
ASSESSING THE EFFECTIVENESS OF DISPUTE RESOLUTION MECHANISMS PROVIDED BY THE HINDU ADOPTION AND MAINTENANCE ACT

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ABSTRACT

The Hindu Adoptions and Maintenance Act (HAMA) 1956 involves and comprises Alternative dispute resolution mechanisms to solve and address matters of adoption and maintenance obligations related disputes within the Hindu community in India. The research paper gives a basic knowledge of what are adoptions and maintenance under The Hindu Adoptions and Maintenance Act (HAMA) 1956 and explains the basic nuances and covers basic topics of adoptions and maintenance obligation in India. This research paper focuses on the problems that are faced by different individuals of the Hindu community in India in resolving their adoptions and maintenance disputes in the family courts through the alternative dispute resolution mechanisms due to many various reasons and situations. The author of this research paper has delved into various problems that is faced during resolving the family matters regarding adoptions and maintenance obligations disputes through the process of alternative dispute resolution mechanisms that are prescribed by The Hindu Adoptions and Maintenance Act (HAMA) but the act is still silent about the usage of alternative dispute resolution mechanisms for resolving the disputes related adoptions and maintenance obligations. The research paper also delves into the current situation in India regarding the awareness of solving disputes through alternative dispute resolution mechanisms and there is a lot of scope to improve the situation and also improve it at the same time. The research paper also talks about the effectiveness of alternative dispute resolution mechanisms that the courts use in attaining an amicable solution for both the parties through their communication and compromise during the mediation and conciliation process of their suit. This research paper talks about the possible solutions and suggestions that the government can take for solving the issues regarding the alternative dispute mechanisms in India.

INTRODUCTION

The Hindu Adoptions and Maintenance Act (HAMA) 1956 acts as a foundation of Family law in India. The said defines Adoption as “a legal procedure which permanently terminates the legal relation between the child and its biological parents and initiates a new parent child relation with the adoptive parents”. Section 3 of The Hindu Adoptions and Maintenance Act (HAMA) 1956 defines maintenance as “provision for food, clothing, residence, education and medical attendance and treatment of the child. It governs complex and emotionally challenging cases related adoptions and maintenance in India. While Hindu Adoptions and Maintenance lays the foundation and the ground work for legal adoptions and ensures financial and economic well being of adopted children and wives, where disputes usually arrive. These disputes vary and range from challenges to the validity of the adoption made to disagreements over maintenance obligations and issues. Effective dispute and alternative dispute resolution is important and crucial for many reasons. Firstly, they offer a platform for the parties to seek redressal and solve their differences. Secondly, timely settlements minimize emotional distress and agony and financial strain on families involved in prolonger legal suits. Thirdly, effective resolution fosters a sense of justice and fairness withing the legal system in India. The Hindu Adoptions and Maintenance act encourages parties to try and attempt conciliation and mediation before resorting to legal battle in the court of law. This process involves an impartial and private third-party mediating discusssons and facilitating an amicable settlement that is accepted by both the parties. The act encourages the court to appoint a mediator for the case of adoptions or maintenance related issues. If mediation and conciliation fail, The Hindu Adoptions and Maintenance Act provides for a recourse through the traditional litigating case in the court of law. The procedures that are mentioned in the said act provide for a fair and transparent legal process for the aggrieved parties. This research paper aims to critically analyse the effectiveness of alternative dispute resolution mechanisms provided under The Hindu Adoptions and Maintenance act. This research paper will firstly, cover the examination of relevant legal provisions and judicial pronouncements or any other prior judgements regarding to dispute resolution in the said act. Secondly this paper will analyse the different perspectives to identify the strengths and weakness withing the existing dispute resolution framework. Ultimately the goal is to ensure that families can navigate adoption and maintenance issues through a fair, timely and just way. The Hindu Adoptions and Maintenance Act (HAMA) 1956 applies to individuals and citizens of India who follow Hinduism governed

by The Hindu law. But over the years the Hindu code of India has gone through many¹ amendments one of them which is joint adoption, which allows Hindu married couple to jointly adopt children. And the Juvenile Justice (care and protection of children) act laid down a few regulations for inter-country adoptions.

RULES APPLIED FOR THIS RESEARCH PAPER:

The Hindu Adoption and Maintenance Act (HAMA), 1956,

The Hindu Adoption and Maintenance Act (HAMA), 1956, governs the disputes regarding adoptions and maintenance in India. It governs disputes regarding adoptions, maintenance obligations and inheritance rights within the Hindu community in India. The Hindu Adoption and Maintenance Act (HAMA), 1951, recognises dispute resolution mechanisms focused on achieving fair and timely settlements.

