Act, 1984	
	The Hindu Marriage Act, 1955	
	The Protection of Women from Domestic Violence Act, 2005	
	The Code of Civil Procedure, 1908	
	The Legal Services Authorities Act, 1985 &	
	Lok Adalats	

4. Simulation Exercises

67-77

Simulation Exercise Problem No. 1

Simulation Exercise Problem No. 2

Simulation Exercise Problem No. 3

Simulation Exercise Problem No. 4

Simulation Exercise Problem No. 5

Simulation Exercise Problem No. 6

Simulation Exercise Problem No. 7

Simulation Exercise Problem No. 8

Simulation Exercise Problem No. 9

Simulation Exercise Problem No. 10

MODULE – I

INTRODUCTION TO FAMILY DISPUTES

Structure of Module:

1. Definition & Meaning of Dispute
 2. Different kinds of Disputes
 3. Family disputes & Causative Factors
 4. Breakdown of Marriage
 5. Testamentary & Intestate Property issues
 6. Child care & custody
 7. Judicial Separation and Divorce
 8. Maintenance
-

OVERVIEW:

This module will acquaint the students with brief overview of family disputes and its causative factors. Further the module throws light on the concepts of break down of marriage, property issues such as testamentary succession (i.e. through a will) and intestate succession (i.e. in the absence of will). The emerging problem of child care and custody after the fallout of the marriage through divorce is touched upon in this module. In addition to it, the module also acquaints the students with the concepts of judicial separation, and divorce and also focuses on issues of maintenance and post divorce issues.

DEFINITION & MEANING OF DISPUTE

According to Oxford Dictionary, “*Dispute means disagreement or argument*”. According to Black’s Law Dictionary, “*Dispute is a conflict or controversy; a conflict of claim or rights; an assertion of a right, claim or demand on one side, met by contrary claims or allegations on the other.*”

Marc Galanter, observes that, “*Disputes are not discrete events like births or deaths; they are more like such constructs as illnesses and friendships, composed in part of the perceptions and understandings of those who participate in and observe them. Disputes are drawn from a vast sea of events, encounters, collisions, rivalries, disappointments, discomforts, and injuries. The span and composition of that sea depend on the broad contours of social life ...The disputes that arrive at courts can be seen as the survivors of a long and exhausting process.*” (in “Reading the Landscape of Disputes: What We Know and Don’t Know (and Think We Know) about our allegedly contentious society”, UCLA Law Review, October, 1983 – August 1984)

Each person has different values, interests which lead to several differences among people, groups and nations. There are cultural differences, personality differences, differences of opinion, and situational differences between persons. These unsettled differences lead to disagreements, which in turn cause problem. The unsolved problem leads to dispute, unresolved disputes become conflicts. Ultimately unresolved conflicts can lead to violence and even war. This is called the continuum of tension.



Fig: Continuum of Tension

Dynamics of Dispute:

Several factors are involved in the emerging of a dispute. The dynamics of a dispute have been illustrated in an **Ice-berg Model** by Günther Gugel of Tübingen Institute for Peace Education. It can be observed that, the six-seventh of an iceberg is under water and unseen, and the tip of the iceberg which is only its one-seventh part, is seen floating over water. It means that only a fraction of the issues in a dispute are immediately accessible. The submerged part of the iceberg, which is its major portion remain hidden below surface of the water. It represents personal interests of the party and underlying factors contributing to the dispute. This hidden portion has to be accessed in order to effectively resolve the disputes, which can be possible only through ADR Mechanism.



Fig: The Iceberg Model for Dynamics of Dispute

DIFFERENT KINDS OF DISPUTES:

The disputes can be generally classified into three categories, namely disputes basing on legal rights, complexity, and subject matter.

Basing on legal rights of the parties, disputes can be classified as **Civil and Criminal Disputes**. The civil disputes are generally private disputes between persons or organizations, resulting due to breach of legal duty by one party, and infringement of legal right of other party. The criminal disputes involve commission of an offence by one party, which is not only harmful to the other party, but also harmful to the society. In a criminal case it is the responsibility of the state to prosecute the accused with the help of police and give proper punishment as per law.

Depending upon the nature and complexity, the Disputes can also be classified into various categories as (a) **Major and Minor Disputes**, (b) **Simple and Complex Disputes**, (c) **Present and Future Disputes** and (d) **Online and Offline Disputes**.

Depending upon the subject matter, the disputes may be classified into:

- **Inter-Personal Disputes:** These disputes relate to personal relationship between the individuals. Emotional issues, disrespect, ego, lack of values are some of the main reasons for this disputes.
- **Consumer Disputes:** These disputes arise when the consumer is aggrieved by deficiency in goods or services, and the seller does not provide proper repair or replacement.
- **Industrial and Labour Disputes:** These disputes relate to employment, terms of employment and conditions of labour like job security, wages, unlawful termination, retrenchment, strikes, lock-outs etc.
- **Commercial Disputes:** These disputes are related to commercial transactions and arise out of the commercial relationships such as partnerships, sale of goods, bank transactions, building and construction work, intellectual property, etc.
- **Corporate Disputes:** These disputes cover disputes between corporate bodies, company and shareholders, shareholders *inter-se*, and include disputes arising at the time of liquidation or winding-up of the company.
- **Organisational Disputes:** These disputes arise within the organisation in respect of administration, structural organisation, and include inter-organisation and intra-organisation disputes.
- **Trust Disputes:** These disputes arise between the trustees and beneficiaries, in relation to proper utilization of funds of the trust, administration of the trust, assets of the trust, etc.

- **Neighbourhood Disputes:** These disputes arise between neighbours or in the locality, and these may be social or tortuous in nature.
- **International Disputes:** These disputes arise between two nations or between a nation and an international body. These may be commercial, criminal or political in nature, and generally involve complex issues of jurisdiction and enforcement.
- **Family Disputes:** These disputes arise out of family relationships such as between wife and husband, children and parents, between siblings or relatives, in respect of their personal or property rights. The family disputes can be classified as follows:

Kinds of Family Disputes:

- **Domestic Disputes:** A domestic dispute is generally any quarrel, which may or may not include violence, within a family or between members of the same household. The victims of domestic disputes may be children, old persons, an adult man/woman, spouse, cohabitant or former spouse, former cohabitant. It may or may not include criminal behavior.
- **Restitution of Conjugal Rights:** It is a kind of dispute when one of the spouse withdraws from the association of the other spouse without any reasonable cause. The aggrieved party has to approach the court of law. This is the first stage legal remedy which can be sought by the parties. This remedy intends to protect the institution of marriage and tries to bring a reconciliation between the spouses.
- **Break Down of Marriage:** There exist typical situations where, the marriage has all the external appearances of marriage, but none of the reality. The marriage becomes merely a shell out of which the substance is gone. In such circumstances, there is hardly any utility in maintaining the marriage as a façade, when the emotional and other bounds which are of the essence of marriage have disappeared.
- **Testamentary and Intestate Property Issues:** If a person dies leaving behind a 'Will' bequeathing his properties in favour of certain beneficiaries, then all his/her legal heirs shall be bound by such 'Will' and the properties shall be distributed as per the directions stipulated in the 'Will'. This type of succession of property is known as Testamentary Succession, and it is governed by the Indian Succession Act, 1954. On the other hand, Intestate Succession is one where a person dies without leaving any 'Will', and the property left by the deceased shall devolve upon his/her legal heirs in accordance with the personal law applicable to him.
- **Child Care and Custody:** The parents and legal guardians have legitimate right of child care and custody. In cases where there are disputes between the wife, husband and other guardians as to the custody of child or where the child is an abandoned or an orphan, the court follows the principle

that “*Welfare of the child is the supreme lex*” and paramount consideration is given to the wellbeing of the child.

- **Judicial Separation:** It is recognized as one of the matrimonial remedies in personal laws. When the parties to the marriage do not want to seek divorce, but cannot live along with each other, they may seek this remedy. Judicial Separation obtained through Court legally permits the parties to a marriage to live apart, and gives an opportunity to reconcile the marriage in the meantime. If the parties resume cohabitation with each other, then the judicial separation ceases to exist.
- **Nullity of Marriage:** Every personal law prescribes certain essential conditions for solemnization of marriage. If any of those conditions are not followed, such marriage may be nullified under law. A marriage is a nullity either because it is void or voidable. A void marriage is one that is regard not to have taken place and can be so treated by both parties to it, without the necessity of obtaining a decree from the Court to annul it. Therefore, it is considered as no marriage under law. A voidable marriage is one that will be regard by every Court as a valid subsisting marriage until a Court of competent jurisdiction has pronounced a decree annulling it. A voidable marriage is a perfectly valid marriage so long as it is not avoided by one of the parties to such marriage.
- **Divorce:** It is one of the drastic matrimonial remedies recognized universally under all personal laws. It is a permanent forsaking of relationship between the wife and husband due to the fault of either party or with mutual consent of the parties or breakdown of the matrimonial relationship.
- **Maintenance:** In the context of personal law, maintenance is a provision to be provided to meet the requirements of the aggrieved spouse or the member of the family, which includes food, clothing, shelter and other necessities according to the social needs and standard of living of the claimants.
- **Post-Divorce Issues:** Maintenance, Custody of children, Visitation rights, settlement of spousal properties, claims of succession to parental properties, Right to remarriage, etc., are some of the post-divorce issues.

FAMILY DISPUTES & CAUSATIVE FACTORS

Family is the basic and important institution of any society. Family is a socially recognized group (usually joined by blood, marriage or adoption) that forms an emotional connection and serves as an economic unit of society. The well-being of family is essential for a peaceful and healthy society. Marriage can be understood as a legally recognized relationship between two people, based on a sexual relationship, procreation of children and implying a permanence of the union. The institution of family is built upon the institution of marriage. Marriages are what create a family, and families are the most basic social unit upon which society is built.

Therefore, it is necessary to study the causative factors of matrimonial disputes for better understanding of family disputes. In matrimonial disputes, generally it can be observed that the spouses do not fight over any specific issue, but they just do not seem to love each other. In spite of best efforts from both sides, they feel they are not able to rekindle the feelings of love they used to have for each other. The following are some of the causes for matrimonial disputes:

Causes for Matrimonial Disputes:

- **Ego boundaries of the Spouses :** Ego is a negative pride resulting in arrogance, and the '*I know it all*' attitude. Ego is self-intoxicating, which is the biggest hurdle in building a positive relationship. To an egoistic person, the world begins ends and revolves only around him. Ego leads to a swollen head. No matter what a person's accomplishments are, there is never an excuse for having a big head. This results in a conflict between the spouses and causes bitterness, resentment and cold competition with fight-flight tendency.
- **Chauvinism and Feminist oriented attitude of spouses:**
 - Generally all over the world, male domination is very much prevalent for one reason or the other. It could be physical strength, societal position, or the duties thrust upon males from ages for taking care of the family's responsibilities or the inherent dominating character of the males. An opposition to such domination, careless attitude by members of the family causes ill-feeling of being neglected by the family, resulting in his anger and loss of wisdom. This dominating attitude can be called as 'Male Chauvinism'.
 - Earlier women were deprived of the benefit of education, which could be due to the custom of child-marriages or parental denial to send their daughters to school. However, in today's world, the traditional mindset has changed and more and more women are getting educated and are competing with men in almost all fields. However, sometimes, this may lead to overemphasis on individual liberty. There is no doubt about the equal status of a wife within the institution of marriage but sometime to counterbalance male chauvinism women may develop non compromising attitude influenced by excessive individualism or radical feminism. The ultimate casualty is the marital relationship.

The presence of male chauvinism and Radical Feminism hampers the marital relationship and have long-standing adverse effects on the children and other family members.

- **Lack of material contentment:** When the couples are dissatisfied with each other and are unable to tend to each other's natural cravings and are not gaining the material love and affection to which they are entitled out of a marriage, it results in breakdown of marriage.

- **Extra-marital affairs:** If any of the spouses is having sex outside the wedlock, it would have disastrous consequences on the marriage. There are several instances where, the other spouse has resorted to crimes or ended up in depression and the relationship is put to an end.
- **Substance abuse & alcoholism:** A drunken person loses his mental capacity to take a rational decision on any issue. When any of the spouses is a drunkard, he/she would resort to unnecessary violence, beating the other spouse, physical and mental harassment using abusive language, leading to spoiling of home environment and marital disputes.
- **Lack of concern towards family relationship:** Some people really work with dedication, sacrificing their health, relations and other important things of their lives. Their fundamental identity comes from their zeal to achieve greater heights in their profession or occupation, which renders them ineffective in other areas of life. If one is highly professional in one's business or office, one's attitude towards an issue will also be professional. Unless the other spouse's attitude is also professional, there could be a mismatch, which may lead to disputes.
- **Mismatch of temper between spouses:** For a successful marital relationship it is necessary for the couple to understand and adjust with each other. It is important to accept the fact that *no person is without flaws*, and that *to err is human*. When a spouse overreacts to a situation and becomes overemotional, and reflects hot-tempered and short-tempered attitude, it would spoil the relationship.
- **High expectations:** In some cases, the partners expect too much from each other. He/she would be having a lot of flowery dreams about marriage, and in reality when the expectations are not met, the party becomes dissatisfied. This would also result in frustration, depression and conflicts.
- **Competitive attitude:** It is a general tendency to compare and compete with others. Healthy competition is good, but blindly trying to emulate others would result in more bad than good. If any partner is constantly comparing their life with others, and trying to compete with others either financially or otherwise, it would create a tense atmosphere in the home and would spoil the congenial relationship of the couple.
- **Financial Insecurity:** Economic security is the basic need of every one. The economic and financial status of an individual can be understood by observing the way he dresses, the way he lives or enjoys, the properties he owns, and his spending attitudes. Everyone likes to lead a comfortable and happy life. Unemployment, lack of opportunities, etc., would result in financial distress and strain the relationship between the married couple.
- **Hatred towards in-laws:** The adverse relationship between the in-laws and the wife/husband would also have a bad effect in a marriage. For a successful marriage, the in-laws shall consider

and provide a congenial environment to the married couple, and the wife/husband shall respect and care for the in-laws.

- **Influential Media:** The media has a great impact on marital relationship and is becoming a major cause for family disputes. The crime stories, tear jerking serial episodes, promotion of perverse behaviour, abundant news of illicit affairs, liberal footage of love and romance in cinema, etc., contribute for negative thinking, misunderstandings. Sometimes the spouse imitates what he/she has seen on the television, which may lead to strained family relations. These days with the advent of the social media and whatsapp the family relations have entered the field of virtual world and in some cases the social media also plays an important role in guiding the relationship between spouses.
- **Failure to cope with crisis in life:** In life, adverse circumstances may arise unexpectedly and the financial status of the family may become worse or health of a spouse may be deteriorated. This state of affairs may not be acceptable to the husband or the wife. A deterioration in the financial status of a person sometimes leads to sarcasm, biting humour, criticism, accusation, etc., from friends and relatives and in the process wisdom is lost and negative interaction starts its dominating role. After leading a comfortable life for quite some time, a person feels uncomfortable to change his lifestyle, spending habits etc., and adapt to the new circumstances in his life, which may lead to unrest and become a cause for disputes in the family.
- **Incompatibility between spouses due to differences in Religion, caste, etc.:** In India caste/religion plays a dominant role in matrimonial settlements and traditionally people have confined themselves to marriages between members of the same caste/religion, which may be due to their common living habits, occupation, societal commitments etc. Whereas, in inter-caste/inter-religious marriages the married couple often find it very difficult to adjust with lifestyle, food habits, rituals and customs of the members of the other caste.
- **Mismatch of Values:** Value-based education influences wisdom. Education that does not impart good human values to a person can be dangerous. If we want to build character in the members of our family or society, we must achieve a minimum level of moral and ethical education. In a marital relationship, if one of the spouses has excellent qualifications and the other has lesser qualifications or is an illiterate and lacks qualities such as honesty, compassion, courage, persistence and responsibility, then it may result in misunderstanding and mismatch of values, which may lead to disputes.
- **Inability to meet demands of children:** In a matrimonial relationship, paramount importance is given by the spouses to their offspring. Parents/spouses are highly concerned or worried about their children's welfare, well-being, comforts and spare no efforts to provide them with the best of comforts, education, placement etc. and in the process they do not mind subjecting themselves to

any sort of stress, strain or inconvenience. However, it may not be possible to fulfill all the interests of the children, for various reasons, which may in turn cause dissatisfaction, disappointment or agony to the children as well as the parents and become a cause for matrimonial disputes.

- **Superiority/Inferiority Complex:** As already discussed, behavior differs from person to person. Irrespective of age and sex, some people dominate the others by virtue of their communications skills, knowledge, wealth, employment, beauty, kind-heartedness and other qualities. This dominating character at times builds up into a superiority complex. Sometimes, a person is depressed, submissive and allows to be dominated by others, which builds into inferiority complex. This could lead to disputes, more so in matrimonial relationships.
- **Other Factors:** Some emotional dependence and vulnerability to the moods and feelings, behavior and treatment of the other partner or external events like a new child, in-laws, economic setbacks, social success or failures could also be reasons for disputes in matrimonial relations.

Causes for Disputes between Parents, Children and Siblings

In a family, the parents are responsible for bearing, caring and rearing their children. In any society, the parents provide all the necessities to their children, within their economic limits. On the other hand, it is moral and legal responsibility of children to look after and take care of the parents when they become old and dependent.

The parents, apart from providing the necessities to their children, shall also provide their care, concern, love and affection, in order to build a strong relationship and bonding. Due to deprivation of parental love and affection, the child may develop indifference attitude towards the parents and also the society. There are instances of mutual neglect, in providing emotional, material and social support, resulting in strained parent-child family relationship. Apart from this, due to individualism, modernization and changing values, there is a conflict in perception, between the parent and the child.

Generally, during their childhood, siblings grow in the family by sharing responsibilities, with supportive, accommodative and sacrificial attitude. When they grow, they become competitive, jealous, possessive, selfish and exploitative, especially in matters of property distribution and enjoyment of material resources of the family.

The above multi-faceted problems affecting human life have brought acute stress and strain on marriage and family. Problems arising out of divorce, dissolution of marriage, dowry and domestic violence, child care and custody, extra-marital relations, NRI marriages, on-line marriage agreements, test-tube babies and the rights and duties of their parents, breakdown of marriage and other related matrimonial issues are acquiring grave proportions and going out of control, in spite of the effective steps taken by the law and the society.

