



# Dispute Redressal In Family Courts - A Study With Special Reference To Mediation In Family Courts In Thiruvananthapuram District

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## 1.1. Introduction

"I had learned the true pictures of law. I had gained the ability to see the good in others and to go inside their hearts. I came to see that a lawyer's actual job was to bring divided parties together. Over the twenty years of my legal profession, I spent a significant portion of my time bringing about private compromises in hundreds of cases because the lesson was so deeply ingrained in me. By doing so, I lost nothing—not even money—and most definitely not my soul. Can't we work toward improving "Access to Justice"?<sup>1</sup>

Any civilized society's cornerstone and goal is justice. Over the ages, humanity has been striving for justice as an ideal for many generations. Protecting the innocent, punishing the guilty, and satisfactorily resolving conflicts are all part of administering justice. Just results must be reached quickly in order for the judicial system to function effectively. Therefore, a quick judicial remedy is essential for the effective administration of justice, particularly in ensuring that legal rights are upheld without unnecessary delays. Justice delayed is often considered justice denied, as prolonged legal proceedings can lead to a loss of trust in the judicial system, cause unnecessary stress to parties involved, and exacerbate existing problems. In many cases, prompt resolution of legal disputes, whether in civil, criminal, or family matters, can help to prevent the escalation of conflict, protect the rights of individuals, and provide clarity and closure.

The principle of timely justice is not only a matter of efficiency but also fairness. When judicial remedies are expedited, the parties involved can reach a resolution that reflects the current state of affairs, preventing the harm or injustice that might occur if the legal process drags on. Additionally, swift justice promotes access to the legal system, ensuring that individuals, particularly those from disadvantaged backgrounds, do not face financial or emotional exhaustion while waiting for their day in court.

To achieve quick judicial remedies and to reduce delays, courts and legal systems must invest in efficient case management, streamlined procedures, and the use of technology. Measures like pre-trial conferences, alternative dispute resolution methods, and simplified procedures for smaller claims can also contribute to faster justice delivery. Ultimately, quick judicial remedies are the key to maintain public confidence in the legal system and ensuring that justice is not only done but done it promptly.

The preamble of the Constitution expresses goals for social, economic, and political Justice. Article 39-A of the Constitution guarantees justice, on the basis of equal opportunity, and prevents the denial of equal access to the courts based on social, economic or other debilities.<sup>2</sup> A fair trial and equal access to justice are fundamental rights<sup>3</sup> and violations will attract the constitutional remedy.<sup>4</sup> However, the Indian judicial system's current operation is insufficient to quickly resolve the country's expanding litigation. A common man may occasionally find himself imprisoned in litigation for the duration of a lifetime despite constant efforts, and in other cases, litigation continues into the following generation. He can deplete his resources in the process, apart from experiencing harassment. Consequently, there is a domino effect at work, with civil suits

<sup>1</sup> S.B KHER, MAHATMA GANDHI, THE LAW AND THE LAWYERS, 227& 228 (Navjivan Publishing House, 1962.

<sup>2</sup> IND CONST., Art. 39.

It states "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

<sup>3</sup> Hussainara Khatoon v State of Bihar, 1979 AIR 1369.

<sup>4</sup> The violation leads to legal remedy from highest judiciary under Art. 32 and 226 of the Constitution.

potentially leading to criminal cases. A constant goal for everyone involved in the administration of justice is the prompt resolution of cases and the provision of high-quality justice.

Even if judicial sector reforms should be implemented as soon as possible, it doesn't seem like courts and tribunals will be able to handle all of the caseload that comes with the legal system. The government must offer as many cost-effective dispute resolution options as necessary to handle the range of disagreements that may occur. In this situation, it is urgently necessary to add Alternative Dispute Resolution to the court's current infrastructure. In addition to improving the judiciary's efficiency, steps are being taken globally to make alternative dispute resolution methods available for pre-litigation and ongoing issues.

Family courts in India play a pivotal role in addressing conflicts that arise within familial relationships, encompassing issues such as divorce, child custody, spousal support, and property disputes. In India, resolving a typical civil dispute through the court system can take years. ADR plays a critical role in family courts, offering a less adversarial and more collaborative approach to resolve disputes. In the emotionally charged environment of family law, where issues such as child custody, divorce, and financial settlements are at stake, ADR provides parties with an opportunity to reach mutually beneficial agreements outside the courtroom. Methods like mediation, arbitration, and collaborative law aim to reduce conflict, preserve relationships, and empower individuals to make decisions that best suit their unique needs. The importance of ADR in family courts is underscored by its ability to alleviate the burden on overloaded court systems, reduce legal costs, and promote quicker resolutions. By fostering communication and understanding, ADR ultimately helps to create more sustainable, peaceful solutions for families, supporting both legal outcomes and emotional well-being.

Among the various mechanisms available for dispute resolution, mediation has gained prominence as a preferred method for resolving conflicts in a constructive and less adversarial manner. By emphasizing collaboration and mutual understanding, mediation seeks to achieve outcomes that prioritize the best interests of all parties involved, particularly children and other vulnerable individuals. Mediation offers a structured yet flexible process that allows disputing parties to actively participate in crafting solutions tailored to their unique circumstances. However, the adoption of mediation within family courts raises important legal and ethical considerations. Therefore, questions about the enforceability of median agreements, adherence to family law principles, and protection against coercion or unfair bargaining power must be addressed. So, ethically mediators are tasked with upholding principles of neutrality, confidentiality, and informed consent while ensuring that power imbalances or other vulnerabilities do not compromise the fairness of the process.

This paper delves into the mechanisms of dispute resolution in family courts, with a special focus on mediation. It examines the legal frameworks, ethical responsibilities, and practical challenges associated with integrating mediation into family court proceedings. By exploring these dimensions, this study aims to highlight the potential of mediation as an effective and equitable tool for resolving family disputes while safeguarding the rights and well-being of all parties involved.

## **1.2. Background of the Study**

Mediation plays a crucial role in the family courts of Thiruvananthapuram District, offering numerous benefits that enhance the effectiveness, efficiency, and emotional well-being of parties involved in family disputes. Family courts in Thiruvananthapuram, like many other jurisdictions, often experience heavy caseloads, leading to delays in case resolution. Mediation provides an alternative dispute resolution mechanism that helps to alleviate this burden by resolving cases more swiftly. This not only speeds up the resolution process but also frees up judicial resources for more complex cases that require formal adjudication.

