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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ROLE OF ALTERNATIVE DISPUTE RESOLUTION IN FAMILY LITIGATION WITH REFERENCE TO HINDU DIVORCE ACT- SOME CASE STUDIES

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Abstract:

Marriage is always regarded with great respect and societal approval. There are so many popular sayings about marriage like that of Dave Meurer which says “A great marriage is not when the ‘perfect couple’ comes together. It is when an imperfect couple learns to enjoy their differences.” In spite of the fact that everybody knows the concept of great marriage, there are ever growing divorces in the family courts. In this backdrop, it is a million dollar question about the tolerance in the marriage that is it appropriate to strive for survival of marriage to avoid societal disapproval? or to come out of it for peace of mind and greater chances for personal and intellectual growth as continuing in it (marriage) is of no value addition instead it is burdensome taxing on the both the parties and how to continue or discontinue in or from marital contract in a cost-effective way? This paper delves deep into the common man's perspective of role of Alternative Dispute Resolution (ADR) in family litigation in the light of Hindu Marriages Act. How and why we have to take the role of ADR in serious family/marriage conflicts.

Key Words: marriage, Alternate Dispute Resolution. family courts, divorce, marriage conflicts

"सखा सप्तपदा भव । सखायौ सप्तपदा बभूव ।
सख्यं ते गमेयम् ।सख्यात् ते मायोषम् ।
सख्यान्मे मयोष्ठाः ।"

"You have got strolled seven steps with me; be my companion. We have strolled seven steps together; let us be companions. Let me get your companionship. Let me not part from your companionship. May you not part from my friendship. [Note: This can be recounted by the prep after taking the seven steps around the holy place." (विवाह कर्मकाण्ड - vivaaha karmakaaNDa)]

Introduction

This quote is the quintessence of Indian especially Hindu marriage institution. It is truly strange to find out that the institution of marriage is seemingly simple and at the same time complex to the core. In this context, this paper tries to analyze the reasons for family conflicts, especially divorce and the role of Alternative Disputes Resolution in solving them. Alternative Dispute Resolution (ADR) methods have gained significant attention in the legal field as effective alternatives to traditional litigation processes. In the context of family law, where disputes often involve sensitive and personal matters, the role of ADR in resolving conflicts and promoting amicable solutions is of particular importance. In this backdrop, the present study tries to shed some light to show how the Hindu Divorce Act is a significant legal framework that governs divorce proceedings within the Hindu community in India. The Act provides guidelines and procedures for divorce, alimony, child custody, and related matters. Alternative Dispute Resolution (ADR) mechanisms offer an alternative approach to resolving disputes outside of traditional court litigation.

Objectives of the study:

The main objectives of this study are to find out the answers to the following questions:

1. What are the existing provisions for Alternative Dispute Resolution in the Hindu Divorce Act?
2. How are Alternative Dispute Resolution mechanisms utilized in resolving divorce cases within the Hindu community?
3. What are the perceptions and experiences of stakeholders, including couples, legal professionals, and mediators, regarding the use of ADR in Hindu divorce cases?

What are the advantages and challenges associated with integrating ADR into the framework of the Hindu Divorce Act

Literature Review

At the start Alternate Dispute Resolution(ADR) is an successful apparatus in sorting out separate cases in an friendly and taken a toll viable way. Amy Vandervort-Clark JD(2023)¹, keeps up that, separate intercession may be a cost-effective elective to the conventional separate case process. Mediation employments a unbiased third party to assist the separating couples arrange the terms of their settlement assertion. The mediator tries to empower open communication. Frequently the couple learns instruments to assist them communicate within the future." This is often accommodating on the off chance that the couple offers minor children and must keep up a relationship. The go between gives no legal exhortation and will not tell you what to do. They resolve all issues, such as property division, spousal bolster or divorce settlement, and child custody. This handle may take a couple of gatherings but is less time-consuming than a traditional separate. The parties do not ought to enlist their own legal direct. It is fitting allude to "to allude to a family law lawyer to assist you get ready for the intervention." Sarah M. Litowich (2021)² states that, One of the foremost common elective debate determination strategies is intercession. After you intervene your separate, a unbiased third party will assist you make the compromises that are essential to reach an understanding and direct the settlement talk. Not as it were can a arbiter help you with settling your debate, but they can too assist you create tools for communication that can set a strong establishment for a positive co-parenting relationship. Udit 22 (2022)³ maintains that A bit like the differing qualities in causes of debate, the settlement models are moreover changed. Alternative Dispute Determination envelops a wide cluster of practices, which are coordinated towards a cost-effective and fast determination of disputes. ADR, as the title recommends, is an elective to the conventional prepare of debate determination through courts. It comprises of a set of hones and strategies to resolve debate outside the courts. Vivek Mourya(2021)⁴ is of the view that When a handful chooses to end their marriage, clashes emerge that must be settled as part of the separate proclaim. Property conveyance, child benefits, and child back are a few of the issues that require consideration so that each party can proceed living their claim lives. Settling these issues and getting a separate can happen without the lengthy and expensive handle of case. More couples than ever are presently choosing options to case to conclusion their marriage. Manasa R.V(2023) ⁵ is of the see that in court cases, it'll be one party winning and the other losing. This comes about in severity and creates a parcel of pressures between the couple who are dissolving

the marriage. It might have an eternal affect on the children of the divorced couple, on the off chance that any. ADR makes a difference to bring down these sort of negative impacts and allows the couple to form their claim choices regarding the disintegration of their marriage, and this has exceptionally tall chances of being a win-win circumstance for both the parties.