BREAKDOWN OF MARRIAGE

Breakdown of marriage or marital breakdown refers to a situation wherein the relationship between the married couple erodes to such an extent that they cannot restore their relationship in ordinary circumstances. The breakdown of marriage is not spontaneous and is a gradual process involving various stages. The couple in the situation of potential breakdown of marriage undergo various stages in which they encounter plethora of complex process such as the psychological process, economic process, social process, legal process, etc. The breakdown of marriage often involves breach of expectations of either spouse by another which ultimately leads to the divorce and dissolution of marital bond between them. The consequences of the breakdown of marriage can also be felt on the children and in-laws. In this context, the marital breakdown and its consequences are different in the families and varies according to the social and cultural setting of the respective families i.e., we can say that what may be a ground of breakdown of marriage in affluent and respectable family may not be the same in the family belonging to lower class families, for instance: In an affluent family, a drunk husband entering into verbal duel with his wife daily will definitely lead to breakdown of their marriage but the same incident when happens in the family of persons of lower income group, it may be treated as a common occurrence and may not lead to breakdown of marriage. But the generalization cannot be made i.e., one cannot say that all marital breakdowns result in divorce and all divorces result from marital breakdowns.

Predictable patterns of marriage breakdown

There cannot be any generalization made with regard to the reasons for the break down of a relationship. The causative factors come into effect differently and as per the situation and circumstance of the family. However, if the relationship starts to break down the sequence of the occurring events becomes predictable. In this regard a theory was propounded by a renowned psychologist Dr. John Gottman who suggested “The Four Horsemen Of the Apocalypse” wherein he enumerated different stages of breakdown of marriage as follows:

Stage – I : This stage involves **obstinate and stubborn conflict and complaints** from spouses. Conflict is common in marriage, but some couples are able to resolve the conflicts between them successfully and there are others who cannot resolve the same. It is not the intensity of arguments that is the problem but it is the question whether the arguments are resolvable or not. Couples that get into trouble find themselves in conflicts that they cannot resolve or compromise upon to both party's satisfaction. Such disagreements can be caused by any number of reasons, but might involve a clash of spousal values on core topics such as whether to have children, or how to handle money.

Stage – II : This is the **Stage of Contempt**, wherein one spouse feels contempt towards the other spouse's attitude. The repeated behavior or “wrong doing” of a spouse may be condoned at the initial stages but the repetitive behavior irks the other spouse. It creates disgust in the minds of the spouses

towards one another. Conflict by itself doesn't predict marriage problems. Some couples fight a lot but somehow never manage to lose respect for each other. Once contempt sets in, however, the marriage is on shaky ground.

Stage – III : This is the **Stage of Defensiveness**, in this stage the partners become increasingly defensive in their behavior of the spouses. Both the spouses become hardened by the conflict and may even react in an acute manner in an overwhelming manner. The partners, over the time realize that they had entered a stage of 'gridlock' and that they cannot resolve their difference and any attempt towards resolution will further overwhelm or disappoint others.

Stage – IV : This is the **Stage of Stonewalling**, this is the final stage where the partners try to hide behind the metaphorical stone wall guarding against one another and there is no idea of reconciliation among the partners.

TESTAMENTARY & INTESTATE PROPERTY ISSUES

When a person dies his property is succeeded over by his legal heirs. The succession to the property of the deceased is carried out in two modes that is through will which is also known as Testamentary Succession or without will which is also known as Intestate Succession.

CHILD CARE & CUSTODY

When a marriage breaks down and ends up in separation of a couple, the person(s) who suffers the most is the child or children born out of the marriage. The Indian Law, while keeping in mind the parents' right to the custody of a child, holds the welfare of the child as the most important factor of consideration when deciding upon who gets the custody of a minor child.

Welfare of the child, broadly, includes the following factors:

- Safe-keeping of the child
- Ethical upbringing of the child
- Good education to be imparted
- Economic well-being of the guardian

The mother and father both have an equal right to the custody of a child. Who gets the custody of the child, however is a question which the court decides upon. While the statutes are conflicting when it comes to personal laws as opposed to secular enactment in the form of The Guardian and Wards Act, 1890, the court of competent jurisdiction strives to strike a balance between the two, all the while holding the welfare of the child as the paramount importance. However, just because the custody of a minor has been awarded to one parent, it does not mean that the other parent cannot see or be in contact with the child. The courts in India are very strict to ensure that a child gets

the affection of both the parents. The other parent gets visitation rights, the conditions of which are determined by the court.

Types of Custody

Primarily, a court of competent jurisdiction in India orders the custody of a child in the following three forms:

Physical Custody

Physical custody when awarded to a parent, implies that the minor will be under the guardianship of that parent with visitation and periodical interaction with the other parent. The aim behind such a custody award is that the child lives in a safe and fulfilling environment but is also not deprived of the affection of the other parent during his formative years.

Joint Custody

Joint custody of a child does not mean that the parents will both live together because of the child even though that what Indian courts believe is best for the welfare of a minor. It simply means that both the parents will take turns keeping the child in their custody. The rotation of a child between the parents' custody may vary from certain days or a week or even to a month. This not only benefits the child as the affection of both the parents is not lost and the parents also get to be a part of their child's life in those young years.

Legal Custody

Legal custody of a child differs from physical custody in more ways than one but the fundamental difference between the two is that legal custody does not necessarily entail having the child with you or being with your child at all times. Legal custody of a child basically means that the parent granted the legal custody takes every decision for the child. From where will the child study and what doctor will the child be treated by is part of legal custody. In most instances, courts grant legal custody to both the parents together but if the divorce is messy and the parents are, apparently, never going to agree with each other, the court grants the legal custody of the child to one parent.

The custody of a child can be primarily claimed by either the mother or the father. In case either of the two are deceased or not in the picture because of operation of any other law, the maternal and paternal grandparents, any other relative(s) of either of the parents strictly out of compassion towards the child can seek custody of the child. The Court can also appoint a third person to be the guardian of the child. The Hon'ble Supreme Court and other courts in India have reiterated time and again that in the proceedings for custody of a minor, the welfare of the minor is the only consideration, irrespective of the claims of the parties to the custody.

The consideration of paramount importance in a proceeding for the custody of a minor is the welfare of the child. No legal right, preferential right or any other right holds more importance than the well-being of the child. Any court of law grants custody to that party who can assure the court that the welfare of the child best lies with them.

JUDICIAL SEPARATION & DIVORCE

Either party to the marriage, whether solemnized before or after commencement of the Hindu Marriage Act, 1955 can under Section 10 of the Act file a petition for judicial separation. After a decree is passed in favor of the parties, they are not bound to cohabit with each other. Some matrimonial rights and obligation, however, continue to subsist. They cannot remarry during the period of separation. They are at liberty to live separately from each other. Rights and obligations remain suspended during the period of separation. The grounds for judicial separation are same as for divorce. *Under Section 13(1), judicial separation may be sought on the following grounds:*

- Adultery: If other spouse had a voluntary sexual intercourse with any person other than his or her spouse after solemnization of marriage.
- Cruelty: If after solemnization of marriage, one of the spouse treats the other with cruelty.
- Desertion: If the other party has deserted the spouse for a continuous period of 2 years without any reasonable ground immediately preceding the presentation of the petition.
- Conversion: If one of the spouses has ceased to be a Hindu.
- Insanity: If the other party is of unsound mind or has been suffering continuously from mental disorder of such a kind and to such an extent that the petitioner cannot live with the other party.
- Venereal disease: If the other party has been suffering from venereal disease in a communicable form.
- Renounced the world: If the other spouse has renounced the world by entering any religious order.
- Has not been heard alive for seven years.

In addition to these grounds some of the grounds are exclusively reserved for women:

- Husband has more than one wife living: If the husband had married before the commencement of the Act and after the commencement of the Act has again remarried either of the wives can present a suit for judicial separation provided the other wife is alive at the time of presentation of the petition.

- Rape, Sodomy or Bestiality: If a man is guilty of offense like rape, sodomy or bestiality, the wife can present a petition for judicial separation.
- Marriage before the age of fifteen years: If the marriage of women was solemnized before attaining 15 years of age, on her attainment of 15 years she could repudiate it but before attaining the age of 18 years.

Grounds for divorce

- The grounds for divorce is mentioned under Section 13(1). The grounds of divorce and judicial separation are the same. Apart from these grounds, the wife may seek divorce on additional grounds as discussed above.
- The parties are also free to present a petition in case there is no resumption of cohabitation between the parties to the marriage for a period of one year or more after the passing of judicial separation by the court. In such a case, the court will not require proof of any of the grounds of divorce. Merely a presentation of the petition will be sufficient for the court to grant a decree of divorce.
- In case, the court had ordered restitution of conjugal rights under Section 9 of the HMA, 1955 and the parties do not comply with the decree of the court and fail to cohabit. In such a case, on presentation of the petition for divorce the court will not enquire into any grounds for divorce and will pass a decree of divorce on the grounds of failure of restitution of conjugal rights.
- In a petition for divorce, if the petitioner cannot prove grounds for divorce, or the court is not satisfied that the act is so grave to pass a decree of divorce it has the power to pass a decree of judicial separation even if the petitioner did not ask for it. In the case of *Vimlesh v. Prakash Chandra Sharma*, the court held that a single instance of cruelty is not so grave to pass a decree of divorce. Thus, the court granted a decree of judicial separation to provide an opportunity for the parties to reconcile.

Additional grounds for divorce

The Marriage Law (Amendment) Act, 1976 provides an additional ground for divorce under Section 13(b). Where both the parties feel that the marriage is torn and there is no scope of reconciliation, both the parties may by mutual consent present a decree of divorce under Section 13(b) whereby the court will not enquire for any reason for divorce and will grant a decree in favor of the parties if both of them want a divorce. Under the Act, a period of 6 months for reconciliation is granted on presentation of a petition for divorce by mutual consent. However, in the case of *Nikhil Kumar V. Rupali Kumar*, the Supreme Court has done away with the mandatory reconciliation period of six months. Now, divorce on the ground of mutual consent can be granted on presentation of the petition and parties do not need to wait for six months.

MAINTENANCE

The maintenance law in India lays down the duty of a man to provide maintenance to his parents, wife and children when they are unable to maintain themselves. Maintenance in law is defined as the amount which is paid to dependent wife, child or parents to maintain themselves. The amount can be paid either by doing one lump sum payment or by way of monthly installments.

Section 125 of the Code of Criminal Procedure, 1973 lays down the concept of maintenance in India, along with the different personal laws that extend the right of maintenance to not only the wife but also to the parents, children as well as divorced wife. Personal laws relating to maintenance in India are applicable to people belonging to that religions, whereas the maintenance claim under Section 125 of the CrPC can be filed by anyone regardless of religion or caste. Law of Maintenance in India gives the procedure as to how to claim maintenance for a child in India and also for wife.

Maintenance under Hindu Laws

Maintenance under Hindu Adoption and Maintenance Act, 1956 is provided as a right of a wife to claim it from husband. A wife can file a maintenance case law in India under the act against her husband when she is unable to maintain herself financially. The courts consider the financial position of the husband and reason for which the wife is separated from her husband, before awarding maintenance to her. However, a wife who claims maintenance under the personal laws cannot claim maintenance under the criminal procedural laws.

The Hindu laws or family law India recognise the right of a wife, children, aged parents and widowed daughter or daughter in law to receive maintenance. Under matrimonial laws, if the husband is ready to cohabit with the wife, the wife's claim to maintenance is rejected. However, a Hindu wife is entitled to reside separately from her husband without forfeiting her maintenance claim under the Hindu Adoptions and Maintenance Act, 1956. The Act envisages certain situations in which it may become impossible for a wife to continue to reside and cohabit with the husband but she may not want to break the matrimonial tie for various reasons ranging from growing children to social stigma.

There is a misconception that a working woman is not entitled to claim maintenance as she is earning and is thus able to maintain herself. The Indian courts have recognised the right of maintenance of a working woman and held that an estranged woman can claim maintenance from her husband even if she earns a monthly income, which is not enough for her to maintain herself. Thus, earning wife is entitled to maintenance under maintenance law for wife in India. Top Family Lawyers will help, assist and guide you throughout the procedure of Indian Maintenance system and case laws.

Child maintenance law in India

Child maintenance in India is recognised under the Section 125 CrPC. It has been provided that the child can claim maintenance from father in India. Section 26 of the Hindu Marriage Act also

provide for maintenance of child under hindu law. The section of the Act states that a minor child is entitled to get maintenance from the father if during the divorce proceeding the **custody of child** has been awarded to the mother or otherwise also. Recently, Indian courts have also said that a major child whether daughter or son is also entitled to get maintenance from his/her father if they are dependent on their parents. Dependency on parents means that they are not in a position to earn themselves either because they are studying or due to any disease.

Maintenance under Muslim Laws

Maintenance of wife under muslim law has been provided under the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Act states that a divorced Muslim woman is entitled to maintenance in the following cases:

- During the iddat period, reasonable and fair maintenance has to be paid to the wife. Mehr agreed at the time of marriage has to be given back.
- When the woman had to maintain herself and her children, maintenance has to be paid for a period of 2 years. If the child is born after the divorce, then the 2 year period begins from the child's date of birth.
- The amount of Mehr or dower agreed at the time of marriage or after the marriage has to be paid to the wife.
- All property was given to her by her relatives, friends or husband before, at the time or after

Definition of maintenance under muslim law is similar as to the generally accepted definition of maintenance. If the divorced Muslim woman is unable to maintain herself after the period of iddat, the Magistrate can order her relatives who will inherit her property, to pay maintenance to her as deemed fit. When the children or relatives of the woman cannot pay maintenance to her, the Magistrate can order the State Wakf Board established under the Wakf Act, 1995 to pay her maintenance.

Maintenance under Parsi Laws

The Parsi Marriage and Divorce Act, 1936 gives the right to maintenance to a Parsi woman. The court can award a maximum of one-fifth of husband's net income as maintenance. The court considers factors like the husband's capability to pay, property and other assets owned by the wife and the personal conduct of the husband and wife. The husband is liable to pay maintenance to the wife for her lifetime only if she remains unmarried and chaste after the divorce.

Maintenance under Christian Law

The Indian Divorce Act, 1869 governs maintenance rights of a Christian wife. Under Section 37 of the Indian Divorce Act, 1869, she can apply for maintenance in a civil court or High Court. The husband will be liable to pay maintenance for her lifetime.

Maintenance under Section 125 of the Code of Criminal Procedure, 1973

Under Section 125 of the Code of Criminal Procedure, 1973, right of maintenance extends not only to the wife and dependent children but also to indigent parents and divorced wives. The maintenance claim depends upon the husband's capability to provide sufficient means. One question that is generally asked is what is the maximum maintenance under Section 125? Previously, the maintenance claim was limited to Rs. 500 per month but now the magistrate has the power to award a reasonable amount of maintenance as they deem fit.

A Class I Magistrate may order a person to pay a monthly allowance for the maintenance of his wife, child, father or mother when there is valid proof of neglect and refusal by the man to maintain them. However, under Section 125 of the CrPC, a wife will not be entitled to receive maintenance if she has committed adultery, refuses to live with her husband or separates from her husband by mutual consent.

Glossary:

1. *Dispute* - a disagreement or argument..
2. *Will* - A will or testament is a legal document by which a person, the testator, expresses their wishes as to how their property is to be distributed at death
3. *Chauvinism* - excessive or prejudiced support for one's own cause, group, or sex.
4. *Nullity* - an act or thing that is legally void.

Frequently Asked Questions:

Objective Type

1. The last stage in the continuum of tension is _____.
2. Succession to the property in accordance with the will or testament is known as _____.
3. Succession to the property in the absence of will or testament is known as _____.
4. _____ is the supreme consideration while granting custody of child.

5. The dispute pertaining to the personal relation between the individuals is known as _____.
6. _____ are the disputes which arise within the organization.

Subjective Type

1. Write an essay on various kinds of disputes.
2. What are family disputes? Enumerate the causative factors of family disputes.
3. What do you mean by dispute and explain the dynamics of a dispute.
4. Explain in detail about the factors behind the matrimonial disputes.

Suggested Readings:

1. Poonam Pradhan Saxena, *Family Law Lecture*, Lexis Nexis.
2. Paras Diwan, *Law of Marriage and Divorce*, Universal.
3. Justice JD Kapoor, *Laws and Flaws in Marriages*, Konark Publishers.
4. Prof. Y.F. Jayakumar, *Horizons of Family Law in India*, Spandana Y.

MODULE – II

JUDICIAL PROCESS & FAMILY DISPUTES

Structure of Module:

1. Resolution of Disputes through judicial process
 2. Procedure for conduct of civil proceedings
 3. ADR Methods
 4. Arbitration
 5. Conciliation
 6. Mediation
 7. Negotiation
-

OVERVIEW:

In this module the students will acquaint themselves with the resolution of the family disputes with the help of JDR (Judicial Disputes Resolution) or ADR (Alternative Dispute Resolution). The module will give the brief procedural overview of the conduct of civil proceedings and proceedings before the family court. In the context of ADR various methods of ADR such as arbitration, conciliation, mediation, negotiation are discussed in brief.

RESOLUTION OF DISPUTES THROUGH JUDICIAL PROCESS

Judicial Dispute Resolution

The Judicial Dispute Resolution (JDR) is the traditional and universally accepted dispute resolution mechanism throughout the world. The legal framework of the Judicial Dispute Resolution can be perceived from various provisions of the Constitution and other legislations. The Indian Constitution designed the structure and hierarchy of courts. The Supreme Court is the apex court of the country, followed by High Courts for each State, District courts for each district and Magistrates of Second Class and Junior Civil Judges at the Bottom. There are 24 High Courts and about 2853 District and Taluka Courts¹, supervised by the Supreme Court.

The primacy of the Supreme Court can be traced from the various provisions of the Constitution of India. The Supreme Court has original jurisdiction in federal matters², concurrent jurisdiction in protection of fundamental rights³, an appellate jurisdiction in constitutional⁴, civil⁵, and criminal⁶ matters and by way of special leave⁷, transnational jurisdiction with respect to matters

¹ http://ecourts.gov.in/ecourts_home/ (visited on 20-01-2017)

² Article 131 of the Constitution of India

³ Article 32

⁴ Article 132

⁵ Article 133

⁶ Article 134

⁷ Article 136

pending before its predecessor court⁸, and consultative or advisory jurisdiction⁹. Apart from this, under Article 138 the Parliament has the power to enlarge the jurisdiction of the Supreme Court in certain matters. One such instance of conferment of power on the Supreme Court is to entertain applications for transfer of trial of criminal case from one place to another place¹⁰. Further, the Supreme Court has the power to enquire and decide all disputes arising out of or in connection with the election of the President of India and Vice-President, and its decision shall be final in these matters¹¹.