Litigation can be a costly process, often placing a financial strain on the involved parties. Mediation, in contrast, tends to be more cost-effective, as it reduces the need for prolonged legal proceedings and associated expenses. This is particularly beneficial in Thiruvananthapuram, where access to affordable legal services can be limited for some segments of the population.

Mediation offers a more amicable and less adversarial environment compared to traditional courtroom settings. This approach helps to reduce stress and anxiety, as it encourages open communication and mutual understanding. For families in Thiruvananthapuram, this can be especially important in maintaining familial relationships and minimizing emotional harm, particularly for children. Mediation empowers parties by involving them directly in the resolution of their disputes.<sup>5</sup> Mediation offers a private and confidential setting, unlike public court proceedings. Agreements reached through mediation are often more sustainable because they are mutually agreed upon rather than imposed. This can lead to higher compliance rates and fewer instances of returning to court for modifications or enforcement issues. In Thiruvananthapuram, where there may be barriers to accessing formal legal services, mediation offers an inclusive alternative that can accommodate individuals from various socio-economic backgrounds.

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<sup>5</sup> HENRY J BROWN & ARTHUR L. MARRIOTT Q.C., *ADR PRINCIPLES AND PRACTICE* 128 (London Sweet & Max well, 1999).

### 1.3. Review of Literature

Conflict may be viewed as a feeling of a disagreement, a real or perceived incompatibility of interest, or inconsistent world views or a set of behaviour. Conflict is the result of two persons attached to their own ideas based on their perceptions. The matrimonial disputes start from these perceptions. Conflicts lead to fear, suspicion, helplessness, frustration, anger, hurt, humiliation, distrust, vengeance etc. Once these factors intrude into the relationship of a family, the outcome is a dispute and the same leads to family cases. In order to patch up these family issues the most remedial and confidential way is the alternative dispute redressal mechanism.

This study is intended to assess the effectiveness of mediation in family courts, in Thiruvananthapuram and to evaluate the level of success of the mediation process. Hence suggestions can be made to achieve success in mediation by enhancing the redressal level with various measures of the mediation process. The study introduces the concepts of mediation success, quality of mediation, mediation techniques, model of dispute resolution management and effective conflict management in mediation.

**Rithu Gautham, Mediation and Family Dispute Resolution Mechanism: A Case Study on Clinical Legal Education** (2021): The study deals with the nature of family disputes, especially those involving children. A paradigm shift has seen in the legal system over the last two decades. The traditional model of adjudication has been replaced by a comprehensive, progressive and multidisciplinary family dispute resolution process as a result of this change. Indian justice dispensing system is bleeding because of the overloading of cases. Being a non-judicial process mediation is one of the most flexible and speedy methods of ADR. FDRC is a leading example in India with the app. 88% success rate at the pre-FIR stage.

**Allard Duursma, A current literature review of international mediation** (2014): Research focused on how international mediation in armed conflicts affects the likelihood of reaching a negotiated agreement, while other possible outcomes of mediation have been understudied. Accordingly, research needs to be done on the effects of mediation attempts that did not lead to a peace agreement, as well as the accumulative effect of peace agreements. Furthermore, the relation between negative peace and mediation has been studied extensively, but how mediation affects the degree of positive peace has received scant scholarly attention. Finally, the interlinkages between different phases of the mediation process examined more extensively. Due to the complex and fragmented nature of construction, conflicts and disputes cannot be solved within the appropriate time. It may cause non-compensable damages such as delays. Traditional and common dispute resolution methods are utilized to reach settlements between parties. Traditional dispute resolution sometimes cannot be effective due to adversarial procedures where one party will win and the other one will lose during the execution.

**Simon Greenberg, Christopher Kee and J Romesh Weeramantry, International Commercial Arbitration: An Asia-Pacific Perspective** (2013): It focused on the development of the private regime of dispute resolution in this vast and rapidly developing area and examines it against the backdrop of legal and cultural diversities of Asia –Pacific nations. It deals with mainly law governing the Arbitration, role of seat, application of substantive law, arbitration agreement etc. In this article, two methods of dispute resolution are discussed regarding double taxation, they are the OECD First Model Tax Convention and the EU Convention. The article also examines the situations under which the settlement procedure is required or available, how the procedures are used, the rights, duties and obligations of the parties, the means for resolving disputes and the limitations of the procedures.

**George COCA, Mediation in the Criminal Proceedings** (2012): The paper deals with the solution of banking problems which are newly emerged. It lays down the method of judicial practice and principles used in the identification of the litigations. The Method of dispute resolution always concentrate on a reasonable solution, maintaining relations of the parties and use of privacy principles. It classifies the areas of the mediation such as credit institutions, banks or non-banking institutions. It suggested for special training to the Mediators and makes it mandatory.

**Shah Report** (2012): It provides that various measures have been implemented with the cooperation, dedication and efforts of judges, lawyers and their associations for the disposal of civil cases in the USA. The author suggested amendments to Section 89 of the Code of Civil Procedure, 1908, amendments are also required to be made to the relevant provisions of the Arbitration and Conciliation Act, 1996. Such as sec 30, 36 part III, 61, 62 and 74 of the Arbitration and Conciliation Act, 1996. It suggested that these amendments help to implement the ADR method more effectively.

**Koh and Tommy, International Law and the Peaceful Resolution of Disputes: Asian Perspectives, Contributions, and Challenges** (2010): The study reveals that Asian governments tend to be more sensitive about their sovereignty than governments in the contemporary West. Therefore, when differences occur and disputes arise, Asian governments tend to insist that they be resolved through bilateral consultations and negotiations. The reality is that, very often, the differences and disputes remain unresolved after years and even decades of negotiations and when it left unresolved, some of these disputes have a tend to contaminate the bilateral relationship as a whole. This is a great pity, because the disputes may revolve around relatively minor issues compared to many other areas in which the two countries have convergent interests. Asian governments should therefore consider resolving such disputes by other peaceful means.