Hindu Marriage Act 1955

Juvenile Justice (care and protection of children) act 2015

ALTERNATIVE DISPUTE RESOLUTION UNDER HINDU ADOPTIONS AND MAINTENANCE ACT:

The Hindu Adoption and Maintenance Act (HAMA), 1956, has control of key aspects of family life in the Hindu community including the aspects of adoptions and maintenance obligations and cases regarding inheritance rights. Navigating these disputes and issues between family members and recognising the psychological and emotional and financial burdens such disputes, issues and suits can cause a strain on the family courts in India. Hindu Adoption and Maintenance Act (HAMA), 1956, offers alternative dispute resolution mechanisms to help and resolve issues in a more amicable and stress-free manner outside the court which is helpful for the aggrieved parties to resolve a family dispute. This research paper analyses the different Alternative dispute resolution options available under Hindu Adoption and Maintenance Act (HAMA), 1956, for solving adoptions and maintenance disputes. Disputes regarding adoptions and maintenance can be emotionally and psychologically challenging and have long lasting consequences. Adoption disputes and suits involve challenges regarding the custody, validity

¹ The Hindu marriage (amendment) act, 2002

of adoption and well being of the child that is being adopted, while maintenance obligations and suits revolve around challenges like child's financial needs, disagreements and inherited property. Alternative dispute resolution under The Hindu Adoption and Maintenance Act (HAMA), 1956, provides several advantages when it comes to a formal legal suit in the court of law. Alternative dispute resolution is cost effective, it is comparatively affordable and less expensive than litigation, decreasing the financial burden and strain on the parties, it is said to be time efficient saving the parties time and the court's time in resolving family disputes regarding adoptions and maintenance obligations. Alternative dispute resolution ensures confidentiality in discussions and protects the privacy of families and the parties. It also saves and preserves relationships and foster communication and understanding between the parties and potentially saving and preserving strained families. Alternative dispute resolution allows to communicate and eventually the parties come to a mutually agreeable solution that address the specific needs of the parties. The Hindu Adoption and Maintenance Act (HAMA), 1956, provides with different alternative dispute resolution mechanisms, Conciliation is the first and primary alternative dispute resolution the Hindu Adoption and Maintenance Act (HAMA), 1956, recognises. It ensures and involves an impartial third party called a conciliator who facilitates and takes forward this process of conciliation and ensures there is communication and negotiations between the parties. Conciliation offers a structured and functional platform for the parties to express their grievances and find a common ground for their dispute to resolve. This process is completely informal and this helps the disputing parties to reduce stress of a legal proceeding and allows the chances to increase in faster resolution. Mediation is the next alternative dispute resolution that is offered by The Hindu Adoption and Maintenance Act (HAMA), 1956, but not directly mentioned in the said Act the process of mediation is similar to Conciliation but involves a more active role of a mediator. Mediation can help the aggrieved parties to reframe issues, explore more options to solve their disputes and allow communication to ensure the parties are heard effectively and fairly. Negotiation is another alternative dispute mechanism that is involved under The Hindu Adoption and Maintenance Act (HAMA), 1956, it refers to direct communication and dialogue between aggrieved parties in dispute to reach a conclusion and settlement without the involvement of a third party. Negotiations can help and facilitate by lawyers and advocates representing each aggrieved party or it can also be undertaken independently by the parties. Negotiations helps parties to maintain control over the solution and outcome that will eventually come at the end of negotiation process and tailor a solution to their specific needs. Lok Adalat is the last alternative dispute resolution that is

offered by The Hindu Adoption and Maintenance Act (HAMA), 1956, which is a court annexed forums for resolving disputes by the means of settlements.

THE EFFECTIVENESS OF THE HINDU ADOPTION AND MAINTAINANCE ACT, 1956 IN RESOLVING DISPUTES:

The Hindu adoption and maintenance act 1956 provides for a comprehensive and complex legal framework for disputes related to adoptions and maintenance obligations with the Hindu community. It clearly and specifically provides the legal provisions that contribute to the effectiveness of disputes and suits under the act by providing a well-defined legal structure and frame work for addressing these issues. The establishment of family courts in India under the family laws in India specialising in matters related to family matters and domestic matters it also increases the effectiveness and fasten the process of resolving the family disputes by offering a specialised expertise in handling sensitive issues and disputes within the Hindu community. Family disputes regarding adoptions and maintenance obligations can be emotionally and psychologically challenging and have a long-lasting negative effect on people's lives. Effective and alternative dispute resolution mechanisms are very important for many important reasons. The alternative dispute resolution provides a platform and a stage for aggrieved parties to seek redressal for their grievances and problems and ask for their claims over adoptions and maintenance for the children's future. It also allows for timely settlements and decrease the emotional strain and financial strain on families involved in long legal battles. The alternative dispute resolution allows for effective dispute resolution that fosters a sense of justice ad fairness in the family related legal system. The Hindu adoption and maintenance act 1956 offers alternative dispute resolution mechanisms such as mediation and conciliation, these mechanisms of alternative dispute resolution allow the parties to communicate and engage in dialogue to resolve the disputes that prevail between them. This process of resolving disputes between parties is considered more effective as it allows the parties to come to an amicable dispute resolution and solution which is preferred by both the parties and creates a sense of win win situation between the parties. Despite its strengths of the alternative dispute resolution mechanisms there are many challenges prevails such as lack of cases, lack of legal awareness about alternate dispute resolution in family matters and lack of access to legal aid can impact the said Act's overall effectiveness in resolving family disputes. There are many factors that affect the effectiveness of the alternative dispute resolution mechanisms. Factors like