The judiciary in States consists of a High Court and a system of subordinate courts to the High Court. There shall be a High Court in each State¹², however the parliament can establish by law a common court for two or more States or for two or more State and Union Territory¹³. The High Court stands at the apex of the State Judiciary. The jurisdiction of the High Court can be traced from provisions of the Constitution of India. It shall exercise the power of the Court of Record¹⁴, Writ Jurisdiction¹⁵, Supervisory and Revisional Jurisdiction¹⁶, transfer of pending cases from subordinate court to High Court to determine the substantial question of law and dispose the case.¹⁷

Appointment of persons to, and the posting and promotion of District Judges in any State shall be made by the Governor of the State, in consultation with the High Court exercising jurisdiction in relation to such State¹⁸. Appointment of persons other than the District Judges to the judicial service of a state shall be made by the Governor of the State, in accordance with the rules made by him in that behalf, after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State¹⁹. The control over the subordinate judiciary i.e. District Courts and Courts subordinate thereto, including the posting, promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court²⁰. Apart from the Constitutional provisions, the Code of Civil Procedure 1908, the Code of Criminal Procedure 1973 and the Indian Evidence Act 1872 play an important role in administration of justice. These legislations are the pillars of JDR.

In the JDR mechanism one party approaches the court either personally or through his representative claiming any legal right or privilege, and the other party files his reply/written-

⁸ Article 135

⁹ Article 143

¹⁰ Section 406 of Code of Criminal Procedure, 1973

¹¹ Article 71(1)

¹² Article 214

¹³ Article 231(1)

¹⁴ Article 215

¹⁵ Article 226

¹⁶ Article 227

¹⁷ Article 228

¹⁸ Article 233(1)

¹⁹ Article 234

²⁰ Article 235

statement to deny such claims. The Judge who is a neutral third party, presides over the proceedings of the court, permits both the parties to present evidences in support of their claims and hears arguments of both the sides and finally delivers his judgement, which is binding on both the parties. The JDR mechanism follows the principles of rule of law, procedure of natural justice, and is an authoritative institution which enjoys the public confidence. It is present in both Adversarial and Inquisitorial System.

- **Adversarial Dispute Resolution System:** In this legal system, parties contest their case through advocates, in a Court which is presided over by an impartial, neutral Judge. Charges or Issues relevant to the case are framed, parties are examined and basing on the evidence, proposition of law and by application of specific civil or criminal procedure, rules prescribed for admission of evidence, judgement is given which is final and binding over both the parties. The role of Judge is limited to that of a referee, and he does not proactively participate in the prosecution of the case. This system is prevalent in Common Law Countries, including India.
- **Inquisitorial Dispute Resolution System:** In this legal system Judge is actively involved in the investigation of facts of the case. The Judge can question the witnesses, call for any information or witness, order for search or further investigation and it is the duty of the Judge to gather facts, evidence and ultimately declare the verdict. The Judge also has power to relax the rules of procedure and evidence, as such, this system is not as rigid as the adversarial system. This system is found Civil Law Countries, like France, Italy, Russia and Germany.²¹

Advantages of JDR:

1. **Faith in the Judicial Process:** Since the judges are appointed by the State and are qualified agents of the state administering justice the people have utmost faith in judiciary and they prefer settlement of disputes through court rather than through other agencies.
2. **Well defined procedure:** The Court is bound to follow well defined and well- designed procedure which is based on the principles of natural justice²². Equality and equal opportunity is provided to every litigant to approach the court.
3. **Binding nature of the judgement:** The Judgement is binding on the parties, as the Judge derives power from the State or Statute. Finally, there is a provision for an appeal to the higher court, if the parties are not satisfied with the findings of the Court.

²¹ For comparative analysis of Adversarial and Inquisitorial Systems, see: Peter Van Koppen (Ed.) and Steven D. Penrod (Ed.), *Adversarial versus Inquisitorial Justice: Psychological Perspectives on Criminal Justice Systems*, (2003), Springer

²² *Nemo judex in causa sua*: No one can be a judge in his own cause (Rule against bias); *Audi alteram Partem*: Hear the other party (Rule of Fair Hearing);

4. **Wide jurisdiction:** Any type of dispute can be brought to the court of law, and there is no bar on the subject matter of suit or proceedings. In this connection, to understand the judicial process in a contested civil case, it is essential to examine the basic procedure provided under Code of Civil Procedure, 1908.

PROCEDURE FOR CONDUCT OF CIVIL PROCEEDINGS

The Code of Civil Procedure, 1908 (C. P. C.) lays down the procedure to be adopted in Civil Courts. It provides for a fair procedure for redressal of disputes. The first Code of Civil Procedure was enacted in 1859 by the Committee headed by Mr. John Romily. It was amended in 1877 and, subsequently, in 1882, however, those amendments did not serve the purpose, therefore, the present Code of Civil Procedure was enacted in 1908. It was drafted by the Committee headed by Sir Earle Richards. The Committee before submitting the draft to the West Minister Parliament travelled India, read its history and ancient texts and then knew the traditions and culture of this country, and the legislation was prepared by considering all these factors.

The Code is mainly divided into two parts, namely, Sections and Orders. While the main principles are contained in the Sections, the procedures with regard to the matters dealt with by the Sections have been specified in the Orders. The Orders contains Rules, which specify the details of the procedure to be followed in the respective Orders. The Code of 1908 is composed to 2 parts. The first part contains 158 Sections and the second part contains 51 Orders, and Rules there under. The Rules can be amended by the High Court, but the Sections can be amended by the legislature only.

The general course of any civil litigation in India can be traced out into different stages which can be broadly classified into **Pre-Litigation Stage** such as sending of legal notice, receiving of reply to legal notice, drafting of the plaint and;

Litigation Stage which begins with the filing of the plaint, jurisdiction, court fees, written statement, conduct of proceedings, replication, filing of documents, framing of issues, list of witnesses, examination of witnesses, judgement, certified copies of judgement, appeal, and execution, etc.

Pre-Litigation Stage:

1. **Sending of Legal Notice:** The principles of natural justice state that the opportunity must be given to the other side to present their version of the story. The law mandates that compulsory statutory legal notice must be issued to the government servants if the case is going to be filed against them under section 80 of the Civil Procedure Code, 1908. However, in respect of private parties there is no such requirement but it is better to give notice as in certain cases the issue may be resolved even before filing of the case. The legal notice can be sent through an enrolled Advocate or Law Firm, it can also be sent by the aggrieved litigant in person.

2. Receiving of reply to legal notice: After the legal notice is sent the party must wait for sufficient period of time to receive the reply from the other side. There is no statutory limit as to the period of waiting but in the cases of notices issued under section 80 of CPC to the government servants one should compulsorily wait for a period of three months before initiating suit.

3. Drafting of the plaint: If the opposite party does not give reply to legal notice or if the reply is evasive or unsatisfactory. A plaint may be filed against him in the appropriate court of law. The plaint is a form of petition filed before the court which mentions the name of the parties, their description, cause of action, court fees, limitation and prayer sought from the court. The plaint may be drafted by the counsel engaged by the plaintiff (complainant) or it may be drafted by the party if he chooses to fight the litigation in person.

Litigation Stage:

1. Filing of Plaint: Every civil suit shall be instituted by the presentation of a Plaint or in such other manner as may be prescribed²³. The Order VII of Code of Civil Procedure, 1908 prescribes the essentials of the Plaint. According to it, a plaint is a statement of claim, a document by presentation of which the suit is instituted. Its object is to state the grounds upon which the assistance of the Court is sought by the Plaintiff. It is the plea of the Plaintiff. It should contain the names and addresses of the Plaintiffs and Defendants, cause of action, limitation, jurisdiction, valuation of the subject matter, details of court fee, specific remedy sought and verification²⁴. The Plaintiff shall also file the documents relied by him along with list of documents²⁵. After the acceptance of the Plaint, the summonses are issued to the Defendants to appear on a specific day before the Court and give their reply to the Plaint²⁶.

The term cause of action refers to a set of facts or allegations that make up the grounds for filing a lawsuit. A Cause of Action is very essential to a Civil Suit, since without a Cause of Action a Civil Suit cannot arise. Limitation here means, a period established by statute, during which a lawsuit must be initiated²⁷. For example, the limitation period for filing a suit for recovery of money is 3 years from the date of default i.e. if the suit shall be filed by the Plaintiff within a period of 3 years from the date of default committed by the Defendant, failing which, the suit becomes barred by limitation.

Jurisdiction means the power or authority of the court to hear and determine a case. The Plaintiff shall file his plaint before the court of proper jurisdiction. There are basically 3 kinds of jurisdiction²⁸, basing on which the place of suing may be determined. They are: a) Pecuniary Jurisdiction, basing on the monetary value of the suit; b) Territorial Jurisdiction, basing on the

²³ Section 26 of Code of Civil Procedure, 1908

²⁴ Order VII Rule 1 of C.P.C.

²⁵ *Ibid* Rule 14

²⁶ Order V of C.P.C. deals with Issue and Service of Summons

²⁷ Governed by Limitation Act, 1908

²⁸ Sections 15 to 20 of C.P.C. deal with Place of Suing

territory or area in which the immovable property is located or the area in which the defendant resides or where the cause of action has arisen; and c) Subject-matter Jurisdiction, basing on the type or nature of the suit, like for instance, cases relating to divorce can be filed only before Family Court.

The civil courts shall have jurisdiction to try all suits of a civil nature, excepting suits, cognizance of which is either expressly or impliedly barred²⁹. A suit is of civil nature, if the principal question therein relates to the determination of private or civil rights of the parties and enforcement thereof. For example: Suit for recovery of money, Suit relating to right to property, Suit for damages for civil wrong, Suit for specific performance of contract, Suit for damages for breach of contract, Suit for Rent, Suit for Accounts, Suit relating to right of worship, Suit for rights of franchise, Suit against wrong dismissal from service, etc.

Further, the suit shall not be hit by *Res-judicata*, otherwise it will not be accepted. *Res Judicata* is a Latin term meaning “a thing decided”. It is the rule of conclusiveness of a judgement and bars re-litigation of cases between the same parties in the Court. The doctrine of *Res-Judicata* is also embodied in the CPC³⁰ and once a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation. It is mandatory provision, and a court shall not try a new suit regarding the issue which is already decided in a former suit between same parties. However, a Plaint would be rejected by the Court if the plaint does not disclose a cause of action, if the relief claimed is undervalued, if the plaint is insufficiently stamped and if the suit is barred by law³¹.

2. Written Statement: Written Statement is a reply of defendant to the Plaint filed by the Plaintiff. It is provided under Order VIII of C.P.C. It should specifically deny the allegations made in the Plaint³². It should be submitted within the limitation period of 90 days from receipt of summons by the Defendant, and shall be verified by the Defendant. The Defendant shall file all the documents relied by him along with Written Statement³³. The Plaintiff can also file rejoinder, in reply to the Written Statement of the Defendant, and shall specifically deny the allegations made in the Written Statement³⁴. Once, a rejoinder is filed, the pleading are said to be complete.

Further, in a suit for the recovery of money the Defendant may claim to set-off against the Plaintiff's demand, which is called as Set-off³⁵, and the Defendant can also file a claim in opposition to the claim of the plaintiff, which is called as Counter Claim³⁶.

²⁹ Section 9 of C.P.C.

³⁰ *Ibid* Section 11

³¹ Order VII Rule 11 of C.P.C.

³² Order VIII Rule 3 of C.P.C.

³³ Order VIII Rule 1(2) of C.P.C.

³⁴ Order VIII Rule 9 of C.P.C.

³⁵ Order VIII Rules 6 & 7 of C.P.C.

³⁶ Order VIII Rule 6A of C.P.C.

3. Reference to ADR by Court: In a court case, after filing of plaint and written statement and before the issues are framed, the court should identify whether the case is fit for reference to any ADR process. If it falls under any excluded category, the Court should record a brief order as to nature of the case, and why it is unfit for ADR and shall proceed with framing the issues. If the case can be referred to ADR, the court should ascertain whether all the parties are willing for arbitration³⁷ or conciliation³⁸. If the parties are not agreeable to arbitration or conciliation, and if court finds the case to be suitable for settlement through mediation, the court may with or without the consent of the parties refer the matter to mediation. The Section 89, Order X Rules 1A, 1B and 1C of C.P.C. deals with court-referred ADR.

4. Framing of Issues: The term “Issue” means a matter that is in dispute between two or more parties or the point at which an unsettled matter is ready for decision. Under law, issue is point at which the parties come to clash. Framing of issues is a very important step in a suit. It has a very important bearing on the trial and decision of the case. It is the process of formulating questions to conduct trial basing on them to arrive at a decision. The Order 14 of C.P.C. deals with Issues and states that, the court is required to frame issues, only on such controversies, as it perceives between the parties. The issues are of two kinds i.e. Issues of Fact and Issues of Law. The issues should be confined to pleadings in controversy, and the Court shall deal with each issue separately in the Judgement³⁹.

Further, discretion is given to the court where it may try an issue relating to (a) the jurisdiction of the court or (b) the bar to the suit created by any law for the time being in force as Preliminary Issue⁴⁰. It relates to disposal of the suit treating these points as preliminary issues by deferring the settlement of other issues.

5. Examination of Parties: The Order XVIII of C.P.C. deals with hearing of the suit and examination of witnesses, and the Chapter X of the Indian Evidence Act, 1872 lays down the law relating to the examination of witnesses. It provides for Examination-in- Chief, Cross-Examination and Re-examination⁴¹. The Plaintiff has the right to begin the examination of witnesses in support of his case⁴², followed by examination of witnesses of Defendant. The witnesses are to be examined in

³⁷ Arbitration 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.

³⁸ Conciliation is a process where an independent third party, the conciliator, helps people in a dispute to identify the disputed issues, develop options, consider alternatives and try to reach an agreement.

³⁹ Order XIV Rule 2 of C.P.C.

⁴⁰ Order XIV Rule 2 (2) of C.P.C.

⁴¹ Sections 137 & 138 of Indian Evidence Act, 1872

⁴² Order XVIII Rule 1 of C.P.C.

open-court⁴³, and the evidence given by the witnesses is recorded by the court. Further, the court may at any stage of a suit recall and examine a witness⁴⁴.

Section 137 of Indian Evidence Act, 1872 provides different stages of examination of witnesses. The examination of a witness by the party, who calls him, is called Examination-in-Chief. The examination of a witness by the adverse party shall be called his Cross-Examination. The examination of a witness, subsequent to the Cross-Examination by the party who called him, shall be called his re-examination. The Examination-in-Chief is followed by Cross-Examination and Re-Examination⁴⁵.

The Order XIII of C.P.C. deals with marking of documents filed by the parties to the suits as exhibits, i.e. the Court assigns a serial number to the document filed by the parties in evidence. A document filed by either party passes through 3 stages before it is held proved or disproved.

- **First Stage**, when the documents are filed by either party in the Court, these documents though on file, do not become part of the judicial record.
- **Second Stage**, when the documents are tendered or produced in evidence by a party and the Court admits the documents in evidence. A document admitted in evidence becomes a part of the judicial record of the case and constitutes evidence.
- **Third Stage**, the documents are held ‘proved, not proved or disproved’ by the Court after application of its judicial mind, usually during the final hearing of the suit.

Further, apart from the witnesses produced by the Plaintiff and Defendant, the Court has ample powers to examine any third party as witness, if it thinks it is necessary for meeting the ends of justice. The court can also order for production of any document, if it is necessary for just adjudication of the case.

6. Hearing and Advancing Arguments: The Order XVIII also deals with hearing and advancing of arguments in a suit. Any party may address oral arguments in a case, and shall before he concludes the oral arguments, if any, submit if the Court so permit concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record. A copy of such written arguments shall be simultaneously furnished to the opposite party. Arguments should be confined to issues framed. No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing considers it necessary to grant such adjournment. The Court shall fix such time-limits for the oral arguments by either of the parties in a case.

⁴³ Order XVIII Rule 4 of C.P.C.

⁴⁴ Order XVIII Rule 17 of C.P.C.

⁴⁵ Section 138 of Indian Evidence Act, 1872

7. Judgement and Decree: Judgement⁴⁶ is final decision of Court containing grounds and reasons for the decision, pronounced by the Court. A judgment must contain: a) A crisp statement of facts of the case; b) The points or issues for determination; c) The decision on such issues and finally; d) The reasons for such a decision. Decree⁴⁷ is the formal expression of an adjudication which conclusively determining rights and liabilities of parties. A decree may be either preliminary or final. A decree is preliminary when a further procedure has to be taken before the suit can be completely disposed off. When adjudication completely disposes of the suit such decree is final. A decree must be drawn separately after a judgment. Certified copies of Judgement and Decree may be obtained by either party by paying requisite fee.

8. Appeal: Appeal is a process for requesting a formal change to a decision of subordinate adjudication. Right of appeal is not a natural right or inherent right attached to litigation. Such right is given by statute or by rules having the force of statute. The Part-VII, Orders XLI, XLII, XLIII, XLIV and XLV of C.P.C. deal with Appeals. Four kinds of appeals are provided under C.P.C., they are: Appeal from original Decree⁴⁸, Second Appeals⁴⁹, Appeal from Order⁵⁰ and Appeal to the Supreme Court⁵¹.

9. Execution: It is the last stage of litigation. The term “execution” has not been defined in the code. Execution is the enforcement of decrees and orders by the process of court, so as to enable the decree-holder⁵² to realize the fruits of the decree by compelling the judgement-debtor⁵³ to honour the decree. The execution is complete when the decree-holder gets money or other thing awarded to him by the judgement, decree or order. The Part-II and Order XXI of C.P.C. deal with the execution proceedings.

Order XXI of the code contains elaborate and exhaustive provision for execution of decrees and orders. It takes care of different types of situations and provides effective remedies not only to the decree-holder and judgement-debtors but also to the objectors and third parties. A decree can be executed by various modes, which include by arrest and detention of the judgement-debtor⁵⁴, attachment of the property⁵⁵, sale⁵⁶ of movable⁵⁷ and immovable property⁵⁸, and delivery of possession⁵⁹.

⁴⁶ Section 2(9) of C.P.C.

⁴⁷ Section 2(2) of C.P.C.

⁴⁸ Sections 96-99, Order XLI of C.P.C.