**Justice M, Jagannadha Rao, Concepts of Conciliation And Mediation And Their Differences** (2011): In this paper Justice attempted to clear some of the doubts raised as to the meaning of the words 'conciliation' and 'mediation'. Section 30, 64(1) and S. 73(1) of the 1996 Act which says that the conciliator has a greater or a pro-active role in making proposals for a settlement, formulating and reformulating the terms of a settlement. A mediator is a mere facilitator. The meaning of these words given in India is the same in the UNCITRAL along with in the Conciliation Rules, in the UK. But, in the USA and regarding certain institutions abroad, the meaning is just the reverse; a 'conciliator' is a mere 'facilitator' whereas a 'mediator' has a greater pro-active role. While examining the rules made in the US in regard to 'mediation', if we substitute the word 'conciliation' wherever the word 'mediation' is used and use the word 'conciliator' wherever the word 'mediator' is used, we shall understand the said rules as we understand them in connection with 'conciliation' in India.

**Prof. K.D. Raju, Alternate Dispute Resolution System: A Prudent Mechanism of Speedy Redress in India** (2007): When we look at the number of cases pending in court it is very necessary to use such methods to decrease the burden of pendency. It is also necessary to maintain the rule of law. The article discusses how the use of Arbitration, Conciliation, Mediation, Lok Adalat, Gram Nyaya Laya and Nyaya Panchayat reduce the burden of pendency.

**Avantika Kestwal, An Introduction To Mediation In India With Reference To Family Disputes** (2003). Alternative dispute resolution techniques like mediation have grown in acceptance in India. A neutral third party, known as a mediator, assists parties in disagreement in communicating and negotiating a resolution that will be acceptable to both parties. Mediation is a voluntary process. The procedure aims to resolve conflicts more quickly and affordably than traditional litigation by being less formal and confrontational. This study offers an overview of mediation in India with an emphasis on how it is applied to family issues. In India, family conflicts are frequent and can result from several problems, including property disputes, marriage problems, and inheritance problems. Family conflicts are frequently complicated and emotionally intense, and they can have a big effect on the people involved, especially the kids.

**Justice Dhananjaya Y Chandrachud, M E D I A T I O N – realizing the potential and designing implementation strategies** (2003): In this article Hon'ble Justice speaks about the instrumental and Intrinsic Functions of mediation, finding solutions to the pitfalls of Litigation, Procedural rigidity, and Participatory roles. The mediator gives facilitation to the parties to arrive at an amicable settlement. He is not an adjudicator. There are various stages in Mediation such as structured informality, creating broad-based remedies etc. There is a need to modify Section 89 of the CPC, with regard to strategies for implementation, awareness and advocacy, Courts and Mediation etc.

**S. Muralidhar, Muralidhar S, The introduction of the alternative dispute resolution methods attracts the attention of the legal profession including judges, lawyers and law researchers** (2003): The introduction of the alternative dispute resolution methods attracts the attention of the legal profession including judges, lawyers and law researchers. This is a reform in the judicial process which is helpful to the speedy disposal of cases. The alternative dispute resolution methods are nothing but access to justice and this is the most basic human right. The possession of rights without effective methods of implementation is meaningless.

**Bernard Mayer, The Dynamics of Conflict Resolution: A Practitioner's Guide** (2000): Conflict resolution requires more than just a mechanical application of procedures and techniques. What is needed is a way of thinking about conflict, a set of intellectual and interpersonal skills, and a clear focus. In this book, Mayer offers ways of thinking about conflict that are relevant and helpful to conflict resolution practitioners seeking to facilitate collaborative problem-solving.

**Robert A. Baruch Bush and Joseph P. Folger, The Promise of Mediation; Responding to Conflict Through Empowerment and Recognition** (1999): The author talks about the emergence of mediation in the U.S., Mediation in the court, and the mechanics of mediation, training and compensation to mediator and certificate to the trained mediator, reduction of burden on the system etc.

These studies have not explained the effectiveness of mediation in family disputes and social and ethical impact of mediation on persons who went through mediation procedures. Hence this study is necessary to have a study about the importance of mediation in family courts with special preference to Thiruvananthapuram District of Kerala.

#### **1.4. Statement of Research Problem**

The statement of the research problem or the study is on Dispute Redressal of Family Courts in Kerala, a study with specific reference to Dispute Redressal through Mediation in Thiruvananthapuram District. The performance of various functional areas at family courts in Thiruvananthapuram District is analysed and evaluated based on client Dispute Redressal Survey. The litigant's feedback is an important method for finding the effectiveness of the redressal mechanism with the commonly accepted appraisal system.

In contemporary legal frameworks, family courts face significant challenges in resolving disputes effectively while maintaining the well-being of all parties involved. One pivotal approach increasingly advocated is mediation, aimed at fostering constructive dialogue and mutual understanding among disputing parties outside the traditional adversarial courtroom setting. However, despite its growing adoption, the precise impact and efficacy of mediation within family court systems remain inadequately understood and documented. Therefore, this research aims to explore the importance of mediation in family courts by

investigating its role in enhancing procedural justice, promoting sustainable resolutions, and addressing the diverse needs of families navigating complex interpersonal conflicts. Through a comprehensive examination of empirical data and comparative analyses of mediation outcomes, this study seeks to provide valuable insights into optimizing family court practices and advancing equitable dispute resolution mechanisms.

### **1.5. Scope and Significance of the Study**

This study aims to explore the importance of mediation in family courts within Thiruvananthapuram District of Kerala. It will consider both urban and rural settings within the district to understand the implementation and impact of mediation in diverse socio-economic contexts. The research will include a variety of family law cases where mediation is applied, such as divorce, child custody and visitation rights, spousal and child support, division of property, and cases involving domestic violence. The study will pay particular attention to how mediation processes address sensitive issues like domestic violence.

The study gathers data from multiple stakeholders, including parties involved in family disputes (spouses, parents, and children), mediators, legal professionals (lawyers, judges), and social workers. The focus will be on capturing the experiences and perceptions of these stakeholders regarding the mediation process.

The research examines the types of mediation models used in the family courts of Thiruvananthapuram, including mandatory and voluntary mediation programs. The study will assess the effectiveness of mediation by analysing settlement rates, the durability of mediated agreements, participant satisfaction levels, time and cost efficiency, and the psychological impact on the parties involved. It will also compare these outcomes with those from traditional litigation processes.

