



Mediation In Matrimonial Cases: A Judicial Perspective In India

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ABSTRACT

In recent years, there has been a significant shift in the way that people see marriage and its social importance. The expectation of marriage being a lifetime commitment has changed. Other causes of family conflicts emerged as the principle of equality replaced hierarchy as the foundation of family law, and it became socially acceptable to dissolve unions that were simply unpleasant or unfulfilling. Families are crucial to any culture or community. A family is a collection of individuals as well as an organisation. In the family, emotional needs are taken care of in addition to, and maybe even more importantly than, financial demands. Conflicts over property inheritance and divorces are more common than ever. Possible explanations include psychological imbalances, professional problems, and economic concerns. The researcher looked into the socio-legal aspects of what leads to conflict in families. It is imperative for society to devise strategies to safeguard the family unit and prevent and settle conflicts that jeopardise its delicate structure. This research papers goal is to present mediation as a different approach to conflict resolution for resolving family issues. The researcher suggests mediation as the ideal method for resolving these disputes since it offers a number of advantages such impartiality, independence, objectivity, and appropriate consideration of the issues at hand. The researcher also gives a summary of the several Indian legislative & Judicial systems that support alternative dispute resolution (ADR) in family disputes.

Keywords: Mediation, Family Disputes, Family Courts Act, Civil Procedure Code, Judicial Approach

1. INTRODUCTION

In today's society, the institution of marriage has changed. It is no longer seen as a commitment that lasts a lifetime. The idea that marriage is a holy union of a husband and wife is no longer viable. The change in circumstances has led to a number of marital cases. The judiciary is unable to handle these issues since it is already overworked due to the increasing volume of cases. When faced with a load like this, alternative dispute resolution has been shown to be the greatest option available. It creates a framework for resolving conflicts between individuals under the law. As a form of alternative conflict resolution, mediation involves encouraging the parties to reach a mutually agreeable solution while a mediator, who is a neutral third party, helps to resolve family conflicts. Corporate organisations are increasingly using mediation as a conflict resolution tool. However, the only focus of this study is on the role that mediation plays in resolving marital conflicts.

In addition to acting as a mediator, mediation helps resolve disputes. It provides justice more quickly than more conventional legal processes. Compared to going to court, alternative dispute resolution, or "ADR," emphasises flexibility and a more cordial atmosphere. Unlike courts, which are closed to the general public, mediation is a private, confidential procedure. These days, mediation is the most widely accepted dispute resolution technique for settling marital issues. But there are two schools of thought. Proponents of mediation contend that it preserves family relationships, especially for kids who are spared the trying and painful proceedings of a conventional court divorce.

However, some consider mediation to be ineffective because the offender gets away with it and the state's efficient criminal justice system doesn't punish them. In any case, society now relies heavily on mediation to preserve social harmony.

2. FAMILY DISPUTES

All families experience stress and tribulations at some point in their lives. On the other hand, marriage issues and divorce are both extremely personal and commonplace events.

The choice to dissolve a partnership and a marriage is known as a divorce. But they are frequently preceded by a drawn-out process of divorcing, which could involve stress, arguments, violence, and even separation from the spouse. Children of estranged parents often experience long-term problems with the other sex as well as poor academic achievement (Robert & Wyer, 1987).

Family disputes are defined by the Family Courts Act as:

1. A lawsuit or other legal action brought by the parties to a marriage in order to obtain a decree of nullity—that is, an annulment or declaration that the marriage is void—restoration of conjugal rights, judicial separation, or dissolution of the marriage;
2. A lawsuit or other legal action seeking a declaration about the legality of a marriage or an individual's matrimonial status;
3. A lawsuit or other legal action involving the partners to a marriage and their respective property;
4. A lawsuit or action seeking an order or injunction in situations resulting from a marriage;
5. A lawsuit or proceeding seeking a determination about the validity of any person.
6. A lawsuit or other legal action seeking support;
7. A lawsuit or legal action pertaining to guardianship, custody, or access to any minor.