⁴⁹ *Ibid* Sections 100-103, Order XLII

⁵⁰ *Ibid* Sections 104-106, Order XLIII

⁵¹ *Ibid* Sections 109, Order XLV

⁵² *Ibid* Section 2(3): any person in whose favor a decree has been passed or an order capable of execution has been made.

⁵³ *Ibid* Section 2(10): any person against whom a decree has been passed or an order capable of execution has been made.

⁵⁴ *Ibid* Order XXI Rules 37 - 40

⁵⁵ *Ibid* Order XXI Rules 41 - 63

⁵⁶ *Ibid* Order XXI Rules 64 - 73

Challenges of JDR:

1. **Docket Explosion & Slow:** Even though, Judicial Dispute Resolution (JDR) is structurally and functionally well designed and works within the ambit of principles of law, for variety of reasons, it is slowly losing the sacrosanctity and public confidence. Docket explosion is one of the major reasons for failure of JDR mechanism. Large numbers of cases are pending in courts and lots of new cases are filed every day⁶⁰. There is undue delay in disposing of cases; Uphaar Cinema Fire Case⁶¹, Bhopal Gas Tragedy Case⁶², Anti-Sikh Riots Case⁶³ are some glaring examples. There are instances of cases where the litigation was continuing for three generations.
2. **Expensive Fees and Costly Litigation:** Advocate fees, court fee and several incidental expenses, result in escalation of litigation costs.
3. **Complex Court Procedure:** The court procedure is very complex and time consuming, because of complicated and cumbersome civil and criminal procedure and rules of evidence.
4. **Insufficient Judge to Population Ratio:** The judge to population ratio refers to the number of judges in one million of population. In India the ratio is 20 judges per million of population. Which is dismally lower than that which is there in western countries like USA where the ratio is 107 per million of population. Due to vacancies in judiciary the other judges face the excessive burden of disposing the cases and are under constant pressure to increase disposal rate which affects the quality of justice delivery.
5. **Lack of technological advancements:** Majority of the courts in India function on manual basis with the least involvement of technology. Due to this, the workload on the concerned staff increases which causes slow movement of the work. In view of this the Govt. of India has started “e-courts project” which enables usage of technology in the court management and also the case monitoring. In the next phase the government is initiating e-filing in the courts.
6. **Win-Lose Situation:** The outcome of the judicial process is simple i.e., one party wins and the other loses. There is no scope of middle path between the parties. The winning side and losing side develop a feeling of enmity between themselves due to which the resolution of dispute is not at all amicable and often leads to irreparable damage between the two parties.

⁵⁷ *Ibid* Order XXI Rules 74 - 81

⁵⁸ *Ibid* Order XXI Rules 82 - 96

⁵⁹ *Ibid* Order XXI Rules 95 - 106

⁶⁰ According to National Judicial Data Grid 2,35,62,302 cases are pending in Courts in India as on 20-01-2017 (http://njdg.ecourts.gov.in/njdg_public/main.php, last visited 20-01-2017)

⁶¹ *Municipal Corporation of Delhi, Delhi v. Association, Victims of Uphaar Tragedy & Ors.*, (2011) 14 SCC 481; *Association, Victims of Uphaar Tragedy & Ors. v. Municipal Corporation of Delhi, Delhi*, 2003 (68) DRJ 128

⁶² *In re Union Carbide Corp.*, 634 F. Supp. 842; *Union Carbide Corporation v. Union of India*, AIR 1990 SC 273

⁶³ *Lal Bahadur v. State (NCT of Delhi)*, (2013) 4 SCC 557

7. **Protraction of Litigation:** The aggrieved side in a litigation in order to seek redressal to his failure often resorts to filing of appeal before the higher court and so. This chain continues till the parties either lose interest or the order of the court is no longer appealable (for eg. Supreme Court). These circumstances cause protraction of litigation for years together.

8. **Pedantic approach and procedure:** the JDR involves pure application of law and appreciation of evidence. It does not consider the human element or the human feelings and anticipation which lead to pure pedantic approach in administration of justice which is devoid of any humanistic feeling.

The courts are unable to appreciate the interests of the parties to the dispute beyond the issues framed in the litigation. The advocates represent the parties and judge decides the case following strict rules of predetermined procedure, hence, parties do not exercise control over the process. The parties oppose every point raised by the other party, thereby increasing animosity between parties, and it ultimately results in a win-lose situation. Judges though are well-qualified in the law, they are unable to address the complex technical issues which need specialization in other disciplines. The findings of the court depend on various factors like available evidence, competency of advocate, precedents etc., which are not in control of the parties. The complex issues of jurisdiction, applicable law and enforceability involved in the cross-border disputes cannot be addressed through JDR.

ADR has many advantages over JDR and also helps significantly in reduction of workload of Courts thereby helps them to focus on cases which ought to be decided only by Courts. The primary goal of ADR system is avoidance of expense, delay, vexation and the promotion of the ideal of *access to justice*⁶⁴. ADR is not intended to supplant altogether the JDR, it offers only alternative options to litigation. As such, in the current scenario there is an imminent need for adopting ADR to provide better solutions to the parties.

ALTERNATIVE DISPUTE RESOLUTION METHODS

ADR refers to wide spectrum of structured processes that use means other than the court-trial to settle the disputes between the parties, by involvement of a third neutral party or directly by the parties themselves. ADR includes Negotiation, Mediation, Conciliation, Arbitration, Lok-Adalat, a mix of mediation/arbitration or arbitration/mediation etc. The arbitration, conciliation, mediation and negotiation are the important pillars of the ADR mechanism that can be effectively used in all civil proceedings in order to get justice.

In the ADR process, parties may have neutrals of their choice, who are experts in subject matter of the dispute; Parties have autonomy to come up with innovative solutions addressing interests of both parties; Parties decide the process and are in full control; ADR generally involves

⁶⁴ Every individual shall have access to proper legal remedies for redress of their grievances, and to effectively claim the enforcement of their rights.

less cost compared to JDR; Parties are directly involved in resolution of dispute; The issues of dispute can be easily maintained private and confidential; The real needs of parties, underlying factors of the disputes are considered; The ADR is generally very fast compared to JDR; The parties are at liberty to consider each other's interests and arrive at a settlement which gives maximum benefit to both; The settlement agreement, award of arbitrator is final, binding and equivalent to decree of court and enforceable; The entire process is very flexible and informal, and can be changed according to requirement of parties. The following are the most popular ADR processes:

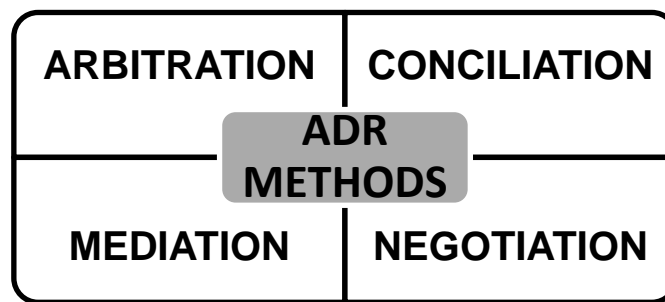


Fig: ADR Methods.

- **ARBITRATION:** It is the private determination of the controversial issue by a neutral third party. It is the process in which an arbitrator appointed by the parties or by the court, constitutes the arbitral tribunal and adjudicates the disputes between the parties to the dispute and passes an award, which is binding on both the parties and equivalent to the decree of the Court. It is governed by the Arbitration and Conciliation Act, 1996. The arbitration involved a 3rd party who resolves the disputes by passing an award after hearing the case from both the sides. The place of arbitration in family matters has less significance and importance but this can be effectively used in resolution of disputes arising out of partition of joint family property, distribution of shares in property by metes and bounds of Joint family property and the litigation arising out of spousal property.

Merits of Arbitration

- * **Low Expense:** Arbitration is cheaper than the court litigation since there is no prescribed statutory fees which need to be paid to the Arbitrator. The fee of the arbitrator itself can be fixed with consent of both the parties.
- * **Expeditious:** With some exceptions, arbitrations tend to follow more specific and defined timelines toward resolving a dispute and arbitrators do not always face crowded work and caseloads, resulting in quicker final decisions.
- * **Impartiality of the Arbitrator:** Often arbitrators are selected by agreement of both parties. It can be a person decided by both the parties or the parties may refer the same to the institution

having expertise in conducting the arbitration. This means that in many cases, no single party controls who the arbitrator (or arbitrators) will be.

* **Finality & Binding nature of Award:** For the most part, it is very difficult to appeal against arbitration rulings or award, even if glaring mistakes have been made by an arbitrator. This finality is ensured in order to end the dispute positively between the parties and allowing the parties to move on.

* **Simplified procedures:** Litigation can involve mounds of paperwork, multiple hearings, adjournments, summons, notices, and similar processes. An arbitration may eliminate some or many of those time-consuming and expensive tools of litigation.

* **Confidential:** Arbitration hearings do not take place in open court and transcripts are not part of the public record. This can be very valuable for parties in some cases who specifically seek privacy of their dispute.

Demerits of Arbitration

* **Expensive:** Arbitration does not always reduce the costs of resolving a legal problem. This is because arbitration can vary in complexity and can take many forms, some of which may actually be more likely to increase the costs versus litigation. For example despite being final and binding, the arbitral award can be challenged by a cantankerous party in a court of law and who feels that he is aggrieved by the award thereby starting another round of dispute settlement.

* **Biased Arbitrator:** In certain cases the arbitrator appointed may be prejudiced or biased towards one side of the dispute and which may later influence his decision making. It happens so in bank related cases that the arbitrators are unilaterally appointed by the banks and the said arbitrator mostly rules in favor of the appointing bank.

* **Inordinate Delay:** In certain cases the arbitrations are not necessarily faster than litigation. This is particularly possible in cases with multiple parties, multiple arbitrators, and complicated legal disputes.

* **Finality and binding nature of the award:** As noted above, it is very difficult to appeal arbitration rulings, even if an arbitrator has made a blatant mistake this can sometimes result in what may be seen as an unfair result (certainly from the losing party's perspective!), with only a small chance that a court can step in to correct it.

- **CONCILIATION:** Conciliation is a method of dispute resolution wherein the parties to a dispute come to a settlement with the help of a conciliator. The conciliator meets with the parties both together and separately to enter into an amicable agreement. Here, the final decision may be taken by reducing tensions, improving communications, and adopting other methods. It is a flexible process,

therefore allowing the parties to define the content and purpose of the proceeding. It is risk-free and is not binding upon the parties unless they sign it. In conciliation proceedings, conciliator plays a proactive role, assists the parties to reach a settlement, makes proposals for settlement and formulates, reformulates the terms of possible settlement. If the settlement is successful, it is drawn into a settlement agreement and is binding on the parties and equivalent to decree of the court. It is also governed by the Arbitration and Conciliation Act, 1996. Part III of Arbitration and Conciliation Act, 1996 - Sections 82 to 86 deal with Conciliation.

Merits of Conciliation:

- * **Flexibility:** Since the conciliation process is informal, it is flexible. Parties may choose their own timing and place of conciliation of their choice. Further they can appoint any common mutually agreed person as the conciliator.
- * **Expertise of Conciliator:** The parties may choose a conciliator who is expert in the issues concerning the dispute between the parties for eg. The real estate businessmen can appoint an engineer to act as conciliator for resolving the disputes involving the construction of the building, etc.
- * **Economical & Affordable:** Similar to the other forms of ADR, conciliation is less expensive and affordable by the parties compared to the litigation. The parties may agree to pay mutually agreed fees to the conciliator or in certain cases it can either nominal or totally free of cost also.
- * **Recourse to Court of Law:** If both the parties or either of the party are dissatisfied with the findings of the conciliator they may take recourse to the court of law to settle their disputes.

Demerits of Conciliation:

- * **Non Binding:** the findings of the conciliator are not binding upon the parties and the parties may or may not agree with the same. There is no mechanism envisaged by law to enforce the agreement reached by way of conciliation.
- * **No scope of appeal:** there is no scope of appeal against the findings of the conciliator and if the conciliation fails the parties come back to square one i.e., they come back to their initial position from where they started.
- * **Inconclusive:** in certain cases the whole conciliation proceedings may be inconclusive due to the deeply imbibed differences in the attitudes of the parties. The parties at the outset may appear willing to enter into conciliation but in fact they may not have any intention to resolve their differences.

Conciliation in Family Disputes

The term ‘conciliate’ is derived from the Latin term ‘*conciliare*’ which means “to bring together, unite in feelings, make friendly”. Even though, the term conciliation is used in the statutes, it is not defined therein.

According to Wharton’s Law Lexicon, “*Conciliation means settling of disputes without litigation. Conciliation is a process by which decision between parties is kept going through the participation of a conciliator.*”

It can be understood that, Conciliation is a non-binding, consensual process, in which, the parties to a dispute appoint an impartial third party called the ‘Conciliator’, who assists the parties in reaching at an amicable settlement of the dispute keeping in consideration the utmost satisfaction of the parties. The conciliator hears both the parties and gives suggestions keeping in view the interests of the parties. However, the parties are not bound to accept suggestions put forth by the conciliator and can opt out at any stage.

In India, the process of Conciliation is presently governed by Sections 61 to 81 in Part-III of the Arbitration and Conciliation Act, 2015.

The parties to a dispute can resort to Conciliation either before approaching the court i.e. pre-litigation or after approaching the court i.e. post-litigation.

- **Pre-litigation Conciliation:** In pre-litigation conciliation, parties can resolve their dispute through conciliation privately without resorting to court litigation. Further, the parties can also go for conciliation administered by any institution like ICADR, ICA etc.
- **Post-litigation Conciliation:** In post-litigation conciliation, the parties may go for conciliation at any stage of the suit, on their own accord, without reference from the court, or the court may refer the parties to conciliation. When the parties resort to conciliation without reference from court, then, after settlement of the dispute, the parties may withdraw the case as settled or compromised.

Role of the Conciliator

The Conciliator should act independently and impartially, and shall assist the parties to reach an amicable settlement; He should be guided by principles of objectivity, fairness and justice, and give due consideration to the rights and obligations of the parties; He should develop rapport with the parties and gain their trust and confidence; He should be unbiased, open-minded and logical in thinking; He must control his emotions and act according to the situation; He should maintain confidentiality of the information; He should function as a communication link between the parties; He should conduct the proceedings taking into account circumstances of the case and wishes of the

parties, including request for taking oral statements and need for speedy settlement of the dispute; At any stage of the proceedings, the conciliator may make proposals for a settlement, which need not be in writing and also need not be accompanied with reasons; He should be cordial and friendly in dealing with the parties and give freedom to the parties to express their views and opinions; He should reduce the friction, diffuse any heated arguments and guide the parties towards problem solving approach; He should be a person of maturity and have full understanding about the interests and needs of parties and shall advise the parties for their utmost benefit.

Family Counselling and Conciliation

The family counseling and conciliation service is usually a three-tier system:

- (1) Pre-marital Counselling,
- (2) Conciliation and Counselling in the process of adjudication, and
- (3) Post adjudication Counselling.

The (1) and (3) are not part of Family Court system, but a community service or private counselors are available for the same.

The Conciliation process in course of family dispute begins only when the case is referred by the Family Court for reconciliation. The parties with whom the conciliator should mediate may be in a state of emotion, worried, frightened, depressed, hurt, guilty and feeling lost and lonely. Therefore, special care and attention, sympathy, guidance and advice are necessary to be given to the concerned spouses. Hence, the role of the conciliator is a challenging task, dynamic and crucial. Moreover, the Conciliator's report is given due regard and consideration in pronouncement of judgement by the Family Court. Therefore, due care and caution must be exercised at the time of appointment of the conciliator, and a person with following qualities shall be appointed.

Requisites for Appointment of Conciliator in Family Dispute

- A person with laudable object and commitment towards protection of family
- A person having complete maturity and full understanding about the preservation of the institution of marriage.
- A person with special training in family law, sociology and social welfare
- A person who has ability to understand and attend to the parties effectively
- A person who is patient enough to listen and understand the problems of the parties
- A person who can act empathetically and ability to appreciate others
- A person who can maintain confidentiality
- A person who can show warmth

- A person who can control his emotions, act according to the situation, develop rapport with the parties, unbiased, open-minded, logical in thinking and friendly with the parties of the Conciliation.

Conciliation Strategies and Techniques for successful Family Dispute Resolution

- Understanding the problem
- Planning the Schedule
- Examining other related problems like social, economic and psychological factors
- Provide congenial atmosphere to the parties
- Collection of material facts to the maximum extent
- Acting according to the situation
- Patient hearing
- Be friendly, timely and honest
- Appreciating the attempts of the parties
- Take help of the relatives of the parties
- Take help of the concerned experts wherever necessary
- Maintain total confidentiality of the facts
- Advise, assist and cooperate with parties for mutual settlement

Statutory framework for Conciliation of Family Disputes

Conciliation and Settlement received statutory recognition in India in adjudication of family disputes even before the enactment of Part-III of Arbitration and Conciliation Act, 1996. The relevant portions from different statutes regarding conciliation and settlement of family disputes are given below:

- **Hindu Marriage Act, 1955 and Special Marriage Act, 1954**

The Section 23(2) of Hindu Marriage Act, 1955⁶⁵ and Section 34(2) of Special Marriage Act, 1954⁶⁶ emphasize that, the Court shall endeavour to bring about ‘**reconciliation**’ between the parties. Here, reconciliation means the act of restoring friendly relations between the parties, which can be achieved through the process of conciliation by settling the disputes between the parties through an

⁶⁵ S.23 (2) of Hindu Marriage Act, 1955: Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties. Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.

⁶⁶ S.34 (2) of Special Marriage Act, 1954: Before proceeding to grant any relief under this Act it shall be the duty of the Court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties. Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in Cls.(c), (e), (f), (g) and (h) of sub-section (1) of Sec.27.

impartial, neutral third party. It can be observed that, the S.23(2) of Hindu Marriage Act and S.34(2) of Special Marriage Act are similar in wording and cast a duty upon the Court, wherever possible to make every endeavour to bring about reconciliation between the parties, before granting any relief. However, reconciliation is not needed in any proceedings wherein relief is for grant of divorce basing on certain grounds.