The research reviews the legal provisions, guidelines, and policies governing the use of mediation in family courts within Kerala, with a specific focus on Thiruvananthapuram. This includes analysing statutory mandates, regulatory frameworks, and the role of the judiciary in promoting or regulating mediation practices. The study will identify the key barriers and facilitators of effective mediation in family courts, such as accessibility, availability of qualified mediators, public awareness, cultural attitudes towards mediation, and institutional support from the court system. It will also explore challenges related to infrastructure, training, and resources.

The study considers the cultural and societal context of Thiruvananthapuram, including traditional attitudes towards family disputes and mediation, the influence of religious and community organizations, and the socio-economic factors that may affect the mediation process and its outcomes. By focusing on these specific areas, the study aims to provide a detailed analysis of the role and importance of mediation in family courts within the Thiruvananthapuram District. The findings will offer insights into improving mediation practices and policies, thereby enhancing the efficacy and fairness of family dispute resolution in the region.

### **1.6. Significance of the Study**

1. The need of incorporation of Mandatory Mediation Sessions for all family law cases, including divorce, child custody, and spousal support, before proceeding to litigation
2. The importance of establishment of a Mediation Support Framework for mediation, including training programs for mediators, certification standards, and regular workshops for legal professionals and the public.
3. The necessity of keeping confidentiality assurance for mediation sessions to protect the privacy of the parties involved.
4. To provide Accessible Mediation Services to all residents of Thiruvananthapuram District, regardless of socio-economic status, by providing subsidized or free mediation options for low-income.
5. The importance of Public Awareness Campaign to inform the community about the benefits of mediation, its processes, and how to access these services in Thiruvananthapuram District.
6. To enhance Monitoring and Evaluation of mediation sessions, including settlement rates, participant satisfaction, and the long-term sustainability of agreements.
7. To integrate Legal and Social Services including counselling and support to domestic violence victims, for providing a holistic approach to family dispute resolution.

### **1.7. Objectives of the Study**

The objectives are mainly classified into three areas, as follows-

1. To analyse the role of Mediators in settling cases pending before the family courts in Thiruvananthapuram.
2. To study the role of Advocates concerned with settling cases before mediation.
3. To understand the role of mediators in arriving at settlement of the disputes between the litigants.

### **1.8. Research Methodology:**

The study is based on descriptive and analytical in nature. The research is carried out using the quantitative data collected from sample respondents. The doctrinal part aims to suggest reforms based on the review of existing laws, judicial decisions, books, journals etc. The sources relied on are noticeably acknowledged in footnotes.

## 1.9. Sources of Data

### Primary data

The primary Data collection was done through personal surveys. The questionnaire prepared was distributed to the mediators, advocates and clients, and their responses were collected. It was collected from 60 respondents from 3 family courts in Thiruvananthapuram district.

### Secondary data

Secondary data required for the study is collected from various sources such as books, magazines, case laws, journals, published research works related to mediation and conciliation, etc.

### Structure of the questionnaire

The Questionnaire is structured into five parts. Part 1 focuses on the demographic details of the respondents. This information is crucial as it helps to understand how different demographic groups perceive and engage with the subject of the study. Part 2 deals with general information about the dispute. Part 3 deals with perception and experience with mediation, measured using a 5-point Likert scale. The question in this section aims to gather information on respondents opinions regarding the mediation process carried on in family courts Thiruvananthapuram district, Part 4 deals with the perception of the mediation process and Part 5 deals with suggestions and feedback of the respondents.

### Population

The litigants in family courts in Thiruvananthapuram district are the population of the study. The total population of the litigants who came to the family court to conduct cases are not in a position to find out. Consequently, the total population of the present study is definite.

### Sampling frame

The litigants from three family courts such as Thiruvananthapuram, Nedumangad and Attingal constitute the sampling frame of the study.

### Sampling Unit

The litigants who have continuously visited the family courts for to redress their grievances constitute the sampling unit of the study. Since the population of the study is in definite, purposive sampling method is adopted.

## 1.10. Limitation of the Study

1. Litigants hesitate to respond to the survey because of their mental stress.
2. The findings are based only on the information given by the respondents who were available as litigants during the project tenure.
3. Litigants refuse to disclose the details of the dispute.
4. There can be a chance of bias in the responses of some of the respondents leading to some discrepancy or inconsistency in the responses collected.
5. Discussions between litigants and mediators are confidential and informal hence reluctant to disclose them.
4. Fear of loss of prestige in society due to matrimonial issues.
5. Limited access to watch the mediation process due to confidentiality.

## 2.1. FORMAL JUDICIAL PROCEDURE- CHALLENGES

The main obstacle for using the formal legal system is the ignorance of the general public' about their rights and remedies. Even the most literate and educated people find it impossible to understand the language of the law since it is always written in extremely complex and difficult language. There haven't been many attempts to translate the legal language into a vernacular form for making them easier to understand. Most of the people are poor and illiterate and are difficult to understand their right and face difficulties to ensure access of remedial mechanism.

The application of formal judicial procedures in family courts often presents several challenges, because of the sensitive and emotionally charged nature of family disputes. <sup>6</sup>While these procedures are designed to ensure fairness and adherence to the law, their rigidity and adversarial nature can sometimes hinder the resolution of issues in a manner that best serves the interests of families. Below are some of the key problems associated with applying formal judicial procedures in family courts:

### 2.1.1. Emotional Distress

Family disputes, such as divorce, custody battles, and property settlements, are deeply personal. Formal judicial processes, which involve cross-examinations, rigid rules of evidence, and legal arguments, can

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<sup>6</sup> See *infra* note 16\_at 68.

exacerbate the emotional toll on the parties involved, especially children. This often leads to heightened tensions and further estrangement.<sup>7</sup>

### **2.1.2. Adversarial Nature**

Traditional court procedures are inherently adversarial, pitting parties against each other. This can deepen conflicts rather than resolve them, making it harder for families to maintain healthy relationships during post-litigation stage. Such an approach may not align with the goal to promote harmony in family matters.