Present Study

Marriage is respected as one of the least demanding educate to see and the foremost complicated educate to get it. It requires, sensible degree of understanding, duty, financial independence and above all mental development to form the institution a workable suggestion. Some of the time, it is felt by majority that mental development is everything to maintain a strategic distance from clashes within the marriage.

Indeed in spite of the fact that, marriage has been respected as a sacred institution in India, The separate rate in later times is disturbing within the background of residential viciousness in its modern grab(traditionally domestic violence was constrained to the degree of physical torment and verbal mishandling). Domestic viciousness in its unused avatar is seen in frame of appearing doubt, conflict of companions and family individuals and disregard of all sorts (consider separating physically, mentally and spiritually). In this situation, separate is as it were accessible nostrum for all these ills of domestic violence. Act 12 of the D.V. Act states that an distressed individual or a Arbitration Officer or any other individual for the sake of the abused individual may plea an application to the Judge looking for one or more reliefs beneath the D.V. Act. The proviso, in any case, states that some time recently passing any arrange on such an application, the Judge might take into thought any Domestic Occurrence Report gotten by him from the Security Officer to the benefit of victim. The expression 'aggrieved person' as characterized beneath Segment 2(a) implies any woman who is, or has been, in a household relationship with the respondent and who affirms to have been subjected to any act of domestic violence by the respondent. Domestic relationship as characterized in Section 2(f), implies a relationship between two people who live or have, at any point of time, lived together in a combined family, when they are related by relationship, marriage, or through a relationship within the nature of marriage, appropriation or are family individuals living together as a joint family. Domestic viciousness has the same meaning as given to it in Section 3⁶ A.K.A. Rahmaan ⁷ states that Pitilessness within the meaning of S. 13 of the Hindu Marriage Act isn't restricted to physical violence but incorporates mental torment caused by one companion to the other. The spouse had made it

deplorably for the spouse to live with her. Any man with sensible self regard and control of continuance will discover it troublesome to live with a insulting spouse, when such insults are in truth offended and insults. Human nature being what it is, a reasonable man's response to the conduct of the insulting companion is the test and unending allegations and ascriptions can cause more torment and wretchedness than physical beating."

Strife may be a truth of life. It isn't great or awful. Be that as it may, what is imperative is how we manage or handle it. Arbitration methods are frequently central to settling struggle and as a essential procedure these have been around for numerous thousands of times. Alternative Dispute Resolution (ADR) refers to a assortment of streamlined conflict control methods outlined to resolve issues in contention more effectively when the ordinary arrangement prepare comes up short.⁸ Alternative Dispute Resolution (ADR) is an elective to the Formal Legitimate Framework. It is an effective to cases. It was being thought of in the light of the truth that the Courts are over burdened with cases. The said framework radiates from disappointment of numerous individuals with the way in which debate are customarily settled coming about in feedback of the Courts, the legitimate calling and some of the time lead to a sense of estrangement from the entire lawful framework- in this way, they require for Alternate Dispute Resolution.

The contrast between case and viciousness is that case may be a sound and civilized way to resolve a dispute through a complex government legal framework, whiles violence isn't a great alternative. ADR opposes violence as intrinsically wrong way of resolving dispute but it is opposed to case as matter of giving disputants another a distant better alternative to resolve their clashes.⁹ ADR's essential objective is to assist disputants resolve their struggle through different mutually agreed strategies.

Conclusion:

It can be safely concluded that whatever may be the circumstances of the marriage and living together, the couple should try to keep their marital bond stable and strong. For that purpose, a great deal of effort on the part of the both the partners, family bonding and above all mutual love and affection towards each other are needed. The stable marriage is foundation of future healthy and peaceful society.

It is properly said by Dave Willis "Fight less, snuggle more. Pray less, serve more. Content less, conversation more. Criticize less, compliment more. Stretch less, giggle more. stress less, supplicate more. With each unused day, discover other ways to adore each other indeed more."

References

1. Divorce and Out-of-Court Proceedings: Alternative Dispute Resolution

<https://www.findlaw.com/family/divorce/divorce-and-out-of-court-proceedings-alternative-dispute.html#:~:text=Not%20all%20divorces%20have%20to,voluntary%20settlement%20between%20the%20parties.>

2. alternative dispute resolution (adr) in divorce by Sarah M. Litowich

<https://www.litowichlaw.com/alternative-dispute-resolution-adr-in-divorce/>

3. Application of ADR methods in family and matrimonial disputes by Udit 22

<https://www.legalserviceindia.com/legal/article-8068-application-of-adr-methods-in-family-and-matrimonial-disputes.html>

4. Can divorce be granted by arbitration, Vivek Mourya

<https://blog.ipleaders.in/can-divorce-granted-arbitration/>

5. alternate dispute resolution mechanism and divorce by Manasa R.V

[http://s3-ap-southeast-1.amazonaws.com/ijmer/pdf/volume12/volume12-issue11\(3\)/14.pdf](http://s3-ap-southeast-1.amazonaws.com/ijmer/pdf/volume12/volume12-issue11(3)/14.pdf)

6. The Supreme Court of India, Prabha Tyagi vs Kamlesh Devi on 12 May, 2022 Point 22

7. family courts – evidence, procedures and role of lawyers a.k.a. rahmaan, page 30

8. alternative dispute resolution in India by Nishita Medha page 4

9. Basic Introduction to Alternative Dispute Resolution page 2