In case of Hindu Marriage Act, where ground for seeking divorce is that, other party has ceased to be a Hindu by conversion to another religion⁶⁷, or has been incurably of unsound mind⁶⁸, or has been suffering from a virulent and incurable form of leprosy⁶⁹, or has been suffering from venereal disease in a communicable form⁷⁰, or has renounced the world by entering any religious order⁷¹, or has not been heard of as being alive for a period of seven years or more⁷², then there is no need for reconciliation. In case of Special Marriage Act, where the ground for seeking divorce is that, other party is undergoing a sentence of imprisonment for seven years or more⁷³, or has been incurably of unsound mind⁷⁴, or has been suffering from venereal disease in a communicable form⁷⁵, or has been suffering from leprosy, which has not been contracted from petitioner⁷⁶, or has not been heard of as being alive for a period of seven years or more⁷⁷, then there is no need for reconciliation. Further, the S.23(2) of Hindu Marriage Act⁷⁸ and S.34(3) of Special Marriage Act, 1954⁷⁹, aid the court in bringing reconciliation between the parties.

Family Courts Act, 1984

The Preamble⁸⁰ of the Family Courts Act, 1984 itself states that the very purpose of the Act is to establish Family Court for promoting conciliation and secure speedy settlement between the parties

⁶⁷ Section 13(1)(ii) of Hindu Marriage Act, 1955

⁶⁸ *Ibid* Section 13(1)(iii)

⁶⁹ *Ibid* Section 13(1)(iv)

⁷⁰ *Ibid* Section 13(1)(v)

⁷¹ *Ibid* Section 13(1)(vi)

⁷² *Ibid* Section 13(1)(vii)

⁷³ Section 27(1)(c) of Special Marriage Act, 1954

⁷⁴ *Ibid* Section 27(1)(e)

⁷⁵ *Ibid* Section 27(1)(f)

⁷⁶ *Ibid* Section 27(1)(g)

⁷⁷ *Ibid* Section 27(1)(h)

⁷⁸ Section 23(2) of Hindu Marriage Act, 1955: Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavor to bring about a reconciliation between the parties.

⁷⁹ Section 34(3) of Special Marriage Act, 1954: For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.

⁸⁰ Preamble reads as “An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.”

to the family disputes. Even in the appointment of judges, the Act gives preference to persons who have expertise in settlement of disputes through conciliation and counseling. It provides that every endeavour shall be made to ensure that persons committed to the need to protect and preserve that institution of marriage and to promote the welfare of children and qualified by reason of their experience and expertise to promote the settlement of disputes by conciliation and counseling are selected; and preference shall be given to women⁸¹. The role of a judge of a Family Court is very important. He is expected to give an impression to the parties that he is their well-wisher and endeavour to settle the dispute amicably. The Judge of a Family Court shall assist and persuade the parties to come to a settlement rather than sit in judgement over their disputes. In this connection, the Judge may take the help of Social Welfare Agencies⁸² and Family Counsellors⁸³ to resolve the family disputes.

The proceedings of the Family Court at the initial stage will be informal and emphasis is given for amicable settlement of dispute between the parties. Section 9⁸⁴ of the Act envisages the method to be adopted for a settlement. Further, much power and responsibility is conferred upon the Family Court to endeavour for mutual settlement of disputes between the parties, with a motive of protecting the institution of family. It may be noted that, as per S.13⁸⁵ of the Act, even legal representation through advocate is not provided to the parties as a matter of right, but the advocate may appear as only *amicus curiae* i.e. as friend/adviser to the court.

⁸¹ Section 4(4) of Family Courts Act, 1984

⁸² Section 5: Association of social welfare agencies, etc: The State Government may, in consultation with the High Court, provide, by rules, for the association, in such manner and for such purposes and subject to such conditions as may be specified in the rules, with a Family Court of, -(a) institutions or organizations engaged in social welfare or the representatives thereof; (b) persons professionally engaged in promoting the welfare of the family; (c) persons working the field of social welfare; and (d) any other person whose association with a Family Court would enable it to exercise its jurisdiction more effectively in accordance with the purposes of this Act.

⁸³ Section 6: Counselors, officers and other employees of Family Courts- (1) The State Government shall, in consultation with the High Court, determine the number and categories of counselors, officers and other employees required to assist a Family Court in the discharge of its functions and provide the Family Court with such counselors, officers and other employees as it may think fit. (2) The terms and conditions of association of the counselors and the terms and conditions of service of the officers and other employees, referred to in sub-section (1), shall be such as may be specified by rules made by the State Government.

⁸⁴ Section 9: (1) In every suit or proceeding, endeavour shall be made by Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit. (2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties. The Family Court may adjourn the proceedings for such period, as it thinks fit to enable attempts to be made to effect such a settlement.

⁸⁵ Section 13: Right to legal representation: Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner. Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as *amicus curiae*.

Code of Civil Procedure, 1908

The Court can refer the parties to ADR process for settlement of their disputes, as per the procedure laid down under Section 89, and Order-X Rule 1A⁸⁶, 1B⁸⁷, 1C⁸⁸ of C.P.C., which shall be studied in the light of decisions of the Supreme Court in *Salem Advocates Bar Association v. Union of India*⁸⁹ and *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*⁹⁰

The Section 89 of C.P.C. reads as under:

89. Settlement of disputes outside the Court.

(1) Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the court may reformulate the terms of a possible settlement and refer the same for-

- (a) arbitration;*
- (b) conciliation*
- (c) judicial settlement including settlement through Lok Adalat; or*
- (d) mediation.*

(2) Where a dispute had been referred-

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act.

(b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

⁸⁶ Order X Rule 1A: Direction of the Court to opt for any one mode of alternative dispute resolution.— After recording the admissions and denials, the court shall direct the parties to suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties.

⁸⁷ Order X Rule 1B: Appearance before the conciliatory forum or authority— where a suit is referred under rule 1A, the parties shall appear before such forum or authority for conciliation of the suit.

⁸⁸ Order X Rule 1C: Appearance before the Court consequent to the failure of efforts of conciliation— Where a suit is referred under rule 1A and the forum or authority to whom the matter has been referred is satisfied that it would not be proper in the interest of justice to proceed with the matter further, then it shall refer the matter again to the court and direct the parties to appear before the court on the date fixed by it.

⁸⁹ AIR 2005 SC 3353

⁹⁰ 2010 (8) SCC 24

(d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

The court can refer parties to Conciliation only with the consent of all the parties. If the conciliation fails, then the adjudication of the case continues from the same stage where it was referred to conciliation. If the conciliation is successful, the settlement agreement will have to be placed before the court for recording it and disposal of the case on its terms. The Conciliation Settlement Agreement is equivalent to Arbitral Award on agreed terms and as such, it is equivalent to decree of a civil court and is enforceable accordingly.

Legal Services Authorities Act, 1987

The main objectives of this Act are, *Firstly*, to provide legal aid to indigent and weaker sections of the society, as identified in Section 12⁹¹; *Secondly*, to hold *Lok Adalats* to resolve disputes in respect of cases pending before the courts or any matter in pre-litigation stage⁹²; *Thirdly*, to organise legal literacy, legal awareness camps and legal aid programmes to educate the poor, backward and weaker sections of the society about the legal rights guaranteed to them under various laws⁹³; and *Fourthly*, to establish Permanent Lok Adalats for resolving disputes in respect of any public utility services⁹⁴.

This Act provides for establishment of Legal Services Authorities at National⁹⁵, State⁹⁶, District⁹⁷ levels and Legal Services Committees at Centre⁹⁸, State⁹⁹ and Taluk¹⁰⁰ levels. These

⁹¹ Section 12: Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is- (a) a member of a Scheduled Caste or Scheduled Tribe; (b) a victim of trafficking in human beings or beggar as referred in article 23 of the Constitution; (c) a woman or a child; (d) a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996); (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or (f) an industrial workman; or (g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a Juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986, or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987; or (h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

⁹² Section 19 of Legal Services Authorities Act, 1987

⁹³ *Ibid* Sections 4, 7, 10 & 11B

⁹⁴ *Ibid* Section 22B

⁹⁵ *Ibid* Section 3

⁹⁶ *Ibid* Section 6

⁹⁷ *Ibid* Section 9

⁹⁸ *Ibid* Section 3A – Supreme Court Legal Service Committee

⁹⁹ *Ibid* Section 8A – High Court Legal Service Committee

¹⁰⁰ *Ibid* Section 11A – Taluk Legal Service Committee

authorities shall lay down principles, policies and schemes for providing legal services; organise legal aid camps, especially in rural areas, slums or labour colonies; encourage settlement of disputes by way of negotiations, arbitration, conciliation; promote research in field of legal services; develop programmes for clinical legal education; spread legal literacy and legal awareness; make efforts to enlist the support of voluntary social welfare institutions.¹⁰¹

Lok Adalat is one of the modes of Alternative Dispute Resolution (ADR), which is unique in India. The term *Lok-Adalat* is derived from two words “*Lok*” which means “People” and “*Adalat*” which means “Court”. The *Lok Adalat* system provides easy access to justice at free of cost, to indigent people who cannot afford to go to courts, by way of conciliation and settlement of the dispute, and is most suitable for family disputes.

According to Section 19(5) of the Act, a *Lok Adalat* has jurisdiction to determine and arrive at a compromise or settlement between the parties to a dispute in respect of: (i) any case pending before the Court for which *Lok Adalat* is organised; or (ii) any matter which is falling within the jurisdiction of such Court. Therefore, the parties even without approaching the court can directly approach the *Lok Adalat* for settlement of their dispute. Further, if the compromise or settlement is successful between the parties, the *Lok Adalat* makes an award which is final and binding on both the parties, and is equivalent to decree of the civil court.

Important Judicial Decisions:

The above statutory provisions reveal that the court at the first instance shall endeavour to settle matrimonial disputes through the process of conciliation. Here the word “shall endeavour” denotes that before awarding decree, the matrimonial court should compulsorily make an effort for conciliation and settlement of disputes by providing a congenial atmosphere to the parties. In a number of cases the High Courts remanded the verdicts of the Lower Courts for not making reasonable human efforts for conciliation and settlement.

In *Kivubai v. Ningappa*¹⁰², the learned judges of the Mysore High Court observed while the trial court has a duty to perform by making every endeavour to bring about a reconciliation in the parties under Sec. 23 (2) of Hindu Marriage Act, the matter does not affect the jurisdiction of the court. It was pointed out that if no endeavour had been made by the trial court, it would be a serious omission which has to be taken into account. In *Chhotelal v. Kamala Devi*¹⁰³, the Patna High Court observed that the law enjoins upon the court a duty to make a sincere effort at reconciliation before proceeding to deal with the case in the usual manner. The court also pointed out that even the advocates for the parties submit that it is not possible to have a reconciliation, still there is a duty on the court to make an endeavour for bringing about reconciliation. In *Raghunath Prasad v. Urmila*

¹⁰¹ *Supra* Note 119

¹⁰² AIR 1963 Mysore 3

¹⁰³ AIR 1967 Pat. 269

*Devi*¹⁰⁴, it was held that efforts at reconciliation are to be made by the court right from the start of the case and not only after the closure of the final hearing of the case but before the court proceed to grant relief under the provisions of law.

In *Sakri v. Chhanwarlal*¹⁰⁵ the Rajasthan High Court remanded a matrimonial dispute to the trial court with a direction to make effort at bringing about reconciliation. The court pointed out that, while making of an endeavour to bring about conciliation even at the beginning of the proceedings may be desirable, the requirement of the law will be amply satisfied if before the final stage of the case, namely the granting of relief the court makes such an endeavour. The words in the first instance only denotes that the court must make endeavour before granting relief. The effort has to be a reasonable human effort and must be made in every case which means all cases where a relief as contemplated by Section 23(1) has to be granted.

In *Sangeetha v. Suresh Kumar*¹⁰⁶, the Supreme Court felt the need of reconciliation in a dispute between the wife and the husband. In this case, a divorce petition was filed by the Respondent husband at Delhi and maintenance as well as criminal proceedings were initiated by the appellant wife at Baroda. A transfer petition was filed under Section 25 of the Civil Procedure Code, 1908 and during the pendency of the transfer petition, efforts were made for reconciliation. The court took note of Para-5 of the Counter Affidavit, wherein, it was stated that the Respondent husband was willing to withdraw the divorce petition in case the Petitioner wife was ready and willing to settle with him and restore marital life. The Court say a ray of hope in bringing reconciliation between the parties and suggested them to try and settle the dispute and bury their differences and start afresh their matrimonial life keeping in view the welfare and interest of their children. The Court adjourned the matter for some time to enable the parties to live together. The Court noted the feelings of the wife and husband. The parties assured the Court that all proceedings pending before them shall be withdrawn by them from the respective courts. The Court recorded their message and directed that the parties shall take appropriate steps to withdraw the pending cases from the respective courts within 3 weeks. The transfer petition was accordingly disposed of and consigned to records.

- **MEDIATION:** Mediation is an informal and non adversarial process in which a neutral third person encourages and facilitates disputing parties to reach a mutually acceptable and voluntary agreement. The Mediation rules framed by the Supreme Court of India and the various High Courts govern the process of Mediation in India. The process is a structured negotiation process. An impartial third party assists the parties to dispute to arrive at solutions for their problems.

¹⁰⁴ AIR 1973 All. 203

¹⁰⁵ AIR 1975 Raj. 134

¹⁰⁶ JT 2000 (8) SC 521

Merits of Mediation

- * **Complete Control** : The Parties to the dispute have complete control over their dispute and its outcome. No external agency or third party is required to control and guide the parties.
- * **Comparatively less stressful**: the mediation is comparatively less stressful than the arbitration and litigation process. Here the parties come together amicably as friends and they try to resolve their disputes.
- * **Intact relationship between the parties**: the relationship existing between the parties remains intact and there is no rupture and disruption of the friendly ties between them. In fact mediation is commonly resorted in family disputes, disputes between partners in a firm, etc. where preserving of the tie or relationship is highly important.
- * **Confidentiality of the proceedings**: Similar to arbitration, the confidentiality between the parties is maintained and it is not open to the general public or people who are not concerned with the dispute.
- * **Quick resolution of disputes**: the disputes can be resolved very quickly through mediation. One or two sittings are enough if the parties are willing to resolve their disputes.

Demerits of Mediation

- * **Inconclusive Settlement**: Since the decision is at the discretion of the parties, there is every possibility that a settlement between the parties may not arise.
- * **Lack of support**: There is no support of judicial authority in the conduct of mediation proceedings. Due to which the nature of mediation may itself become less serious.
- * **Absence of formality**: Since they are not based on any legal framework or legal footing there is complete absence of formality in mediation proceedings. It is highly informal.
- * **Either Party Can Withdraw**: either party can withdraw from the proceedings at any time. In litigation, the only party that can withdraw is the plaintiff, if they drop the suit. This means that even the party that is 'at fault,' can withdraw if they are not happy with where the mediation process is headed.
- **LOK-ADALAT**: Lok Adalat means "People's Court". The Lok Adalat is an institution constituted under the Legal Services Authority Act, 1987. Lok Adalat has the powers of the Civil Court like summoning and examining the witnesses. It can resolve all matters except the criminal cases that are non-compoundable. If the compromise/settlement is reached between the parties, an award is made by the Lok Adalat, which is binding on the parties and equivalent to Decree of Court,

but the same is non-appealable. All the proceedings of a Lok Adalat are deemed to be judicial proceedings and every Lok Adalat is deemed to be a Civil Court.

- **NEGOTIATION:** Negotiation is any form of voluntary communication between two or more people, for the purpose of arriving at a mutually acceptable agreement. It is a method of dispute resolution whereby a dispute between two individuals or groups is settled amicably by an impartial third person called as a negotiator, using different techniques. In a negotiation, the disputants may represent themselves or may be represented by a negotiating agent or agents. The negotiator, in this form of resolution, uses various communication methods to bring the parties of the dispute to a settlement. It is a non-binding process and the parties are in full control of the process, with object of arriving at a negotiated settlement of dispute. The primary aim of this type of dispute resolution is to reach an agreement that is fair and acceptable by the parties. The parties engage in the dispute with each other until they reach a desirable outcome for all involved.

Merits of Negotiation

- * **Flexibility:** It is the most flexible form of dispute resolution as it consists only the interested parties and their representatives. The parties are free to shape the remedies suitable for them which increases the chances of resolution of the dispute between them.
- * **More chances of success:** the chances of the parties resolving their disputes are highest in negotiation. The parties, by focusing on their mutual needs and interests and the use of mechanisms such as objective standards, there is a greater chance of reaching an agreement that meets the needs of the parties. This is sometimes referred to as a “win-win” approach.
- * **No need for third party:** there is no need for the presence of the third party to facilitate negotiation. It can be done by the parties by themselves. This assumes importance in the circumstances where none of the parties want to involve the outside parties in the process.
- * **Binding nature of agreement:** the outcome of the negotiation agreement binds only the parties who were involved in the negotiation.

Demerits of Negotiation

- * **Unequal bargaining power:** In certain cases the parties may be of unequal power and the weaker party(ies) may be placed at a disadvantage. Where a party with an interest in the matter in dispute is excluded or inadequately represented in the negotiations, the agreement's value is diminished, thereby making it subject to future challenge.
- * **Absence of third party:** The absence of a neutral third party can result in parties being unable to reach agreement as they may be incapable of defining the issues in hand, let alone making any progress towards a solution.

* **Non amenable issues:** Some issues or questions are simply not amenable to negotiation. There will be virtually no chance of an agreement where the parties are divided by opposing ideologies or beliefs which leave little or no room for mutual concessions and there is no willingness to make any such concessions.

Mediation and Conciliation both are voluntary processes where a neutral third person tries to bring about a settlement between the parties, the proceedings are confidential and the decision making power is with the parties and not the neutral, and in practice there is not much of difference in application of the process. The Supreme Court in the *Afcons* case of has also opined that, the term ‘mediation’ is a synonym of ‘conciliation’ as per the Black’s Law Dictionary. In India, United Kingdom, and UNCITRAL Model Law, mediator plays a facilitative role, but the conciliator plays a pro-active, interventionist role. But, in USA the mediator has a greater pro-active role and conciliator is a mere facilitator. In fact, the term ‘conciliation’ was in vogue before the 1980s and later the term ‘mediation’ is being used more often. In India the term ‘mediation’ has been used in the Arbitration and Conciliation Act, 1996 and in the Section 89 of C.P.C. after the 1999 amendment. It should also be understood that, all the advantages of Conciliation are available to Mediation, and apart from that a conciliation settlement agreement is by itself executable as a decree of the court under the Arbitration and Conciliation Act, 2015. Therefore, Conciliation and Mediation are suitable methods for resolving family disputes.