### **2.1.3. Lengthy and Costly Proceedings**

The largest problem facing the current justice delivery system is the length of time it takes to resolve cases and the prohibitive expense of litigation. The average waiting period can last for several years in both the criminal and civil subordinate courts. Thus, justice is negated. Several obstacles are in place to achieve this. India's judiciary is already seeing a docket explosion.<sup>8</sup> The massive backlog of cases simply serves to limit access to justice.<sup>9</sup> The public becomes less confident in the idea of justice as a result of the delays of court system. Even the victorious petitioner is unable to recoup the whole cost of the action, demonstrating the ineffectiveness of our current cost regime. Any litigation that takes a long time to conclude incurs additional costs and compounds the difficulty of not having a reliable mechanism for their recovery.<sup>10</sup>

Formal judicial procedure can be time-consuming and expensive due to their complexity and requirement of legal representation. This can disproportionately affect individuals with limited financial resources, leaving them unable to pursue justice effectively.<sup>11</sup>

### **2.1.4. Overloaded Court Systems**

Family courts often face heavy caseloads, leading to delays in hearings and judgments.<sup>12</sup> Prolonged litigation can leave families in limbo, causing financial and emotional instability during an already challenging time.<sup>13</sup>

### **2.1.5. Lack of Privacy**

Formal court procedures are public, which can result in sensitive family matters being disclosed in open courtrooms. This lack of confidentiality may deter individuals from fully engaging with the process or lead to further emotional harm.<sup>14</sup>

### **2.1.6. Limited Flexibility**

Formal procedures follow strict legal frameworks, leaving little room for creative or personalized solutions tailored to the unique needs of families. This rigidity can result in outcomes that feel inadequate or unfair to one or both parties.

### **2.1.7. Impact on Children**

Children are often the most affected by family disputes. The adversarial and formal nature of court proceedings can expose them to stress and conflict, which may have long-term psychological impacts.

While formal judicial procedures are essential for ensuring fairness and legality, their application in family courts must be balanced with sensitivity to the unique dynamics of family disputes. Alternative methods like mediation and collaborative law, which prioritize flexibility, confidentiality, and reconciliation, can often provide more effective and compassionate solutions for families in distress.

## **2.2. Alternative form of Dispute Settlement— Evolution**

The idea of parties to resolve their disagreements amicably or with the assistance of a third party predates alternative dispute resolution and is widely recognized in ancient India. Conflicts were resolved amicably through the involvement of Parishad, Sreni (guild members with comparable occupations) and Kulas (family

<sup>7</sup> See *infra* note 14 at 24.

<sup>8</sup> There was a backlog of over 2 crore cases for as long as 25 to 30 years.<sup>6</sup> Of these, there were over 1.32 crore (13.2 million) criminal cases and around 70 lakhs civil cases. Indian Law Institute, *Judicial System and Reforms in Asian Countries: The Case of India*, INSTITUTE OF DEVELOPING ECONOMIES, JAPAN EXTERNAL TRADE ORGANISATION (IDE-JETRO) 39 (March 2001).

<sup>9</sup> Gross Sr, *The American Advantage: The value of inefficient Litigation*, 85 MICH.L. REV, 734(1987).

<sup>10</sup> K. Jayachandra Reddy, *Alternative Dispute Resolution*, in ALTERNATIVE DISPUTE RESOLUTION 103 & 105 (P.C. Rao & William Sheffield ed., Universal Law Publishing 2015).

<sup>11</sup> KALEESWARAM RAJ, *RETHINKING JUDICIAL REFORMS REFLECTIONS ON INDIAN LEGAL SYSTEM* 23 (Universal Law Publishing, 2018).

<sup>12</sup> Indian Law Institute, *Judicial System and Reforms in Asian Countries: The Case of India*, Institute of Developing Economies, Japan External Trade Organisation (IDE-JETRO), (March 2001) 37.

<sup>13</sup> See *supra* note 11 at 35.

<sup>14</sup> Oscar G Chase & Jonathan Thong, *Judging Judges: The effect of court room Ceremony in Participant Evolution of Process Fairness related Factors*, 24(1) YALE J. OF LAW & HUMANITIES 225(2013).

assemblies), etc.<sup>15</sup> The main goals of the ADR movement are to promote the idea of universal access to justice and to prevent inconvenience, expense, and delay. The goal of the ADR system is to deliver rapid, easy, affordable, and accessible justice. It operates differently from the typical legal system. Under this, disagreements are resolved with a third party help, following a straightforward process that is largely carried out according to the parties' agreement. ADR encourages quick dispute resolution with minimal time, skill, or financial outlay while preserving subject matter confidentially throughout the decision-making process in order to achieve substantial justice.<sup>16</sup> In other words, ADR seeks to deliver justice that not only settles disputes but also improves the parties' relationship. It can be broadly divided into two and it may be community-based conflict resolution mechanisms like Lok- Adalat and court-annexed options such as mediation, arbitration and conciliation.

Alternative dispute resolution provides the involved parties with options, but it does not completely replace the existing judicial system. <sup>17</sup>ADR frequently results in a fair and cooperative resolution of conflicts. It's considered to be a crucial component of the judicial reform process, representing the "access to justice approach."<sup>18</sup> Rather than focusing on treating the symptoms of malice, the ADR's primary goal is to identify its origin and eradicate it. This implies that the goal of this strategy is to find a better, more durable solution.<sup>19</sup> ADR might be seen as a compromise in which everyone emerges victorious but neither party loses nor wins.

Justice Warren Burger, the former Chief Justice of the United States Supreme Court states as:

"The harsh truth is that we may be on our way to a society overrun by hordes of lawyers, hungry as locusts and bridges of judges in numbers never before contemplated. The notion — that ordinary people want black-robed judges, well-dressed lawyers, fine-paneled courtrooms as the setting to resolve their disputes, is not correct. People with legal problems like people with pain, want relief and they want it as quickly and inexpensively as possible."<sup>20</sup>

It is untrue to say that the general public prefers black-robe judges, well-dressed attorneys, and elegantly panelled courtrooms to settle their legal conflicts.<sup>21</sup> Similar to those who are in agony, those who are facing legal issues desire relief as soon as feasible at a reasonable cost. An adjudicator's most important tool is accurate information and court cases are delayed because parties are unwilling to divulge facts that might be uncomfortable. It could be difficult to discover the truth if someone is forced to appear in the witness box and face ridicule from the public. Informal conversations across the table can yield information more quickly. ADR is therefore a step in the right direction where the court has failed to efficiently obtain facts. Because the parties are the ones making the decisions and are conscious of the veracity of their positions, they are encouraged to make decisions during mediation or conciliation even though there is no barrier.<sup>22</sup> When the disputants end up in a win-lose situation as a result of the cost procedure it becomes pitiable and if the outcome's financial cost is lower, the mechanism's efficiency is increased, and there is a chance that a disruption won't occur.