Data relating to Family Dispute Settlements at Delhi

| S. No. | Category of Matters | No. of Cases Referred | No. of Cases Settled | No. of Cases Not Settled | No. of Cases NFFM/ Non Starters | No. of Connected Cases Settled |
|--------|---|-----------------------|----------------------|--------------------------|---------------------------------|--------------------------------|
| 1 | Matrimonial U/s 125 CrPC. | 6412 | 2916 | 2247 | 1169 | 2315 |
| 2 | Petition for Divorce | 5165 | 1947 | 2784 | 1779 | 1512 |
| 3 | Case U/s 498A/406 IPC(Including Bail Application) | 28668 | 10813 | 13146 | 4470 | 5316 |
| 4 | Restitution of Conjugal Rights | 893 | 344 | 465 | 80 | 232 |
| 5 | Custody Guardianship Matter | 785 | 289 | 333 | 145 | 303 |
| 6 | Domestic Violence Act Cases | 31618 | 12851 | 11134 | 5619 | 12309 |
| | Total | 73541 | 29160 | 30109 | 13262 | 21987 |

29160 Cases settled + 21987 connected cases settled Total = 51147 from 2005 to 2021

3. PRESENT LEGAL REGIME

The Code of Civil Procedure, 1908 (the "CPC") was amended in 2002 to include mediation as an additional method for resolving disputes. According to Section 89, the court may refer a disagreement to arbitration, conciliation, or judicial resolution through Lok Adalats or mediation if it thinks the matter can be settled amicably through other channels. We call this mediation that is administered by the court. The court-ordered mediation may not always be successful. The legal action will proceed with further litigation in that case. The court will provide the mediator a report and close the case if the mediation is successful. There are two kinds of mediation: court-referred mediation and pre-litigation mediation.

The Hindu Marriage Act of 1955 gives the Court instructions to attempt to reconcile parties seeking a divorce, depending on the specifics of the case. Reconciliation may also be selected by the court as the first course of action in divorce cases under the Special Marriage Act of 1954. Courts must also make an effort to settle family disputes, according to Section 9 of the Family Courts Act.

Mediation Act of 2023: On December 20, 2021, the Mediation Bill was initially presented in the Rajya Sabha. The Standing Committee then gave it a careful examination. Specific recommendations about the provisions of the Bill were included in the committee's 117th Report, which was published on July 13, 2022. The Union Cabinet adopted some of the recommendations.

As a result, on August 2, 2023, the Rajya Sabha and, on August 7, 2023, the Lok Sabha both successfully passed the amended bill, which was then known as the Mediation Bill of 2023. The Mediation Act of 2023 was the formal name given to the Bill on September 15, 2023, after it was ratified by the President. The Act came into effect in part on October 9, 2023.

3. JUDICIAL OUTLOOK OF MEDIATION IN MATRIMONIAL DISPUTES

In *Srinivas Rao v. Deepal*, the Supreme Court looked at pre-litigation mediation in relation to family issues. The husband asked for a divorce on the basis of mental cruelty since the wife had falsely filed a criminal complaint against him and his family. The husband was granted a divorce by the court, which also underlined the benefits of pre-litigation mediation as a method of dispute resolution. The Court acknowledged that disputes can be settled through litigation when they occur for trivial issues. It was also found that parties that seek mediation as soon as possible had a better chance of coming to a good agreement, according to data from the Delhi district courts. The Supreme Court mandated that all family courts create and make available pre-litigation clinics at all mediation centres.

In the *Gaurav Nagpal v. Sumedha Nagpal* case, the Supreme Court expressed concern over the large number of divorce and judicial separation cases that are overflowing the courts. The Hindu Marriage Act specifies the situations in which a divorce decision may be sought, the Supreme Court further declared. In general, unless a marriage has irreparably failed, the availability of such a course shouldn't encourage people to pursue a divorce. The goal should be to save the marriage rather than to destroy it. Court proceedings ought to be reserved for extreme cases in which a person's marriage is irreversibly ruined.

In the case of *B.S. Krishna Murthy v. B.S. Nagaraj and Ors.*, Justice Markanday Katju made the statement that lawyers should advise their clients to pursue mediation, especially if the dispute is family-related. If not, both sides would incur significant costs if the case continued for years or even decades.

The court in *G.V. Rao v. L.H.V. Prasad* held that marriage is a heterosexual institution that is centred on the kid in our culture. But if the marriage as a whole fails, many connections will need to change, upsetting the peace and normalcy of the family. As a result, rather than relying on litigation to resolve marital issues, family laws and courts promote reconciliation and mutual agreement.