accessibility, skilled conciliators and mediators, court system efficiency and sensitivity on gender matters.

ACCESSIBILITY OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS OUTLINED UNDER THE HINDU ADOPTIONS AND MAINTAINANCE ACT 1956 FOR THE RURAL POPULATION OF INDIA:

The alternative dispute resolution mechanisms outlined under The Hindu adoption and maintenance act 1956 faces many and significant number of problems that hamper its accessibility for the rural population of India and to people belonging to lower socio-economic backgrounds. These groups of people delve into the barriers faced by the rural population. Not all people are comfortable with the idea of alternative dispute resolution and lack legal knowledge about the same, these people majorly come from the rural villages and socio economically weaker sections of the country. There are many factors that affect the accessibility of alternative dispute resolution in the rural areas of India. These factors include geographical dispersion, due to the geographical factors there is a lack of awareness about the alternative dispute resolution mechanisms that are available to resolve family matters amicably. India is a land of different languages one of the factors that acts as a barrier in accessing different dispute resolution mechanisms. There are many vulnerable languages in India and mainly they prevail in the rural areas of India. To bridge this gap the government can set up mobile Lok Adalat's can bring alternate dispute resolution process closer to the target population, reducing travelling time and strain. Community outreach programme can help bridge the gap of language and communication. Setting up of online dispute resolution platforms in remote areas which help all the citizens of India even the rural population of India to access different types of dispute resolution. Increasing and enhancing the accessibility of The Hindu adoption and maintenance act 1956 dispute resolution mechanisms for rural communities and lower socio- economic groups demands a multi-pronged approach. Combined efforts are needed to increase and spread awareness and address legal barriers and look for underlying social and economic factors that contribute to the chain of marginalisation. It also depends upon the people's mindset of accepting the alternative dispute resolution rather than a traditional suit in the family courts, these people also do not have a skilled legal advisor or an advocate who is skilled in alternative dispute resolution mechanisms who can guide them about the alternative dispute resolution mechanisms, this is also one of the reasons the effectiveness of alternative dispute resolution mechanisms to a greater extent.

DRAWBACKS AND LIMITATIONS OF ALTERNATIVE DISPUTE RESOLUTION UNDER THE HINDU ADOPTION AND MAINTAINANCE ACT 1956:

While the alternative dispute resolution comes with a certain advantage it also comes with certain draw backs and limitations, firstly enforceability of agreements, limited scope and power imbalance between the parties may cause the Mediation or conciliation sessions not effective due to financial situations of the party and many more situations where one party is more powerful than the other. There are many challenges in The Hindu Adoption and Maintenance Act (HAMA), 1956, framework of legal sections governing the different aspects of adoptions and maintenance. Lack of standardised guidelines is one of the draw backs in the frame work of The Hindu Adoption and Maintenance Act (HAMA), 1956, the absence of specialised legal guidelines for conducting alternative dispute resolution mechanisms can lead to inconsistency in the approach taken by different mediators and conciliators. While confidentiality is ensured in alternative dispute resolution mechanisms but can lead to the limitations of transparency and less accountability. In case of a supposed or potential abuse case on a wife the lack of a formal record system can make it more challenging to hold parties accountable and the family courts then limit the scope of delivering no justice for the victim. Having a legal representative during negotiating settlements between the parties is very important as they advise and help them about the needed legal knowledge and help then take the right course of action. Aggrieved parties or individuals from lower socio-economic backgrounds, may not have access to legal professionals or legal aid or support them and guide them through alternative dispute resolution process, putting them in such situations will create a disadvantage in negotiating settlements efficiently. Availability of skilled mediators and conciliators are less in number and the cases that are registered are double in number. There should be an involvement of trained, experienced and skilled mediators, conciliators and facilitators is very important for reaching a fair and sustainable and effective resolution through alternative dispute resolution. Alternative dispute resolution in family matters require skilled and experienced expertise. Inadequate training and experience hinder the process of delivering an amicable solution to the parties.