Therefore, the advantages of A.D.R. is summarised that it –

1. Focuses upon the parties' own needs and interests,
2. Provides for a full disclosure of competing interests and positions
3. Confers upon the parties a right of self-determination
4. Allows for procedural flexibility
5. Maintains privacy and confidentiality
6. Creates a win-win situation in the minds of parties
7. Separates the problem from the people
8. Saves the time and money

## 2.2. DEVELOPMENT OF ADR PROCEDURES IN INDIAN COURTS

ADR was formerly a voluntary action taken by the parties but it received favourable legal recognition with the CPC Amendment Act of 1999. The Legal Services Authorities Act, 1997, the Legal Services Authorities (Amendment) Act, 2002, and the Arbitration and Conciliation Act, 1996 widened the scope of alternative dispute resolution mechanisms. In addition to the courts, the statutory authorities, such as Legal Services Authorities, have a crucial role in the justice delivery system. However, the support of the state is needed for the proper implementation of their duties. Moreover, there were a number of ways that allowed the courts to

<sup>15</sup> See *supra* note 10 at 79.

<sup>16</sup> DR. MADABHUSHI SRIDHAR, ALTERNATIVE DISPUTE RESOLUTION NEGOTIATION AND MEDIATION, 93 (Lexis Nexis, 2013).

<sup>17</sup> Oscar G Chase and Jonathan Thong, Judging Judges : The effect (effect) of court room Ceremony in nParticipant Evolution of Process Fairness related Factors, 2013 24(1) Yale JournL OF law & Humanities 226.

<sup>18</sup> See *supra* note 16 at 79.

<sup>19</sup> See *supra* note 16 at 79.

<sup>20</sup> S.B. Sinha, *Judicial Reform in Justice Delivery System*, (2004) 4 SCC (Jour) 35.

<sup>21</sup> See *supra* note 5 at 130.

<sup>22</sup> Dhara Wijayatilake, *Mediation in Sri Lanka*, badr.v5i9. ART09 182 (2023) (Apr.6,2023,10.15), <https://rbadr.emnuvens.com.br/rbadr/article/view/194/138>.

send conflicts to mediation even before the creation of S. 89 of CPC.<sup>23</sup> Unfortunately, these laws had not been widely used. These provisions can be found, among other places, in the Hindu Marriage Act, 1955,<sup>24</sup> the Industrial Disputes Act,<sup>25</sup> and the Family Courts Act, 1984.<sup>26</sup> They are also available in a very early form through S. 80, Order 32 A, and Rule 5 B of Order 27 of the CPC.<sup>27</sup> In *Oil & Natural Gas Commission v Western Co. of Northern America*,<sup>28</sup> the Supreme Court demonstrates a trend along these lines. According to Section 80(1) of the Code of Civil Procedure, a lawsuit cannot be filed against the government or a public official until a notice including the name of the cause of action and other relevant information has been delivered to the government office. The court held that the purpose of serving notice under S. 80 of the CPC is to give the government enough notice of any potential legal action against it.<sup>29</sup> If the government so desires, it can resolve the claim amicably or impose restrictions without going to court. It aims to provide the government with the chance to evaluate the legal stance of the other party and settle it if justified.<sup>30</sup> A decree can be pronounced on any valid agreement or compromise between the parties that results in the satisfaction or adjustment of a claim that can be made during the pendency of the matter.<sup>31</sup> When a lawsuit is filed against the government or a public official, the court is responsible for assisting the party in reaching a settlement.<sup>32</sup> The court may adjourn the proceedings and attempts to effect settlement if it appears to the court at any point during the proceedings that there is a reasonable likelihood of settlement.

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<sup>23</sup> From Vedic period, people use mediation as a tool to solve disputes. In the past, disputes between parties were settled by informal panchayats, in which respected village elders or Mahajans served as mediators. Some Indian tribes still use Panchas or Pancha Parmeshwars, who act as impartial third parties, to arbitrate conflicts between wrongdoing individuals or groups. However, mediation gained recognition as a formal and authorized ADR technique with the start of British colonization.

<sup>24</sup> S. 23(2), The Hindu Marriage Act, 1955

It stipulates in that the court must first attempt to mediate reconciliation between the parties, if feasible given the facts of the case, before awarding relief under this Act. Section 23(3) of the Act allows the court to adjourn a procedure for a reasonable amount of time in order to facilitate reconciliation. The person appointed by the court or the parties involved will then be given the task of reporting back to the court on the outcome of the reconciliation.

<sup>25</sup> S. 4 & 5, The Industrial Disputes Act, 1947.

“S. 4(1) The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes. (2) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

S. 5. Board of Conciliation-(1) The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute. (2) A Board shall consist of a chairman and two or four other members, as the appropriate Government thinks fit. (3) The chairman shall be an independent person and the other members shall be persons appointed in equal numbers to represent the parties to the dispute and any person appointed to represent a party shall be appointed on the recommendation of that party.”

<sup>26</sup> It proposes to establish family courts, a different dispute settlement mechanism in dispute relating to family matters by accepting a procedure of speedy resolution. The parties can settle their dispute with the assistance of courts.

<sup>27</sup> Rule 5B, The Code of Civil Procedure, 1907.

**“Duty of Court in suits against the Government or a public officer to assist in arriving at a settlement.**

(1) In every suit or proceeding to which the Government, or a public officer acting in his official capacity, is a party, it shall be the duty of the Court to make, in the first instance, every endeavour, where it is possible to do so consistently with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.

(2) If, in any such suit or proceeding, at any stage, it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit, to enable attempts to be made to effect such a settlement.

(3) The power conferred under sub-rule (2) is in addition to any other power of the Court to adjourn proceedings.”

<sup>28</sup> 1987 AIR 674.

<sup>29</sup> Ghanshyam Dass v Domination of India, (1984) 3 SCC 46),

<sup>30</sup> Reghunath v Union of India, AIR 1969 SC 674.