In the case of *Jagraj vs. Bir Pal Kaur*, the Supreme Court determined that the Hindu Marriage Act, 1955's section 23 was adopted by the parliament with the intention of upholding the sanctity of marriage. Therefore, every step taken to facilitate the parties' reconciliation must be supervised by the courts.

4. MEDIATION'S BENEFITS AND LIMITATIONS IN MATRIMONIAL DISPUTES

One of the primary benefits of using mediation as a conflict resolution method is that it may ensure anonymity while also potentially saving a significant amount of money and time. The court determined in the *Moti Ram Tr.Lrs. & Anr. vs. Ashok Kumar & Anr.* case that "mediation processes are secret proceedings." It is not necessary for the mediator to disclose the specifics of the proceedings when he is required to give the court a report on sessions that were successful. If it doesn't work out, all he has to do is submit a report that says, "Mediation failed." The goal of the mediator is to bring about lasting peace. The parties have committed to cooperating in order to arrive at a solution that gives them some degree of control over the final result and is acceptable to them both. Generally speaking, mediation is less taxing than litigation. It gives kids the opportunity to see their parents cooperating even when they don't agree. A 2004 study by Baker McKenzie found that children of divorce had higher levels of aggressive, problematic, and impulsive externalising tendencies. Additionally, they display internalising habits like loneliness, worry, and hopelessness. Joint custody is often the outcome of mediation, which is advantageous for the kids because it guarantees them a future with both parents. When the parties have moved past hostility, appearing in court is a far more pleasant alternative.

Not only can couples lose money in court, but society and the government also lose money. In Florida, divorce costs amounted to approximately \$2.5 billion in 2002. About 40% of court files and more than 70% of reopening are family law cases, according to the Family Law Supreme Court Steering Committee (2003).

Closure is encouraged through mediation. It excludes all further appeals, modifications, and legal action. Additionally, there's a potential that it will help you repair or rebuild your relationship because small disagreements frequently serve as the catalyst for larger ones. From the author's point of view, mediation is also more beneficial for the attorney because happy clients are more likely to hire the attorney again when they are recommended for mediation. Additionally, mediation allows for far greater participation since it gives each side the chance to state their case in their own words. The settlement results in better compliance since the parties have consented to it and signed it. The creation of a non-judicial, non-adjudicatory divorce resolution procedure would need a radical reworking of the way society views divorce. Legislators should be encouraged to develop alternative methods for divorcing spouses due to the realities of contemporary divorce, including the large number of pending cases and general dissatisfaction.

Ultimately, connected or related incidents may be resolved through mediation. Conversely, mediation has disadvantages. There could be a time, money, and effort waste if the talks end in failure. The mediation could be partial or prefer one spouse over the other if the mediator lacks experience. If the devious spouse's hidden financial assets are not uncovered, a cunning partner may even conceal income or assets, leaving the weaker spouse insolvent.

If one spouse is submissive and the other dominating, the settlement could be unfair to one party. Consequently, the mediators need to be skilled and knowledgeable.

5. DIFFERENT MEDIATION MODELS

Three fundamental models of mediation are used in practice: facilitative, transformative, and evaluative. The facilitative paradigm is used when the mediator encourages communication between parties who are primarily in the same room. The mediator helps to clarify the parties' specific points of view, interests, and needs by posing questions, summarising what the parties have stated, and so on. For marital problems, however, transformational mediation works best. It is comparable to facilitative mediation but makes the assumption that the parties should come up with their own solutions.

Evaluative mediation is used when the parties spend the majority of the mediation moving back and forth between rooms with the mediator. The mediator typically looks at the legal aspects of each party's case, highlighting weaknesses in the claims made by one or both parties. This kind of mediation is better suitable for matters involving contracts and corporations. Recently, a novel form of mediation called narrative mediation has emerged, wherein the emphasis is on creating a fresh "story" or "narrative" to understand and transform the conflict. It is highly specialised and requires much training. There is a long history of using narrative mediation in nations like Australia and New Zealand. It's most frequently used in dispute resolution at work and in school.