COMPARISION BETWEEN DIFFERENT ADR MECHANISMS

FEATURES	Arbitration	Mediation	Conciliation	Negotiation
Neutral Third Party	Presence of Adjudicator	Presence of Facilitator	Presence of Facilitator or Evaluator	No third party is present or required but it can be done with the help of facilitator
Nature of the Proceeding	Legally Binding	Not Legally binding	Not Legally binding	Not Legally binding
Level of Formality	Formal	Informal	Informal	Informal
Level of Confidentiality	Confidentiality as determined by law	Confidentiality based on trust	Confidentiality as determined by law	Confidentiality based on trust
Legal Framework (In India)	The Arbitration and Conciliation Act, 1996.	Section 89 of the Code of Civil Procedure, 1908. Mediation Rules, 2015 by Supreme Court of India	The Arbitration and Conciliation Act, 1996.	No legal framework, as per the accord of the parties

In order to have control over the process, choice of outcome, protect relationships, save time and money, parties prefer to settle their disputes out of court, through consensual process of Conciliation. Conciliation is a voluntary, flexible, confidential, and interest based process, which provides for amicable settlement of dispute by an impartial, independent third party. Conciliation is most suitable for settlement of family disputes as it provides party autonomy, confidentiality and protects the relationships between the parties.

However, the ADR processes cannot be applied to resolve disputes relating to non-compoundable criminal offences; matrimonial disputes relating to divorce, judicial separation or restitution of conjugal rights; guardianship and testamentary matters; insolvency and winding up matters; eviction or tenancy matters; constitutional matters and matters involving the interest of a minor. Further, ADR may not be suitable when the parties are not on equal footing and the weaker party may require protection of the court.

Glossary:

1. *Arbitrator* - an independent person or body officially appointed to settle a dispute.
2. *Conciliator* - a person who acts as a mediator between two disputing people or groups.
3. *Judicial Dispute Resolution* - judicial act performed by Courts, touching the rights of parties and property brought before it by notice or process and on whose claims some decision has to be rendered.

Frequently Asked Questions:

Objective Type

1. ADR is the abbreviated form of _____.
2. JDR stands for _____.
3. In arbitration proceedings the award is passed by an _____.
4. In matrimonial disputes the best suited method of ADR is _____.
5. The arbitration and conciliation in India is dealt by _____ Act.
6. The civil courts in follow the procedure as laid down by _____.
7. _____ most informal method of alternative dispute resolution.
8. The award passed by arbitrator is _____ upon the parties to dispute.

9. _____ constituted under the Legal Services Authorities Act, 1987 deals with alternative dispute resolution.
10. Lok Adalat can resolve any dispute except _____ & _____.

Subjective Type

1. Write an essay on the judicial dispute resolution highlighting the merits and demerits of JDR.
2. Compare and contrast between various alternative dispute resolution systems.
3. Write in detail about the benefits of ADR over JDR.

Suggested Readings:

1. Madabhushi Sridhar, *Alternative Dispute Resolution, Negotiation and Mediation*, Lexis Nexis and Butterworths (2006).
2. Sriram Panchu, *Mediation Practice and Law*, Lexis Nexis and Butterworths (2015).
3. O.P. Malhotra, *The Law and Practice Arbitration and Conciliation* (LexisNexis 2006).
4. Indu Dave, *Basic Essentials of Counselling*, Sterling Publishing Co.
5. A. Krishnan (ed), R.S. Bachawat's Law of Arbitration and Conciliation (Vol. 1 & 2 5th Edn, LexisNexis, Wadhwa 2009).

MODULE – III

FAMILY DISPUTES AND ADR METHODS

Structure of Module:

1. ADR Methods under legal rules
2. The Family Courts Act, 1984
3. The Hindu Marriage Act, 1955
4. The Protection of Women from Domestic Violence Act, 2005
5. The Code of Civil Procedure, 1908.
6. The Legal Services Authorities Act, 1987 & Lok Adalats

OVERVIEW:

In this module the students will learn about the alternative dispute resolution methods such as arbitration and conciliation within the legal framework of the Family Courts Act, 1984; The Hindu Marriage Act, 1955; The Protection of Women from Domestic Violence Act, 2005; The Code of Civil Procedure, 1908; The Legal Services Authorities Act, 1987. The module will analyze in details about the specific provisions in these laws pertaining to conciliation and arbitration.

ADR METHODS UNDER LEGAL RULES

The ADR methods such as the arbitration, mediation, conciliation and negotiation has received wide popularity among the people, law makers, members of judiciary and also the members of bar due to the inexpensive and speedy remedy provided by such methods. The ADR methods in India had received legal recognition from the Parliament. The principal legislation dealing with the arbitration and conciliation is the Arbitration and Conciliation Act of 1996. However, there are other legislations which take into purview the ADR methods and provide for venue for resorting to ADR methods in the course of administration of justice. Some of the legislations dealing with the ADR are as follows:

- The Family Courts Act, 1984
- The Hindu Marriage Act, 1955
- The Protection of Women from Domestic Violence Act, 2005
- The Code of Civil Procedure, 1908.
- The Legal Services Authorities Act, 1987

THE FAMILY COURTS ACT, 1984

When the litigation is with regard to any matter concerning family such as divorce, maintenance, custody of children, financial support, etc. the same should not be viewed in terms like

who failed to prove his rights and who succeeded to prove his rights. The pedantic approach and application of law in family disputes often results in absurd results because we must remember that when we are dealing with the family we are talking about social problem. Family is an institution where all the human considerations play a vital role and there is a strong presence of human values, ethics, morals, etc. in such setting the adversarial process followed by the court of law need to be modified in order to suit the family settings. The formal and strict procedural requirements must be relaxed in the settlement of family disputes and there should be an informal and less technical procedure to deal with the family disputes or issues. The adjudication of family disputes stand on all together a different footing. A different jurisprudence must be followed by the courts of law in order to encourage resolution of family disputes in an amicable manner with the least amount of confrontation. The courts dealing with the family issues are under a duty to protect and preserve the institution of family. In such a setting the adversarial system is not at all suitable as it avoids any scope of reconciliation and mediation between the parties mostly spouses and parents. The court engaged in family problems requires a less formal and more active investigations and inquisitorial procedure. In other words, it is not a litigation, in which parties and their counsel are engaged in winning or defeating a legal action, but an inquisition in which parties, social workers, lawyers, welfare officers, and councillors are engaged in finding out a solution to family problems. Providing punishment for the wrong-doer and reward for the wronged party does little good to the party in the relationship of family as one person has considerable influence over the other.

The basic purpose of the Family Courts as embodied in the preamble to the Family Courts Act is: To promote conciliation in, and secure, speedy settlement of disputes relating to marriage and family affairs and matters connected therewith.

The Family Courts Act, 1984 was enacted to establish family court for promoting the conciliation and to secure speedy settlement between the parties to the family disputes. The rationale for setting up of different set of courts i.e., family courts is as follows:

1. For the preservation of the institution of marriage whenever practicable and to prevent the break up of families due to matrimonial disputes and if any dispute arises, for the quick resolution of the same.
2. Speedy settlement of family disputes with due regard to the sentiments of the parties involved.
3. Conciliation, counselling and individualised treatment based on case study approach with expertise from law, medicine, psychiatry and social work are put together for handling family conflicts.

4. To ensure fair trial in the family cases which may not happen so in the regular procedure followed by the courts. The statement of objects and reasons clearly state that the family courts are established to:
- a) Provide for establishment of Family Courts by the State Governments,
 - b) Make it obligatory on the State Governments to set up a Family Court in every city or town with a population exceeding one million,
 - c) Enable the State Governments to set up such courts in areas other than those specified in (b) above,
 - d) Exclusively provide within the jurisdiction of the Family Courts the matters relating to:
 - i. Matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, or declaration as to the validity of a marriage or as to the matrimonial status of any person,
 - ii. The property of the spouses or either of them,
 - iii. Declaration as to the legitimacy of any person,
 - iv. Guardianship of a person or the custody of any minor,
 - v. Proceedings under Chapter IX of the Code of Criminal Procedure. (relating to order for maintenance of wife, children or parents)
 - vi. Make it obligatory on the part of the Family Court to endeavour, in the first instance to effect reconciliation or a settlement between the parties to a family dispute. During this stage, the proceedings will be informal and the rigid rules of procedure need not apply.
 - e) Provide for the association of social welfare agencies, counsellors, etc., During conciliation stage and also to secure the services of medical and welfare experts,
 - f) Provide that the parties to a dispute before a Family Court shall not be entitled, as of right, to be represented by a legal practitioner. However, the Court may, in the interest of justice, seek assistance of a legal expert as *amicus curiae*,
 - g) Simplify the rules of evidence and procedures so as to enable a Family Court to deal effectually with a dispute,
 - h) Provide for only one right of appeal which shall lie to the High Court.

Thus, the Family Court Act encouraged and empowered various state governments to set up Family Courts in all cities with a population of over one million people. The Department of Justice is the nodal department concerned with the administration of the Act.

Section 3 of the Family Courts Act, 1984, deals with the establishment of family courts. The following statements of the Act provide the brief details of the establishment of family courts:

1. For the purpose of exercising the jurisdiction and powers conferred on a family court by this Act, the State Government, after consultation with the High Courts, and by notification.
 - a. Shall, as soon as may be after the commencement of this Act, establish in any area in the state comprising city or town where the population exceeds one million, a family court.
 - b. May establish family courts for such other areas in the state as it may deem necessary.
2. The state government shall, after consultation with the High Court, specify, by notification, the total limits of the area to which the jurisdiction of the family court shall extend and may, at any time, increase, reduce or alter such limits.

Functioning of Family Courts:

A. Appointment of Judges: Section 4 of the Family Courts Act contains provisions for the appointment and functions of judges, their qualifications, designation, age limit, the powers of the central government to frame rules regarding selection of judges, service conditions etc. The Act provides that only persons committed to the need to protect and preserve the institution of marriage should be appointed as judges.

B. Jurisdiction of Family Courts: Section 7 (1) & (2) explanation of the Family Courts Act of 1984 describes the kind of disputes over which the family court has jurisdiction. It is “Subject to the other provisions of this Act, a family court shall:

1. have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and
2. be deemed, for the purpose of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate civil courts in the area to which the jurisdiction of family court extends.

The suits and proceedings referred to in this Subsection are suits and proceedings of the following nature, namely:-

- (a) suits or proceedings between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;
- (b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;
- (c) a suit or proceeding between the parties to a marriage with respect of the property of the parties or of either of them;
- (d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship,
- (e) a suit or proceeding for a declaration as to the legitimacy of any person;
- (f) a suit or proceedings for maintenance;
- (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

2. Subject to the other provisions of the Act, the family court shall also have and exercise-

- (a) the jurisdiction exercisable by a magistrate of the First Class under Chapter IX (relating to the order for maintenance of wife, children and parents) of the code of criminal procedure, 1973 (2 of 1974); and
- (b) such other jurisdiction as may be conferred on it by any other enactment.

C. Conciliation and Counselling in Family Court: Under the Family Courts Act, counsellors are expected to carry out the conciliation process. The counsellors, guided by the principles of objectivity, fairness and justice should assist the parties in an independent and impartial manner to arrive at an amicable settlement, considering the rights and obligation of the parties. The counsellors are supposed to make proposals for a settlement of disputes, based on the preference made by the parties. They offer a range of choice for resolving the disputes. The conciliator is supposed to act in an independent and impartial manner while facilitating an amicable settlement between the parties, he/she is to observe objectivity, fairness and justice and has to give due consideration to the right and the obligation of both parties.

Conciliation and counselling are the special and unique features of the Family Courts Acts, 1984. The Family Court Act prescribes conciliation with the dominant purpose of 'preserving the institution of marriage' and 'promoting the welfare of children'. Section 6 (1) merely state that "the

State Government shall, in consultation with the High Court determine the number and categories of counsellors, officers and other employees required to assist a family Court in the discharge of its functions and provide the family court with such counsellors, officers and other employees as it may think fit". The Family Court Act does not provide for institutionalised conciliations either in the public sector or in the private sector.

D. General Procedure: The procedure prescribed under Section 10 of the Family Court Act deals with general procedure and powers of the family court. The State High Courts, Central and State Governments are conferred with powers to frame rules for proper functioning of the family courts to achieve the objectives of the Act.

For the purpose of dealing the matters, the family court act as civil courts and can apply the procedure laid down in the Civil Procedure Code and any other related law in addition to the rules framed by the High Courts, Central and State Governments. So also the provisions of Cr.P.C are made applicable to the family court in regard to matters relating to maintenance of wife, children and parents. For this purpose the family court will exercise jurisdiction of the first class magistrate. The family court can also lay down its own procedure to facilitate proper and speedy settlement of disputes.

The disputes can be briefly stated and can be substantiated during the course of discussions. The statements of the parties concerned need not be recorded in writing in advance. It is sufficient to record them in brief. Formal evidence can be briefly recorded through an affidavit. These procedures are at variance with the practices generally followed in other courts. The decisions arrived through conciliation or on the basis of interim orders issued by the family court are not subject to appeal or revision. Appeals against the decisions of the family court can be made on merit to the High Court; appeals so made are heard by a bench of at least two High Court Judges.

E. Right to Legal Representation: Section 13 of the Family Courts Act of 1984 dispense with the service of the lawyer. The Act makes it clear that "notwithstanding anything contained in any law, no party to a suit or proceedings before a family court shall be entitled, as of right to be represented by a legal practitioner; It provided that if the family court considered it necessary in the interest of justice, it may seek the assistance of a legal expert as *amicus curiae*.

F. Support or Auxiliary Service: The prime objective of support service is to help parties at reconciliation and conciliation, and to lessen an adversarial atmosphere. No family court system can proceed without well-organized support services. The Family Court Act visualises some support service. Section 5 of the Act stipulates for the association with the court proceedings of institutions or organisations engaged in the social welfare of persons professionally engaged in promoting the welfare of the family of persons working in the field of social welfare or any other expert in family law matters. Section 6 of the Act also stipulates for the appointment of counsellors, officers and other

employees necessary for the functioning of the family court system. The family court Act Section 12 also secures the service of a medical expert or such other persons who specialize in promoting the welfare of the family and to assist in the discharge of its functions.

THE HINDU MARRIAGE ACT, 1955

Under the amended Hindu Marriage Act (HMA), the approach of the courts in matters relating to family and marriage is different from that of the other ordinary civil disputes. The amendment of HMA in 1976 provided for many significant changes in the procedure like provisions for in-camera proceedings, if desired by the parties, a prohibition on publication of family proceedings except the judgement of the High Court or the Supreme Court printed or published with the previous permission of the court, day-to-day hearing of marriage disputes, fixing of six months period for conclusion of proceedings, etc. Another very significant amendment was addition of Section 23(2) to the Act. This sub-Section states that before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case, to make every endeavour to bring about reconciliation between the parties except in case of proceedings where relief is sought on any of the grounds specified in clauses (ii), (iii), (iv), (v), (vi) and (vii) of sub-Section (1) of Section 13.

A Hindu marriage is not contractual but sacrosanct, it is not easy to create such ties but more difficult to break them. A judge is required to actively stimulate rapprochement process. Section 23(2) is salutary provision exhibiting the intention of the Parliament requiring the court in the first instance to make every endeavour to bring about reconciliation between the parties. The approach of court in matrimonial matters is required to be much more constructive, affirmative and productive rather than abstract, theoretical or doctrinaire. Matrimonial matters must be considered by the courts with human angle and sensitivity. Sub-Section (3) makes a provision empowering the court on the request of the parties or if the court thinks it just and proper for the purpose of reconciliation to adjourn the proceedings for a reasonable period, not exceeding 15 days. The court is also given power to refer the matter to any person named by the parties, or even to nominate a person if the parties fail to name any person and to give directions to report to the court. When a report is submitted, the court shall have due regard to it while disposing of the proceedings. The restriction placed on the court while adjourning the case for the purpose of reconciliation only to a period not exceeding 15 days is in consonance with the policy of speedy disposal, as contained in Section 21 B which was added in 1976.

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Protection of Women under Domestic Violence Act, 2005 came into force from 26 October 2006. It is a very comprehensive and promising legislation that combines civil remedies with criminal procedures to ensure effective protection and immediate relief to victims of violence of any kind

occurring within the family, The definition of 'domestic violence' is in consonance with the UN Model Legislation on Domestic Violence. The aggrieved can seek protection against any physical, sexual, verbal and emotional abuse or economic abuses. This law for the first time recognizes a women's right to a violence free home. Under the Act, the right to reside in the matrimonial home/shared household was seen as a major breakthrough in women's rights in India. She cannot be evicted from the shared household and if evicted can seek immediate relief, seek a protection order, monetary compensation, residency order, custody order, free legal services, medical aid and counseling with the help of the Protection Officer or Service Provider. The Act envisages appointment of domestic violence Protection Officers by the State Governments in every district and encourages the participation of voluntary associations as Service Providers. The Ministry of Women and Child Development, the National Commission for Women and the non-governmental organizations have also taken initiatives to propagate the remedies available in this Act to the affected women by organizing awareness campaigns/seminars/ workshops and sensitizing the enforcement agencies.

Salient features of the Act are as follows:

1. It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage, a relationship in the nature of marriage, or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to the protection under the proposed legislation. However, whereas the Act enables the wife or the female living in a relationship in the nature of marriage to file a complaint against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner;
2. It defines "domestic violence" to include actual abuse or the threat of abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition;
3. It confers on the aggrieved woman the right to reside in a shared household, whether or not she has any title or rights in the same. In fact, a respondent, not being a female, can be directed under the Act to remove himself from the shared household or to secure for the aggrieved woman the same level of alternate accommodation as enjoyed by her in the shared household or to pay rent for the same;
4. The orders for relief the aggrieved woman is entitled to under the Act include protection orders, residence orders, monetary relief, custody orders and compensation orders;

5. It empowers the Magistrate to pass protection order in favour of the abused to prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the abused, attempting to communicate with the abused, isolating any assets used by both the parties and causing violence to the abused, her relatives or others who provide her assistance against the domestic violence;
6. It provides for appointment of Protection Officers and recognizes and involves nongovernmental organisations as service providers for providing assistance to the abused with respect to her medical examination, obtaining legal aid, safe shelter.

THE CODE OF CIVIL PROCEDURE, 1908

The court can refer the parties to ADR process for settlement of their disputes as per the procedure laid down U/s. 89 and Order X Rule-1A of the Civil Procedure Code (CPC). Section 89 C.P.C. and the corresponding Rules were inserted by Act No. 46 of 1999 (w.e.f. 1.7.2002). The section embodies the legislative mandate to the court to refer sub judice disputes to various ADR mechanisms enunciated therein where it finds it appropriate to do so, in order to enable the parties to finally resolve their pending cases through well established dispute resolution methods other than litigation. Section 89 CPC has therefore recognized the need and importance of ADR even at the post litigation stage.