<sup>31</sup> See *supra note 27* at Order 23, Rule 3. The court will issue a decree in line with the agreement or compromise if it is satisfied that a lawsuit has been settled, in whole or in part. The court is bound to record a legitimate compromise or adjustment and issue a decree based on them.

<sup>32</sup> *Id* at Order 27 Rule 5B.

To prevent the Centre's and the state's public sector enterprises from fighting their legal battle in court by spending high legal fees, court costs, procedural expenses, and waiting for the public to appear, the Supreme Court began issuing various directives. <sup>33</sup>The court observed that the state and union government need to develop a process for settling interdepartmental issues such that they cannot be challenged in court.<sup>34</sup> The Supreme Court directions to the government to establish a committee to monitor disputes between government departments and public sector undertakings makes it clear that the machinery contemplated is only intended to ensure that no litigation proceeds to court without parties having had a chance to mediate before an in-house committee. <sup>35</sup>

### 3.1. MEDIATION- AN EFFECTIVE TOOL OF ADR

Mediation and other alternative dispute resolution processes are deeply rooted in the Indian context. Arbitration has been in use for over thirty years and suffers delays and uncertainty. This led to the development of hybrid concepts like ARB-MED and MED-ARB. It has been widely used in developed countries to resolve disputes within one or two weeks. Mediation is an alternative resolution method, that lies the essence of joint problem-solving beyond the aim of resolving disputes formally. It opens channels of communication, and fosters deep understanding and reconciliation.<sup>36</sup> Mediation transcends the traditional notion of resolving disputes through compromise; it embodies a profound journey of healing for all involved. Unlike conventional methods, it acknowledges the emotional, psychological and relational dimensions of conflict.<sup>37</sup> It rebuilds trust and repairs fractured relationships. It empowers emotional restoration and encourages parties to cultivate empathy and understanding of the humanity of the other party. Finally, Mediation serves as a catalyst for personal growth and transformation.

Mediation balances the soft approach of neutering relationships with the hard-nosed stance of addressing underlying issues. Rather than engaging in a battle of egos, mediation advocates for a collaborative effort to dismantle the barriers and pave the way for mutually beneficial solutions. Beyond its immediate aim of resolving disputes, mediation serves as a conduit for opening networks of communication, fostering deeper understanding and fostering reconciliation. It leads to a vital component of the healing journey.

### 3.2. Mediation- Historical Background

The historical evolution of mediation can be traced from ancient times with various forms of alternative dispute resolution appearing in different cultures of different societies. <sup>38</sup>In many ancient societies' elders, community leaders or religious leaders occupy as mediators to resolve disputes. Later in the mid-centuries societies became more organised which led to structured dispute-resolution mechanisms. In the twentieth century mediation gained prominence in labour disputes. In the 1960s mediation focused on resolving interpersonal conflicts and promoting social justice. In the late 20<sup>th</sup> century, a formalised ADR process leads to the uniform mediation law. <sup>39</sup>With globalisation, the focus is on international mediation to resolve conflicts between nations. In the 21<sup>st</sup> century the advent of technology has facilitated online mediation platforms and that led to global connectivity and digital communication. In the contemporary period mediation has been recognized as a profession with standardised training programmes with ethical guidelines that contribute to the credibility of mediation as a successful dispute resolution method. <sup>40</sup>

The first elaborate training for mediators was conducted in Ahmedabad in 2000 by the Institute for the Study and Development of Legal System. It was followed by training workshops conducted by the Institute for Arbitration, Mediation, Legal Education and Development (IAMLED), a Public Charitable Trust, and it was carried on by two senior lawyers of Ahmedabad. The Chief Justice of India formally inaugurated the mediation

<sup>33</sup> In *Oil and Natural Gas Commission v Collector of Central Excise*, 1995 Supp 4 SCC 541, the Supreme Court decided that case shouldn't be heard, wasting time and taxpayer money. In accordance with a SC ruling, the cabinet secretary presented a report stating that all departments had received instructions. It was decided that to evolve a public commitment to settle issues amicably through arbitration, or mutual consultation in place of litigation. The Govt. ordered the formation of a committee with representatives from various departments. It must keep an eye on these conflicts and make sure that no lawsuit is brought before a court or tribunal without first being reviewed and approved by the committee. The directive instructed all HCs to be notified so that all lower courts would be informed.

<sup>34</sup> *Chief Conservator of Forests v Collector*, (2003) 3 SCC 472.

<sup>35</sup> *Punjab & Sind Bank v Allahabad Bank*, 2006 (3) SCALE 557. The SC restated the importance of a Committee for avoiding litigation. In *ONGC III case*, (2204) 6 SCC 437, the court gave a direction.

<sup>36</sup> ANIRBAN CHAKRABORTHY, *LAW AND PRACTICE OF ALTERNATIVE DISPUTE RESOLUTION IN INDIA* 223 (2016).

<sup>37</sup> Dk Sampath, *Mediation*, NLSUI 233 6 (1991)

<sup>38</sup> See *supra note* 36 at 16.

<sup>39</sup> *Id* at 19.

<sup>40</sup> See *infra note* 81.

centre and reported that the first lawyer-managed mediation centre in India.<sup>41</sup> In 2002 Chief Justice of India called a meeting of Chief Justices of all the High Courts to impress the importance of mediation and the need to implement S 89 of CPC. The court-annexed mediation and conciliation centres were established at several courts in India and makes them part and parcel of the judicial system as against court-referred mediation, wherein the court merely referred the matter to a mediator. In Salem Advocate Bar Association v Union of India<sup>42</sup> famously known as Salem Bar -1 case, the amendment to S. 89 CPC was upheld and a committee was formed to frame the guidelines. The court directed to formulate the terms of reference and guidelines to be followed by courts under this section. The Supreme Court in AFCONS case<sup>43</sup> laid out the entire procedure for reference of cases to mediation, role and duties of referral judges etc. and it has been considered as the bible of mediation.