LITERATURE REVIEW:

Measures to enhance effectiveness of alternative dispute resolution: this article written by scholars and senior advocates chalks down the effectiveness of alternative dispute resolution

under The Hindu Adoption and Maintenance Act (HAMA), 1956 and talks about training programmes for mediators and conciliators to improve the status and process of the alternative dispute resolution mechanisms in resolving disputes regarding adoptions and maintenance in family matters.²

This research paper by the law institute of India talks about the cost effectiveness and accessibility of alternative dispute resolution under The Hindu Adoption and Maintenance Act (HAMA), 1956 specially mediation and conciliation. These alternative dispute resolution mechanisms offer a faster and a more effective amicable solution for the aggrieved parties.³

Focus on restorative justice: this blog written by practicing advocates of family matters in family courts all over India, touch on a crucial aspect that is highlights in their research, and it concludes the need of Alternative dispute resolution mechanisms to work towards restoring faith in justice system in India and fostering reconciliation and rebuilding families and stranded relationships that were damaged during the dispute between the parties.⁴

Emerging research shows the need for online alternative dispute resolution mechanisms to provide a easier and accessible way for aggrieved and disputed parties in alternative dispute resolution mechanisms from a remote area. Many mediation centres that are set up by the respective high courts for a faster and an effective way to resolve family disputes regarding adoptions and maintenance in India.⁵

This research paper talks about the draw backs and challenges of alternative dispute resolution in enforcing agreements that are reached at the end of every mediation and conciliation process when there is a dispute in the family courts. Specially women without proper knowledge and legal guidance may feel pressured to accept the unfavourable settlements.⁶

CONCLUSION:

The Hindu Adoption and Maintenance Act (HAMA), 1956 governs over the disputes of adoptions and maintenance in the Hindu community in India. To curb the issue of case

² Mittal, R. (2019). Alternative Dispute Resolution in India.

³ Law Institute, 60(2), 345-362.

⁴ Kumar S (2019)

⁵ Mahajan, V (2015). Family law

⁶ Khandelwal, S (2018) Gender bias in family dispute resolution: A critical analysis for alternative dispute resolution mechanisms in India.

pendency in the family courts in India, there were alternative dispute resolution mechanisms were introduced like mediation, conciliation, and negotiations within the supervision of High courts of that state which intern helps to resolve family disputed regarding adoptions and maintenance obligations. While there are advantages of alternative dispute resolution mechanisms there are many limitations and draw backs of the same. Addressing to the problems discussed above there are possible solutions that can we implemented by the government of India as well as the High courts of all the Indian states. Setting up of mobile alternative resolution centres across India specially in the rural areas of India as travelling and financial strain increases on the people who are economically weak and cannot afford the same. Setting up of online alternative dispute redressal sessions for people who cannot make it physically to the mediation centre for the mediation process. Involving vulnerable language communication in the process of mediation and conciliation which will help people who do not know how to read and write any other language than the language they usually communicate in. Despite almost all the states have a mediation and conciliation centre for all kinds of disputes there is lack of awareness about the process and option of alternative dispute resolution other than the traditional court suit and proceedings, people are unaware of the fact that it is more efficient, cost effective and less time consuming rather than the traditional court suit and case that in turn takes many years to resolve and there is one party at loss and another party at the gain but in the alternative dispute resolution process both the parties come to a common and amicable conclusion where both the parties are in win win situation. There is a lack of awareness and knowledge about the alternative dispute resolution mechanisms, more the people are education better for the aggrieved party so that they can solve their disputes more confidentially and in a faster rate. Women of rural areas not being educated about alternative dispute resolution mechanisms and then they have to abide to the settlements which are not amicable by the parties here the gender biasness plays a very important culprit of these situations. Educating women on the same will help make alternative dispute resolution mechanisms work efficiently and in a fairer manner which delivers amicable solutions to both the parties bias free. The next problem that was mentioned in the able paper was that the facilitators, mediators and conciliators are not well trained and educated to handle mediation and conciliation, these facilitators, mediators and conciliators should be trained and well educated on the said law and should allow the parties to communicate and have a dialogue regarding the same. The training of the facilitators, mediators and conciliators should be done uniformly under a centralised training academy by the central government of India. If the

training of the facilitators is uniform the proceedings of the alternative dispute mechanisms is uniform which intern becomes easier for all the parties and advocates to maintain accountability of the same. Following a few easy steps we can make alternative dispute resolution more effective and accessible to people all over India and make them more aware about the same, will lead to less burden of cases on the family courts in India and more over the parties can amicably solve their disputes with confidentiality and with effective dialogue and communication which is agreed by both the aggrieved parties.