

Family Disputes & ADR

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Dispute

- Disagreement, Difference of Opinion.
- Conflict of Claims, Controversy, Allegations.
- Each person has different values, interests which lead to several differences among people, groups and nations.

Different Kinds of Disputes

1. Inter-Personal Disputes
2. Consumer Disputes
3. Industrial and Labor Disputes
4. Commercial Disputes
5. Corporate Disputes
6. Organizational Disputes
7. Trust Disputes
8. Neighborhood Disputes
9. International Disputes
10. Family Disputes

Family Disputes

1. Domestic Disputes
2. Restitution of Conjugal Rights
3. Break Down of Marriage
4. Testamentary and Intestate Property Issues
5. Child Care and Custody
6. Judicial Separation
7. Nullity of Marriage
8. Divorce
9. Maintenance
10. Post-Divorce Issues

Causes for Matrimonial Disputes

1. Ego boundaries of the Spouses
2. Male Chauvinism and Radical Feminism
3. Lack of material contentment
4. Extra-marital affairs
5. Substance abuse & alcoholism
6. Lack of concern towards family relationship
7. Mismatch of temper between spouses
8. High expectations
9. Competitive attitude
10. Financial Insecurity
11. Hatred towards in laws
12. Influential Media
13. Failure to cope with crisis in life
14. Incompatibility between spouses due to differences in Religion, caste, etc.
15. Mismatch of Values
16. Inability to meet demands of children
17. Superiority/Inferiority Complex
18. Other Factors

JDR – ADR - FDR

- **Inquisitorial System** – is a legal system in which the court is actively involved in investigating the facts of the case. **Followed in Norway, Sweden, Japan, Germany, etc.**
- **Adversarial System** - where two opposing parties represent their case before an impartial person i.e., judge. **Followed in Common Law Countries.**

Adjudication of Disputes

■ Judicial Dispute Resolution (JDR)

- Judge centric dispute resolution;
- Adjudication in open court & Legal formalities;
- Transparency and Rule of Law;
- Win & Lose outcome;
- State is the custodian of justice.

■ Alternative Dispute Resolution (ADR)

- Party centric dispute resolution;
- Adjudication in private domain;
- Informal procedure;
- Win – Win situation.

Rationale behind ADR in Family Disputes

- Family disputes involve serious and emotional aspects.
- Family disputes involve sensitive and delicate issues.
- Family disputes involve children and blood relatives issues.
- Family disputes involve conjugal and privacy issues.
- Family litigation needs special procedure.

Rationale behind ADR in Family Disputes

- Rigid rules of procedure and evidence not suitable.
- Demand from social organizations and NGOs.
- The law commission 59th report in the year 1974.
- CPC was amended in 1976 to deal with family cases.
- The result is – The Family Courts Act, 1984.

Aims & Objectives of the Family Courts Act, 1984

- To make obligatory on the state to establish number of family courts.
- To provide jurisdiction to the family courts on nullity of marriage, divorce, judicial separation, restitution of conjugal rights, validity of marriage, property disputes between members of family, legitimacy of the child, guardianship, custody of children and maintenance etc
- To make mandatory of conciliation proceedings on family courts.

Aims & Objectives of The Family Courts Act, 1984

- To settle family disputes through conciliation, reconciliation and settlement.
- To provide social and medical assistance to assist the parties to settle their disputes by conciliation.
- To prevent legal practitioners except as *amicus curiae*.
- To simplify the rules of evidence.

Role of Mediator & Conciliator

- **Honesty and integrity**
- **Impartial** and **neutral** towards the parties
- **Unbiased, open-minded** and **logical** in thinking
- **Wise** and understand the situation correctly and decide the **right course of action**
- Maintain **confidentiality** and **transparency**
- Have **expertise** to understand technicalities of the dispute
- **Courteous** and shall **respect** the parties
- **Good listener**
- **Assess the interests and needs** of the parties
- **Patient** during conducting proceedings
- Have **sympathy** and **empathy** towards parties
- **Shift the focus from positions to interests**
- **Reduce the friction**, diffuse any heated arguments

Advantages of Mediation & Conciliation

- **Voluntary, participative and confidential** process - parties get opportunity to present their case directly, and have liberty to opt out at any stage
- **Speedy, efficient and economical**
- **Fair process**
- **Simple and flexible** procedure
- Parties have **control** over the process
- Helps to maintain, improve and **restore relationships**
- **Focuses on interests** of parties and ignores inimical positions.
- **Mutually beneficial settlement.**
- **Creative solutions** to the disputes.
- **Promotes finality** and puts end to dispute
- In case of court referred mediation, the parties are entitled to **refund of court fees.**

Check List for Conciliators / Family Counsellors

- Commitment for protection of the institution of Family
- Maturity to understand the problems of others
- Patience to listen to the parties
- Maintenance of confidentiality
- Unbiased, open mind
- Control of one's own emotions
- Special training in Sociology, Psychology and Family Law
- Persuasive ability to solve the problem