6. METHOD OF MEDIATION

Unlike the 1996 Arbitration and Conciliation Act, which addresses the procedural and technical aspects of arbitration, mediation is not governed by any laws. It's problematic because, while mediation is recommended, the process and specifics of mediation are still not spelt out in law. Nevertheless, there are two ways to begin mediation in India:

1. When discussing private mediation, the parties do so voluntarily.
2. In accordance with Section 89 of the Civil Procedure Code, the court refers the parties to mediation.

The Supreme Court stated in the case of *M/S. Afcons Infra Ltd & Anr v. M/S Cherian Varkey Construction* that the court is able to select any of the methods. In reality, the regulation stipulates that "the court will have access to section 89 of the Code once the pleadings are complete and after requesting admission/denials wherever appropriate, and before formulating questions." If there are many rounds of discussion or if the questions are complex, the courts may send the case to mediation. A decision based on a settlement reached through court-ordered mediation cannot be appealed against or amended. The ideal time for mediation in family and marital cases is right after the respondent has been served but before the respondent files written declarations or objections.

Since there is no legislation governing mediation, the processes are carried out in accordance with the rules set forth by each court.²³ However, the Supreme Court ruled in *Salem Advocate Bar Association v. Union of India*²⁴ that Section 89 is ineffective since mediation procedures must be regulated because there is no framework in place. The Supreme Court recommended the government to draft an Indian Mediation Act in the recent case of *M.R. Krishna Murthi v. New India Assurance Co. Ltd and Others*, noting that such legislation is desperately required.

Eventually, legislators will give people the freedom to decide whether or not to get married, and courts will want to avoid handling divorce cases.

The four functional steps in mediation are:

- i. Introduction and Opening Statement;
- ii. Joint Session;
- iii. Separate Session(s); and
- iv. Closing.

The mediator begins by introducing himself and giving details about his name, years of professional experience, and any areas of specialisation that he may have. Each side then makes a comment after that. Subsequently, he talks about his appointment as a mediator, the case he has been assigned to mediate, and his background, including whether or not he has previously resolved a dispute of a similar nature. The mediator then expresses the need for a peaceful conclusion to the conflict and requests that the parties and their solicitors provide their identities. Among the objectives of this stage are encouraging the parties, fostering a nice atmosphere, gaining the trust of the parties, and establishing neutrality.

In the second stage, the parties are then free to state their positions, present their case, give explanations for their viewpoints, let out their feelings, and exchange ideas without interruption or opposition. At this point, the mediator may pose questions to allay any concerns and improve mutual understanding between the parties. The mediator will pinpoint the points of agreement and disagreement throughout this session. With the mediator's approval, the parties may respond to one other's arguments and even ask each other brief questions. In the third stage, separate sessions give the mediator access to more specific information and enable him to address issues raised by the parties during the joint session. The mediator takes emotional factors into account as they address the sensitive issues at hand on a deeper level. It helps the parties grasp the situation more fully. He needs to be aware of the worries and ask thoughtful inquiries. The mediator must be brief, accurate, and considerate of the worries and emotions of the parties.

7. MEDIATION OF MATRIMONIAL DISPUTES IN FOREIGN COUNTRIES

After agreeing on the terms of the settlement, the parties reassemble the case with the assistance of their attorneys, and the mediator verbally acknowledges the terms of the settlement. After the conditions are outlined, both parties sign the agreement. Each party receives a copy of the signed agreement, while the original signed document is forwarded to the referral court, which will use it as the basis for a suitable order. The parties are congratulated and thanked by the mediator for their involvement. The mediator should remain impartial during each of these phases and provide an environment where the parties feel comfortable to express their emotions.

Only German law (the Mediationsgesetz) has applied to mediation. Given that its mediation and conciliation have been attempted since its introduction at the Landgericht Gottingen in 2002 in court. In Australia, mediation has shown to be a successful method for settling family conflicts. Since its establishment in 1976, the Australian Family Court has offered family therapy programmes. The legislators and judges have acknowledged the importance of the contributions made by counselling specialists.

In order to save money on travel and hearing room expenses, online divorce mediation has also been introduced in the US. It makes use of modern video conferencing technology. Additionally, in 2015, the Dutch Legal Aid Board created Rechtwijzer, a brand-new website focused on online divorce mediation in the country. The platform was developed by the Hague Institute for Internationalisation of Law. Family mediation has only grown very slowly in Italy, despite some legislative and local government initiatives to promote mediation. Certain modern sections of law also contain some overlap between family mediation, counselling, and other social services targeted at helping families.