89. Settlement of disputes outside the Court - (1) Where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may re-formulate the terms of a possible settlement and refer the same for-

- (a) arbitration;
- (b) conciliation;
- (c) judicial settlement including settlement through Lok Adalat; or
- (d) mediation.

(2) Where a dispute has been referred-

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

Thus, the court can refer the parties to arbitration, conciliation, mediation, lok adalat or judicial settlement in terms of section 89 of the Code of Civil Procedure, 1908 for resolution of their disputes at the post litigative stage.

The Law Commission of India had recommended the introduction of the conciliation court system and had underlined the importance of conciliation/ mediation as a mode of ADR. The Malimath Committee had also advocated the need of an amendment in law for introduction of ADR mechanisms. On the recommendations 5 of the Law Commission of India and the Malimath Committee the Code of Civil Procedure (Amendment) Bill was initiated in 1997.

Section 89 CPC makes it obligatory for the courts to explore the possibility of resolution of the dispute by making reference to one of the several ADR mechanisms provided therein. However the pre condition for referring the matter is satisfaction of the court that there exist elements of settlement. The court has to form an opinion that a case is one that is capable of being referred to and settled through any of the ADR processes. Simultaneously Order X Rule 1A CPC mandates that the court to direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89 CPC and on the option of the parties, the court has to fix the date of appearance before such forum or authority as may be opted by the parties.

The provisions when harmoniously construed indicate that the need of the having a hearing after completion of pleadings, to consider recourse to ADR process under section 89 CPC is mandatory. But actual reference to an ADR process in all cases is not mandatory. Where the case is unsuited for reference to any of the ADR process, the court will have to briefly record the reasons for not resorting to any of the settlement procedures prescribed under section 89 CPC. In other cases reference to ADR is mandatory. The court need not elaborate the terms of the proposed settlement nor is there any requirement to give detailed reasons for arriving at the conclusion regarding the existence of elements of settlement and the court may describe very briefly the nature of the dispute and the existence of the elements of settlement in three or four lines. However, a duty is cast upon the court to consider whether it is possible to refer the parties for a settlement.

During the course of legal proceedings after recording the admissions and denials, the court has to direct the parties to suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89 CPC by mutual consent and on the option of the parties, the court has to

fix the date of appearance before such forum or authority as may be opted by the parties. If the parties are not able to opt for a particular mode of ADR provided in section 89 CPC then the court has to refer the matter itself to a suitable ADR mechanism in terms of section 89 CPC except for arbitration and conciliation which require express consent of the parties. In this respect section 89 CPC has introduced the concept of mandatory ADR. Thereafter the parties are supposed to appear before such forum or authority for settlement of the case. However if the matter is not settled the matter is again referred back to the court. If the matter is settled the settlement is recorded by the court and the matter is disposed of. Where the court refers the parties to the suit to anyone of the mode of settlement of dispute referred to in section 89 CPC and the matter is settled and disposed of the plaintiff is entitled for refund of court fees. Even if the matter is settled in appeal the appellant is entitled to refund of court fees.

THE LEGAL SERVICES AUTHORITIES ACT, 1987 & LOK ADALATS

The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to provide free Legal Services to the weaker sections of the society and to organize Lok Adalats for amicable settlement of disputes. In order to achieve the objectives enshrined in the National Legal Services Scheme Justice J.N. Bhatt has suggested Ten Commandments¹⁰⁷, which are as follows:

- i. To provide and create for effective and efficient well-structured, comprehensive and cohesive, legal service programmes and projects, which will help prompt distributive justice. Legal aid in its scope and ambit must contain both preventive and protective measures. Legal Aid should be adopted as such, as people's movement for speedy and inexpensive justice, at all levels.
- ii. Legal Service Authorities and Committees under the Act must be sufficiently funded by the State. They must also receive adequate support and ample assistance from the civil services. It should also, be liberally assisted by the Bench and Bar. It should also be helped, generously by Non-Governmental Organizations (NGOs).
- iii. Legal service personnel should strictly comply with and employ the means —cum - merit criteria for avoiding likely misuse of legal service system. Rights and duties are interdependable and inseparable. Rights flow from duties and duties confer rights. If all simply insist on rights and not duties there shall be no effective legal service and social order and justice.
- iv. Appointment of Legal Aid Advocates must be on the criteria of competence, character, commitment and credentials.

¹⁰⁷ Justice. Bhatt J.N," Ten Commandments of effective legal services ,Nyaya Deep" ,Vol.II , Issue 3 (1999)19.

- v. Appointment of "Legal Aid Counsel" in all Courts of Magistrates so as to ensure that no person in custody feels handicapped in his defence. Dedicated approach to legal aid by the judiciary and legal fraternity is not only equally important but is imperative.
- vi. Aspect of "Permanent Lok Adalat" must be well planned. It should be functioning in all districts in the country, phase-wise and subsequently should be subject to review and assessment periodically.
- vii. Well structured and effective planning for efficient publicity campaign for creating awareness of objects of provisions of Legal Services Authorities Act to the subjects and to educate persons concerned for which multifaceted and dimensional legal literacy campaign on large scale must be evolved and executed.
- viii. Item of legal services should be a planned item in the budget so as to ensure national legality in the plan of national development. It is not only expedient but obligatory in our country which is wedded to the welfare state policy and more so when more than majority are handicapped by poverty and illiteracy and also social inequalities.
- ix. Legal Service is not a charity nor a grace but a constitutional mandate and state members of Bar and Bench as well as other concerned legal aid functionaries, service-oriented clubs and organizations should strive and ensure that this solemn pledge is observed with letter and spirit.
- x. Legal fraternity must respond with juristic sensitivity to the voice of weak, meek, poor, suppressed and exploited women, destitute children. Bar is really, backbone of legal service to complete the constitutional obligations and obtain statutory rights of millions of handicapped needy and deserving people. The scheme of family counsellor in each District to begin with if not in each court will help to solve and settle many disputes of family, dispute between spouses etc.

The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to monitor and evaluate implementation of legal aid programmes and to lay down policies and principles for making legal services available under the Act. In every State, a State Legal Services Authority and in every High Court, a High Court Legal Services Committee have been constituted. District Legal Services Authorities, Taluk Legal Services Committees have been constituted in the Districts and most of the Taluks to give effect to the policies and directions of the NALSA and to provide free legal services to the people and conduct Lok Adalats in the State. Supreme Court Legal Services Committee has been constituted to administer and implement the legal services programme insofar as it relates to the Supreme Court of India.

Functioning of NALSA it lays down policies, principles, guidelines and frames effective and economical schemes for the State Legal Services Authorities to implement the Legal Services Programmes throughout the country. Primarily, the State Legal Services Authorities, District Legal

Services Authorities, Taluk Legal Services Committees, etc. have been asked to discharge the following main functions on regular basis:

- i. To Provide Free and Competent Legal Services to the eligible persons;
- ii. To organize Lok Adalats for amicable settlement of disputes and
- iii. To organize legal awareness camps in the rural areas.

Free Legal Services

The Free Legal Services include:-

- a) Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings;
- b) Providing service of lawyers in legal proceedings;
- c) Obtaining and supply of certified copies of orders and other documents in legal proceedings.
- d) Preparation of appeal, paper book including printing and translation of documents in legal proceedings.

Persons eligible for getting free legal services include:-

- i) Women and children;
- ii) Members of SC/ST
- iii) Industrial workmen
- iv) Victims of mass disaster, violence, flood, drought, earthquake, industrial disaster.
- v) Disabled persons.
- vi) Persons in custody
- vii) Persons whose annual income does not exceed Rs. 1 lakh (in the Supreme Court Legal Services Committee the limit is Rs. 1,25,000/-).
- viii) Victims of Trafficking in Human beings or begar

LOK ADALATS

Lok Adalat is one of the Alternative Disputes Resolution Mechanisms. It is a forum where the disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably. The Lok Adalat has been given statutory status under the Legal Services Authorities Act, 1987. Under this Act, an award made by a Lok Adalat is deemed to be a decree of a civil court and is final and binding on all parties and no appeal lies against thereto before any court.

(a) Lok Adalats are being organized by the Legal Services Authorities/Committees for settlement of cases pending before courts u/s 19 of the Legal Services Authorities Act, 1987 and also for matters at pre-Litigative stage, under the guidance of NALSA.

(b) Chapter VI-A has been inserted in the Legal Services Authorities Act, 1987 in the year 2002, with a view to provide compulsory pre-Litigative mechanism for conciliation and settlement of disputes relating to 'Public Utility Services'.

The Lok Adalats are organized by State Legal Services Authorities / Supreme Court Legal Services Committee/ High Court Legal Services Committees/ District Legal Services Authorities and Taluk Legal Services Committees, regularly all over the country either on a daily, fortnightly or monthly basis in addition to the National and Mega Lok Adalats.

Lok Adalat has the jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of any case pending before; or any matter which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organized.

The Lok Adalat is usually presided over by a sitting or retired judicial official as the chairman with two other members, a lawyer and a social worker. It has been observed through experience that cases involving monetary disputes are easily settled through Lok Adalats. Therefore, most motor road accident disputes are brought to Lok Adalats. The primary condition of the Lok Adalat is that both parties in dispute should consent to the settlement. It is necessary that the parties involved in the dispute are whole-heartedly involved in the justice dispensing system and do abide by the decision given by the Lok Adalat.

There is no court fee. If the case is already filed in the regular court, the fee paid will be refunded if the dispute is settled at the Lok Adalat. The procedural laws and the Evidence Act are not strictly followed while assessing the merits of the claim presented to the Lok Adalat. The decision of the court is binding on the parties to the dispute and its order is capable of execution through legal process. No appeal lies against the decision of the court. Lok Adalat is very effective in the settlement of money claims. Disputes like partition suits, damages and matrimonial cases can also be easily settled before Lok Adalat as the scope for compromise through an approach of give and take is high in these cases. Lok Adalat is indeed a boon to the litigant public, where they can get their disputes settled fast and free of cost.

Powers of Lok Adalat: The Powers bestowed on Lok Adalats are as follows:

1. It has the power of the Civil Court, under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters:-
2. Power to summon and enforce the attendance of any witness and to examine him/her on oath.

3. Power to enforce the discovery and production of any document.
4. Power to receive evidence on affidavits,
5. Power for requisitioning of any public record or document or copy thereof or from any court.
6. Such other matters as may be prescribed.
7. Every Lok Adalat shall have the power to specify its own procedure for the determination of any dispute coming before it.
8. All proceedings before a Lok Adalat shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of IPC.
9. Every Lok Adalat shall be deemed to be a Civil Court for the purpose of Sec 195 and Chapter XXVI of Cr.P.C.

Glossary:

1. *Domestic Violence* - violence or other abuse by one person against another in a domestic setting, such as in marriage or cohabitation.
2. *Family Courts* – Exclusive courts established under the Family Courts Act, 1984 to deal with family and matrimonial disputes.
3. *Counselling* - the provision of professional assistance and guidance in resolving personal or psychological problems.

Frequently Asked Questions:

Objective Type

1. The Family Courts are constituted under _____.
2. The aim of the family court is to protect and preserve the _____.
3. Section 13 of the Family Courts Act, 1984 dispenses with _____.
4. Section _____ of the Hindu Marriage Act, 1955 talks about every endeavour to be made to bring conciliation between the parties.
5. Section _____ of the Code of Civil Procedure, 1908 speaks about the settlement of disputes outside the court.
6. NALSA stands for _____.
7. The award passed by the Lok Adalat is not _____.

Subjective Type

1. Write an essay on settlement of disputes outside the court as mentioned under Section 89 of the Code of Civil Procedure, 1908.
2. Write a note on the Family Courts and the procedure followed by them.
3. What do you mean by dispute and explain the dynamics of a dispute.
4. Explain in detail about the Legal Services Authorities Act, 1987 and the Lok Adalats.

Suggested Readings:

1. Amendment of Section 89 of the Code of Civil Procedure, 1908 and allied provisions, Report No. 238 by P.V. Reddy J, Judge Supreme Court of India, Govt. of India, Law Commission of India.
2. C.K. Takwani: *Civil Procedure*, Eastern Book Co., Lucknow.
3. N.K. Acharya: *Protection of Women from Domestic Violence Act*, Asia Law House.
4. O.P. Tiwari: *The Arbitration and Conciliation Act*, Allahabad Law Agency.
5. Shriniwas Gupta & Dr. Preeti Misra: *Marriage Laws & Family Courts Act*, Asia Law House.

MODULE – IV

SIMULATION EXERCISES

Structure of Module:

1. Classroom Exercises
 2. Report Writing
-

OVERVIEW:

This module involves practical training to the students with the help of the simulation exercises. The module will acquaint the students with the conduct of the civil proceedings before the family courts on issues like dissolution of marriage, adoption, child custody, maintenance, etc. further it will enable the students to write a report based upon the holistic findings and reasoning.

Simulation Exercise Problem No. 1

Mr. Raghava Rao was a retired civil servant, during his extremely illustrious career he acquired few immovable properties through his hard earned income. The said immovable properties include their dwelling house situated at Road No. 1 Jubilee Hills (worth Rs. 2 Crores), Hyderabad; their farmhouse at Ananthagiri Hills (worth Rs. 75 Lakhs) in Vikarabad District; their old house at Basheer Bagh (worth Rs. 1 Crore), Hyderabad. The said Mr. Raghava Rao during his life time wanted to execute a will in favour of his legal heirs but unfortunately he died of sudden cardiac arrest in the year 2018.

Mr. Raghava Rao is survived by his wife (Smt. Rajamani), three children i.e., two sons Mr. Surya Prakash (Businessmen) and Mr. Chandra Prakash (Doctor) and one daughter Mrs. Jyothika, who was married to one Mr. Ramesh Kumar and are currently residing at Vijayawada. As the matter stood thus, Mr. Surya Prakash suffered certain losses in the business and was unable to fulfil his debts to the creditors. The banks also refused to advance any loans to Mr. Surya Prakash as he did not have any collateral security in the form of immovable property.

On one fine day he proposed before his mother and brother for partitioning of the immovable properties acquired by his father during his lifetime as a part of which he proposed division of the immovable properties between himself, his mother and brother and totally excluding his sister. He excluded his sister on the pretext of having spent Rs. 50 Lakhs at the time of her wedding in the year 2010. Mr. Surya Prakash proposed allocation of shares as follows:

1. Dwelling House at Road No. 1 Jubilee Hills (worth Rs. 2 Crores), Hyderabad – For himself.

2. The farmhouse at Ananthagiri Hills (worth Rs. 75 Lakhs) in Vikarabad District – For his brother Mr. Chandra Prakash.
3. The old house at Basheer Bagh (worth Rs. 1 Crore), Hyderabad – For his mother.

After acquiring the knowledge about the said proposal, Mrs. Jyothika has asked her mother and brothers regarding her share in the immovable property of her father. After the intervention of her daughter, Mrs. Rajamani (mother); Mr. Chandra Prakash (Younger Brother) has agreed to divide all the above immovable properties into equal shares amongst all the surviving family members of Late Mr. Raghava Rao.

However, Mr. Surya Prakash (elder brother and elder son) has blatantly refused to give any share to his sister and contends that it was him, who helped financially from his own pocket to conduct the marriage of Mrs. Jyothika. After refusal by her brother Mrs. Jyothika has filed a suit for partition of the immovable properties by metes and bounds before the Chief Judge, City Civil Court, Hyderabad against her mother and brothers.

The said case was referred to the Mediation Center attached to the court.

Simulation Exercise Problem No. 2

One Mr. Prabhakar after abandoning his formal education, he pursued his career in music treating it as a concept of 'bhakti' or devotion. His father is a violinist in carnatic music and has been accompanying various vocalists in number of concerts all over the state. Prabhakar's interest in violin playing had driven him to the music and had made an impact on his future goal. He continued his 'sadhana' as a daily routine under the guidance of his father as it was necessary to understand the nuances and the subtleties of music which could only be gathered by experience and acquisition of knowledge at the feet of a "guru" and also to keep alive "the Guru- Sishya Parampara". He was living in Chennai and had started giving concerts all over the country and he has become renowned violin player and brought accolades to him as well his family members.

Prabhakar at the age of 26 became renowned personality in the South India and has been giving solo violin performances. Prabhakar married Thulasi on 19.11.2010 at Tirupathi according to Hindu rites and customs. After entering into wedlock, they lived together at Vadapalani, Chennai. Tulasi was the daughter of an officer in the Vigilance Department in the Government of Andhra Pradesh. As tradition would warrant, Thulasi went to her parental home for delivery where a male child was born on 30th of May, 2011. The respondent celebrated the child's birth in his in-law's house and thereafter, the wife stayed with her parents for some time. She returned to Chennai and there she lived with her husband till 03.01.2012.

Thulasi filed a matrimonial petition in the court wherein she contended that on 03.01.2012, her father-in-law, without her consent, took her to her parental home and, thereafter, the husband without any justifiable reason withdrew from her society. All efforts made by her as well as by her parents to discuss with her husband and his family members to find out a solution went in vain. In this backdrop, a prayer was made for restitution of conjugal rights.

Interestingly, Prabhakar filed a petition in the court praying for decree of divorce and custody of the child. He contended that there was total incompatibility in the marital relationship inasmuch as she found fault with his life style, his daily routine, his likes and dislikes and picked up quarrels on trivial issues. She threw tantrums only with the exclusive purpose that she should dominate the relationship and have her own way. At the time of practising and learning music in the presence of his father, who was also his “Guru”, she hurled abuses and screamed which invariably followed with arguments and quarrels. Though she was expected, as per the customs, to show respect towards elders and to the senior artists, yet, throwing all traditional values to the wind, she would walk away by creating a scene to his utter embarrassment. His public image was totally ruined and reputation was mutilated. It was also alleged that she called her parents and threatened to initiate proceedings under the Indian Penal Code, 1860 with the help of her father. With the efflux of time, the discord aggravated and the wife became more aggressive and did not allow her husband to go near her or the child.

On 03.01.2012, when the wife expressed her desire to go to her parental home, he could not dare to object and giving importance to the physical safety of the wife and the child, he requested his father to escort them to Hyderabad. While she was at Hyderabad, she spread rumours among the relatives and friends pertaining to his fidelity, character and habits. It was further asserted by the husband that she had filed the petition only to harass him and, in fact, the manner in which he had been treated clearly exhibited mental cruelty and, therefore, the said relief should not be granted. It was averred that in view of the treatment meted out to the husband, dissolution of marriage was the only solution and not restitution of conjugal rights.