8. IF MEDIATION IS APPROPRIATE IN CASES OF DOMESTIC VIOLENCE

Section 498A of the Indian Penal Code, 1860 (often known as the "IPC") addresses domestic abuse. As to the 1908 Code of Criminal Procedure, domestic abuse is an offence that is not subject to compounding (henceforth referred to as CrPC). The courts cannot lessen the seriousness of these offences. Conversely, the courts have adopted an alternative stance. Conversely, the courts have adopted an alternative stance. The use of mediation to settle marital issues has not been met with resistance by the courts. In *Mohd. Mushtaq Ahmed vs. State*, the wife filed a FIR under Section 498A IPC against the husband in addition to a divorce petition. The Karnataka High Court mandated that the pair attend mediation. After everything was settled, the wife decided to have the FIR withdrawn. The High Court declared that in the exercise of its inherent jurisdiction to further the interests of justice, the court may, under appropriate circumstances, dismiss criminal prosecutions, FIRs, or complaints. In *Gurudath K v. State of Karnataka*, the court determined that Section 329 CrPC would not prohibit the use of the power to quash a FIR, despite the fact that the offences are not compoundable. If an amicable agreement has been made by the parties, there is no issue. The Indian courts' decision to make this change would decrease the likelihood that the accused in domestic abuse cases would be found guilty. The number of domestic abuse complaints submitted increased by 134 percent in 10 years, from 50,703 to 118,866, between 2003 and 2013.

9. CONCLUSION & SUGGESTIONS

The potential of mediation to address unfair treatment and promote a sense of justice and fairness in Indian culture is encouraging. We'll employ mediating skills, including objective communication and persuasive negotiation techniques. "Discourage litigation; persuade your neighbours to compromise whenever you can," advised Abraham Lincoln. Make sure they understand how the typical winner frequently loses out in terms of fees, expenses, costs, and time.

Although it can't be avoided, conflict can be controlled. Every relationship experiences highs and lows due to life's cycles, including having children and raising them, working towards a career, and dealing with the realities of the modern economy. Legislation must be passed by the government in order to permit the use of ADR in marital disputes. It's past time to concede that there will be no winner, no vanquished.

Not only that, but a significant section of the public is ignorant of the advantages of mediation. The government ought to act forcefully to encourage mediation, including setting up increased access to legal aid clinics and camps, as well as advertising via radio, television, and newspapers putting out informational flyers in noticeable places, such as police departments and court houses. More often, mediators should be recommended by judges and lawyers. Other nations and the things they've done can teach us much more. Without a doubt, mediation is a field that has to be developed and studied further, and it will surely lead us down an evolutionary path when it comes to conflict resolution.

In an effort to make justice accessible to all, India has been experimenting with and discussing extrajudicial options like negotiation, conciliation, arbitration, and mediation as less costly alternatives to the legal system. The growing backlog of court cases could make things unfair to the regular person. The research assistant would like to propose or advise the following in order to accomplish the goal of ADR's justice for all or any:

1. Educating the public about the ADR mechanism is the first and most crucial action that the government must take. This can be done by setting up a website, publishing information in print and broadcast media,

- including newspapers, radio, native cable television, and pamphlets, or by hosting symposiums, workshops, and seminars.
2. There is not enough court staff to meet the demands of their existing caseload, leaving them with little time to develop an effective ADR procedure. Therefore, more judges ought to be recruited in order to improve the situation.
 3. ADR practitioners ought to be among the legal profession. To do this, solicitors must conduct suitable training and take part in role-plays or simulated practices. It is necessary to create several kinds of mediators and conciliators so that they can work in their own fields of expertise, which include family, business, and so forth.
 4. In order to ensure that the ADR mechanism is implemented correctly, the government must set aside enough money to cover the costs of necessary infrastructure, higher-ups' approval, labour, and a panel of skilled arbitrators, conciliators, and mediators, among other things.
 5. A special defender or treasurer should be assigned to handle lawsuits brought by or against the government, as these matters comprise the majority of unsettled issues in the courts.

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