Thulasi in her written statement asserted that she was aware of the importance of music, its traditional values and clearly understood the devotion and dedication as she herself was a ‘Veena’ player and because of her sacrifice, her husband had gained reputation and popularity which also enhanced his financial status, but, with the rise, he failed to perform his duties as a husband. She denied the interruption in the practice sessions and controverted the factum of maltreatment. It was averred that as the husband had gained reputation, his parents and other relatives thought of a second marriage so that he could get enormous dowry. She denied the scandalous allegations and stated that she was proud of her husband’s accomplishments. She justified her filing of petition before the Chief Metropolitan Magistrate for grant of maintenance as he was absolutely careless and negligent to look

after her and the child. It was further pleaded that the grounds mentioned in the petition were vexatious and frivolous and, therefore, there was no justification for grant of a decree of divorce.

The matter has been referred to the conciliation Centre for conciliation ,

Simulation Exercise Problem No. 3

Ms. Roma is a student of architecture studying in a reputed national institute. She was a very successful student and was most sought after intern to the internship providers and placement agencies. During her final year of college, she had the opportunity to do her internship with the world wide reputed ABC Company. As a part of internship she had to join the company at Bangalore and she stayed at Bangalore for a period of four months.

During her internship she came into contact with one Mr. Harish, a software developer, who was working in the same company. Mr. Harish had the opportunity to interact with Ms. Roma frequently and they gradually became good friends. Later on Ms. Roma returned to Hyderabad, completed her graduation in architecture and got a job with the top architecture firm with handsome salary package. Meanwhile, her friendship with Mr. Harish had blossomed into love and they tried to convince their parents about their relationship.

Before the marriage, the parents of Mr. Harish had visited the residence of Ms. Roma and had solemnized the alliance between both the families. However, there was one problem i.e., since the paternal house of Mr. Harish was at Bangalore it was requested that Ms. Roma relocate herself to Bangalore after her marriage to which she agreed. In accordance with the Hindu customs and rights both the parties got married at Hyderabad on 14.02.2018.

As part of the agreement, Ms. Roma prepared herself to relocate to Bangalore. When Ms. Roma went to Bangalore she stayed at her in laws house and immediately she found herself a job at an MNC. With the passage of time she found out that her in laws house is a rented accommodation and that they have their own house in rural Karnataka. Further she found out that after solemnization of alliance with her family her husband was laid over by the company and that, in fact, he is currently unemployed. But the said facts were never revealed to Ms. Roma. Her husband and her in laws are extremely cordial with her and in fact they never bothered her nor interfered with her nature of job or any matter.

On the eve of New Year 2019. Ms. Roma went to the party with her friends. In the said party she took her unemployed husband with herself and during interaction with her friends, who were also accompanied by their husbands. It was revealed that Mr. Harish is the only one who is currently unemployed. Ms. Roma felt embarrassed by the fact that her husband is unemployed left the party early with her husband. After a week, she tried to contact her employer and sought an employment

opening for her husband. This fact later came to the knowledge of Mr. Harish, who was a very sensitive and prideful person. He confronted his wife and told her that he does not require any person's recommendation to find a job. This small confrontation led to frequent quarrels between them. The parents of Mr. Harish often tried to intervene and pacify the couple but of no avail.

Ms. Roma returned to her maternal house on March 2019 and after staying there for one week when she came to know that she has conceived and that she is two months pregnant. She is now fed up with the attitude of her husband and in laws and she wanted to move in her career and life. Meanwhile she filed a petition for divorce on the ground of cruelty by her husband and in laws at Family Court Hyderabad. Further, it also came to the light that she is going to terminate her pregnancy at the earliest possible convenience to avoid any further health complication.

The matter is referred to conciliation and mediation center.

Simulation Exercise Problem No. 4

The marriage between the appellant-husband, Dinakar and the respondent-wife, Ramani, was solemnized on 09.05.2009 at the Holiday Inn Hotel in Hyderabad, as per Hindu rights and customs. This was not the first matrimonial alliance between the two families. The husband's elder brother was already married to the wife's sister. Both parties admittedly belong to middle class families. At the time of marriage between the parties, Dinesh, the husband was 22 years of age, and Ramani was 19. Now the husband is 35, and the wife 32. The marriage between the parties was duly consummated, and their relationship blossomed into one full of love and affection.

The cordiality between the parties continued for a period of two years, till the wife conceived for the first time in February 2011. The aforesaid conception was aborted when Radhika Gupta was in the fourth month of her pregnancy, as she had commenced to suffer from hypertension resulting into fits, extreme morning sickness and general weakness. The decision to abort the pregnancy in June, 2011, was based on medical advice.

After her first conception was aborted in June, 2011, the attending gynecologist at Apollo Hospital, had cautioned the couple against any further conception for at least two years. The couple had been advised, that pregnancy of Ramani during this period could lead to serious medical complications. Despite having been forewarned by the gynecologist, Ramani alleges, that her husband had proceeded with unsafe cohabitation, resulting in a second pregnancy within a short period of eight months (after the termination of the first pregnancy), i.e., well within the unsafe period.

The wife Ramani conceived for the second time in February 2012. During the instant pregnancy, she had similar symptoms, as she had suffered on the earlier occasion. For the aforesaid reason, and on medical advice, when the pregnancy was in its eighth month, a caesarian operation was performed in September, 2012. At the time of birth of the child, the wife, Ramani, was unconscious.

Even after the child was delivered, she remained unconscious. The child born to Ramani survived for only five days.

Since Ramani had developed serious medical complications, she was treated at the best hospitals at Hyderabad, amongst others at the Apollo Hospital, as an indoor patient. Well Known Doctors from across the country were consulted. They had attended upon her, at the behest of her husband Dinakar. To ensure that there was no deficiency in her medical upkeep, she was shifted to the Leelavathi Hospital at Mumbai. At Mumbai, further tests were conducted and surgeries were performed. She also sought consultations from the National Institute of Medical Health and Neuroscience, Bangalore (NIMHANS).

During the treatment of Ramani , neurologists and gynecologists looking after her believed, that she had suffered brain damage. On that account, she is stated to have lost her memory, so much so, that she could not even recognize persons of close affinity. Her speech was also stated to have been substantially impaired. It was averred, that the condition of the wife was such, that she could not even discharge her personal obligations. She had to be assisted by an attendant. According to the contention of Dinakar, the condition of Ramani was no better than a child of five years. He also alleged, that Ramani's condition was such, that she could not be left alone in the room, nor could she be permitted to use the bathroom by herself. Gynecologists, who examined Ramani had opined, that she was not fit for discharging her matrimonial obligations. They also felt, that she could not bear a child. Neurologists believed, that it was impossible for the husband to live with Ramani .

Dinakar filed a matrimonial petition in the Court in for a decree of divorce on the ground of insanity of his wife, Ramani and her cruelty towards him. The husband contends, that his wife did not allow him to touch her physically, even to please her. It is the husband's assertion, that at times Ramani would wake up in the middle of the night, and thereafter, would not allow him to sleep. Dinakar even accused his wife, for shouting and screaming without any reason. The petition was contested by the wife that it is only that Dinakar has caused her ill health by not following the advice of the doctors against the early pregnancy. According to Ramani, the fall out of the second pregnancy, specially the effect thereof to her health, was the real cause of the turnaround of the matrimonial relationship, between the parties. For that, Ramani blames her husband.

The petition has been referred to the mediation centre for mediation.

Simulation Exercise Problem No. 5

Mr. Radhakrishna got married to one Mrs. Rajyalakshmi in the year 1973 and they were blessed with three children i.e., two sons – Mr. Anil and Mr. Sunil and a daughter – Sunitha. The eldest son Mr. Anil is a naval officer and is currently serving the Indian Navy in officer cadre as is posted to high seas for major part of the year, Mr. Sunil is an established sports bike racer and had

won many championship titles. Ms. Sunitha is a typist and is currently attached to the government office. All of them were leading a very peaceful and happy life at Hyderabad.

But the fate has different things for this family. Mr. Sunil, who was an established sports bike racer had met with the fatal accident in a racing championship and after two days of struggle in the ICU he succumbed to injuries. After losing the son, who was in the prime of his youth Mrs. Rajyalakshmi has become very weak both physically and psychologically. On the other hand, Ms. Sunitha provided has provided emotional support for her parents but financially she is also weak and she is getting only paltry sum as salary which is highly insufficient.

As the matter stood thus Mr. Radhakrishna has retired from service and is not getting any pension as he hailed from a private sector. Mr. Radhakrishna is himself a diabetic patient and is in constant need of medical treatment on weekly basis. Mr. Radhakrishna sought financial help of his sole surviving son Mr. Anil, who blatantly refused to provide any financial aid to his parents citing his own financial difficulties. Mr. Radhakrishna, has strived very hard for his elder son and in fact, he spent huge sum of money for coaching of his son to write the entrance exam for the defence services, etc. Now when it is the time of the son to help his father, he is out rightly denies any help.

Aggrieved by the attitude of the son, Mr. Radhakrishna has filed a Maintenance Case before the Family Court Hyderabad seeking monthly maintenance from his son. During the course of the litigation both the parties have come together and wanted to resolve the matter out of the court before the elders of the family.

Imagine yourself (FDR Trainee) as the elder of the family and prepare a conciliation report between both the parties so that it can be filed before the court.

Simulation Exercise Problem No. 6

One Mr. John, who currently serving the government as the Executive Engineer in the irrigation department is married to one Ms. Esther Shanti in the year 2009. After their marriage they were living together in the various places since Mr. John's job was of transferrable nature. Even after five years of marriage Ms. Esther was not able to conceive a child.

After this they sought medical intervention from the reputed infertility clinic. During the course of medical treatment and tests it was revealed that Ms. Esther was suffering from some congenital medical issue due to which she is sterile and cannot bear a child. They sought expensive medical IVF (In-Vitro Fertilization) in order to conceive a child. The said treatment lasted for nearly two years and in the year 2016, Ms. Esther conceived and became pregnant.

Meanwhile, Mr. John who desperately wanted to father a child became highly disinterested in his wife after she has conceived. It happened so that the relatives of Mr. John were eyeing his property and they wanted Mr. John to write off his property in their name but in case a child is born to him there is an every chance that the child would become the successor to all the properties of Mr. John. The relative were successful in systematically brain washing Mr. John and instigated him to ask his wife for aborting the pregnancy.

Ms. Esther was shocked to hear the inhuman proposal of her husband as she is in the advance stages of pregnancy i.e., 6th Month. She pleaded her husband to drop the idea since both of them had struggled a lot for conceiving the child but of no avail. Her prayers went to deaf ears of her husband and she left her matrimonial house and started living at her maternal house for the rest of her pregnancy.

Even after a daughter was born to her, Mr. John never bothered to visit her and after two weeks of the delivery she received a court notice stating that Mr. John has filed a petition for divorce on the ground of cruelty. The matter has been referred to the Family Mediation and Conciliation Center. Write a report.

Simulation Exercise Problem No. 7

Mr. Dhani Ram was a hard working individual who has started his career from the lower most level in the society. He initially started working as a railway porter at Hyderabad Railway Station and with the help of his friends and well wishers he crossed all the obstacles of his life and slowly started small business venture under the name of L.D.R. Printing Press in Hyderabad in the year 1985.

With the passage of time the L.D.R. Printing Press became a multi branch printing industry with substantial presence in both domestic and international markets. Mr. Dhani Ram started diversification of business in the year 2005 and currently, he owns industries such as L.D.R. Reality Builders (real estate firm); L.D.R. Food Processing Industries; L.D.R. Equities; L.D.R. Hotels Pvt. Ltd.

Mr. Dhani Ram at the age of 85 has passed away due to his old age. He was survived by his wife and his two sons Mr. Surajmal and Mr. Chandmal. Both the brothers succeeded jointly to the industries and firms which had been set up by their father after his demise.

Now, the elder son Mr. Surajmal wants to maintain the business as established by his late father without any expansion overseas. He wants to consolidate the existing business and wants to run the same without any losses. Meanwhile Mr. Chandmal, the younger son is a youthful energetic entrepreneur who wants his father's business to thrive both domestically and internationally. He wants the business to further diversify and to invest in acquisition of many companies, etc.

Both the brothers have different views with regard to the future plans of the industry due to which the management is getting affected consequently, the industries have started incurring losses. To prevent any further loss to the business established by their deceased father the younger brother Mr. Chandmal proposed to the elder brother regarding the division of industries amongst themselves in order to facilitate the smooth execution of their future plans in respect of LDR Industries. Mr. Surajmal has, in principle agreed to the same but there are certain contentious firms such as the real estate firm and the hotels firm where both of them are contesting for the ownership of the same.

As the matter stood thus, both the brothers had appointed a retired judge as an arbitrator with regard to the division of the real estate firm and hotels firm. Pass the award as an arbitrator.

Simulation Exercise Problem No. 8

One Ms. Ramya is a first year student of MBBS and is a good and a meritorious. As per the orthodox traditions of family of Ms. Ramya, she was married to Mr. Ramesh at a very tender age of 18 years. As per custom she left her maternal home and went to live with her in-laws at Bangalore discontinuing her MBBS Course at Hyderabad.

Ms. Ramya is a very intelligent student and wanted to continue and complete her MBBS education. However, she was not made to do so owing to the orthodox mentality of her in laws and her husband. On many occasions the in-laws of Ramya had chided her, ridiculed her and even scolded her whenever she insisted on continuing with her education.

One fine day, Ms. Ramya had mustered the courage and had asked her husband Mr. Ramesh in front of her in laws to permit her to carry on with her MBBS course. The husband and in-laws infuriated with the continuous insisting of Ms. Ramya has threatened that she will be driven out of the house if she continues with her demand of pursuing MBBS education.

But Ms. Ramya remained adamant and tried to contact the various colleges in Bangalore to secure admission into MBBS course, secretly without the permission of her husband and in laws. One day she received the letter of acceptance of her admission through post. The in-laws who received the post got very angry with Ramya and had called driven her out of the house and left her to fate.

Ramya returned to her parents at Hyderabad and explained about her interest in pursuing education and also about the attitude of her in-laws. Mr. Rajesh, the father of Ms. Ramya went to Bangalore along with the elders and mutual well wishers of the family to reconcile both the families. As a conciliator and well wisher of the family write a conciliation report.

Simulation Exercise Problem No. 9

Mr. Alok got married to Ms. Nina as per the wishes of his parents on 01.02.2018 at Hyderabad. Both of them have settled in Chennai and are working as software professionals in an

internationally reputed company. Both of them are employed at a managerial level and they have extreme stress at the work. Mr. Alok is currently working in the night shift and Ms. Nina is currently working in the morning shift. Both of them rarely have the time to see each other except on the weekends i.e. Saturday and Sunday.

Due to extreme stress at workplace, both Alok and Nina are socially withdrawn and always remain in an agitated and repulsive mood. They rarely ask each other about their well being. This continued for three months. Both the parties feel neglected and lonely despite staying under one roof.

One day Mr. Alok asked about the well being of Ms. Nina to which she reacted in a very rash manner, this incident had ignited the violent outburst between couples. Both of them started behaving in a violent manner and were hurling abuses at each other. Mr. Alok had taken a step further and had filed a petition for judicial separation from Nina. After hearing both the sides the court had granted the decree for judicial separation.

After the grant of decree, Ms. Nina resigned her job at Chennai and came back to Hyderabad to live with her parents. After a period of two months Nina started realizing her mistake of neglecting her family life and has started missing her husband.

Meanwhile at Chennai Mr. Alok felt that he had committed a mistake in haste by approaching the court of law seeking separation and that he is missing his wife Nina. He started to realize his mistake of neglecting her and of not paying enough concentration to their marital life. Thereafter Mr. Alok tried to contact Ms. Nina over the phone and apologized to her. Nina, though she acknowledged the apology of Mr. Alok but was not eloquent about her feelings.

Seeing the condition of their children parents of both the Nina and Alok had referred the matter to a counsellor and wanted the counsellor to reconcile the couple and save their marriage. As a counsellor write a report of observations after interviewing both the parties and suggest a remedy to protect and preserve their marriage.

Simulation Exercise Problem No. 10

Mr. Ravindranath is a progressive young entrepreneur aged 30 years and in the field of the industries he had carved himself a special status and respect among his fellow entrepreneurs. As a part of Corporate Social Responsibility initiatives the company of Mr. Ravindranath has started sponsoring an orphanage more particularly “The Children’s Home Orphanage”.

One day Mr. Ravindranath was visiting the orphanage and there he came across one orphan baby named Niveditha who was only of 3 years of age. When he interacted with the child, he got emotionally attached to the child and had decided to adopt her despite the fact that he was still unmarried. Mr. Ravindranath had legally adopted Niveditha and started raising her as his own

daughter. Meanwhile, the concerned parents of Mr. Ravindranath had started looking for matrimonial alliances for his son.

Many of the prospective brides were willing to enter into alliance with Ravindranath but as soon as they came to know about the existence of adopted daughter Niveditha, they went back on their proposals. It became very difficult for the parents of Ravindranath to find a suitable bride for him.

Finally, they got a proposal from a lady named Anitha who was really impressed by the ideals of Mr. Ravindranath and had no problem with Niveditha. Both Ravindranath and Anitha got married as per Hindu Rites and customs and are living peacefully and happily.

After the marriage Anitha had developed special liking for Niveditha and had started to raise her as her own child. Meanwhile Niveditha also developed extreme liking for Anitha.

With the passage of time there were certain differences which cropped up between Ravindranath and Anitha. Ravindranath insisted on simple living and high thinking and was trying to live an idealistic life based on philosophy of the thinkers. Whereas Ms. Anitha always insisted Ravindranath to be pragmatic and practical and wanted to live a luxurious life as they can easily afford the same.

Due to the incompatibility between the couple both started quarrelling with each other at the drop of the hat. Things went out of the hand and both of them filed a case for obtaining decree of divorce with mutual consent. During the pendency of legal proceedings it came to the knowledge of Mr. Ravindranath that his wife Anitha is pregnant and meanwhile Ms. Anitha has also filed a petition for the custody of Niveditha. The matter has been forwarded to the District Mediation and Conciliation Center. Conciliate.

Note: The above problems are only illustrative and not exhaustive. The students will be given more simulation exercises in the duration of the course work.

Disclaimer: All characters and events depicted in the above simulation exercises are entirely fictitious. Any similarity to actual events or persons, living or dead, is purely coincidental.