The legislature made effort to introduce legal sanctity to mediation by enacting various legislations. The Commercial Courts Act, 2015 made Pre-institution Mediation mandatory before filing a suit in the commercial Courts. <sup>44</sup>The Mediation Act 2023 is a landmark legislation that aims to promote and facilitate mediation as an organized means of dispute resolution in India and it covers a wide range of aspects like recognition of different types of mediation, pre-litigation mediation, enforcement of mediated settlement agreements and regulation of mediators and mediation institutions. <sup>45</sup> Kerala State Mediation and Conciliation Centre (KSMCC) is an initiative of the High Court of Kerala. It has been conceived as a project for giving effect to S. 89 of the Code of Civil Procedure which provides for Mediation as an Alternative Dispute Resolution mechanism.

### 3.3. THE LEGISLATIVE INITIATIVE

The Mediation Act, 2023 represents a significant stride toward enhancing the legal landscape in India by formalizing and expanding the use of mediation as an ADR mechanism. It is designed to offer a structured and efficient means of resolving disputes, aiming to alleviate the burden on courts and provide a more accessible, timely, and cost-effective option for parties seeking resolution. The peculiarities reflect the evolving approach towards dispute resolution in India, focusing on reducing litigation, ensuring quality outcomes, and enhancing the transparency and efficiency of the mediation process. It provides structures mediation process in India.

#### 3.3.1. Mandatory Pre-Litigation Mediation for Specific Disputes

One of the most distinctive features of the Act is its requirement for mandatory pre-litigation mediation in certain types of disputes. Prior to filing a lawsuit in court, parties involved in certain civil, commercial, and family matters are required to attempt mediation. <sup>46</sup>This feature sets the Act apart from other legal frameworks that consider mediation only as a voluntary or optional process. The goal behind mandatory mediation is to encourage early resolution of disputes, which can reduce the burden on courts and allow parties to settle issues amicably without resorting to lengthy and costly litigation. The law promotes mediation as a means to foster better relationships between parties, particularly in cases where ongoing disputes may damage personal, family, or business relationships.

##### 3.1.2. Establishment of Mediation Centres and the Role of the Mediation Council of India

The law provides for the creation of specialized mediation centers at the national levels.<sup>47</sup> These centers are pivotal in implementing the Act and providing structured, efficient, and accessible mediation services. The Mediation Council of India (MCI) is established under the Act to oversee the functioning of these centers, regulate the mediation process, and ensure that it aligns with the highest standards of quality and professionalism.<sup>48</sup> It is responsible for accrediting and training mediators, ensuring that they meet established qualifications and adhere to ethical standards. The role of the MCI is critical in maintaining the integrity of the mediation process and guaranteeing that mediators are competent to handle complex legal and commercial disputes.

<sup>41</sup> Mediation Training Manual of India, *Mediation and Conciliation Project Committee, Supreme Court of India* 7 (2010) . It was inaugurated on 27<sup>th</sup> July 2002.

<sup>42</sup> AIR 2005 SC 3353.

<sup>43</sup> Afcons Infrastructure Ltd. v Cherian Varkey Construction Co. P. Ltd., (2010) 8 SCC 24.

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<sup>44</sup> S.12A (1), The Commercial Courts Act, 2015.

It states:“ Pre-Institution Mediation and Settlement—(1) A suit, which does not contemplate any urgent interim relief under this Act, shall not be instituted unless the plaintiff exhausts the remedy of preinstitution mediation in accordance with such manner and procedure as may be prescribed by rules made by the Central Government.”

<sup>45</sup> The mediation Act received the assent of the President on the 14<sup>th</sup> September, 2023 and came into force on 9<sup>th</sup> October 2023.

<sup>46</sup> *Id* at S. 5(1) &S.6(1).

<sup>47</sup> *Id* at S. 30.

<sup>48</sup> *Id* at S. 38.

### **3.1.3. Enhanced Focus on Mediator Qualifications and Professionalism**

It introduces stringent qualifications for mediators, aiming to professionalize the mediation process and maintain its credibility. Mediators are required to have specific training, experience, and certification to practice.<sup>49</sup> This professional approach ensures that mediators are equipped with the necessary skills to handle disputes effectively and impartially. Furthermore, the Act provides for the MCI to play a central role in establishing standards for training, accreditation, and ongoing professional development of mediators. This emphasis on professionalism ensures that mediators are not just neutral facilitators but qualified professionals who can handle even complex commercial or legal matters.

### **3.1.4. Confidentiality and Admissibility of Information**

The Act ensures that everything discussed in the mediation process remains confidential. This confidentiality protects the parties from having to disclose sensitive information in subsequent legal proceedings.<sup>50</sup> Mediators are specifically prohibited from disclosing any information obtained during the mediation process unless required by law.<sup>51</sup> Moreover, any documents or statements made during the mediation cannot be used in court proceedings, making mediation a safer space for parties to explore solutions without the fear of compromising their positions in future litigation. This provision encourages open communication and can significantly improve the likelihood of parties reaching a mutually acceptable resolution.

### **3.1.5. Enforceability of Settlement Agreements**

While mediation traditionally allows parties to voluntarily reach a resolution, the 2023 Act, makes the settlement agreements reached in mediation enforceable in court.<sup>52</sup> Once both parties agree on the terms, the settlement is not just a non-binding agreement but can be converted into a court order. This enforceability is a significant development because it provides the mediation process with the same legal weight as a formal court judgment. If either party fails to comply with the terms of the agreement, the other party can move the court for enforcement. This feature addresses the concern that parties may not always honor the terms of a mediated agreement, offering legal recourse if the terms are breached.

### **3.1.6. Online Mediation Facilities**

Given the growing reliance on digital platforms and the challenges posed by geographical constraints, the Act allows mediation to be conducted online. This provision ensures greater accessibility, particularly for parties in remote or underserved areas.<sup>53</sup> The shift to online mediation has the potential to make dispute resolution more flexible and less costly. It also enables cross-border mediation, which is increasingly important in globalized trade and commerce, offering a modern approach to dispute resolution.

### **3.1.7. Time-Bound Mediation Process**

S. 18 of the Act provides a stipulated period within which mediation must be completed, typically within 120 days can be extended with the consent of the Parties for further period of 60 days. This time-bound approach contrasts with the prolonged timelines often associated with traditional litigation, where cases can drag on for years. The Act also offers flexibility in extending the time period if necessary, ensuring that while the process is expedited, it is not rushed to the detriment of achieving a fair resolution.

### **3.1.8. Role of the Courts in Mediation**

While mediation is primarily a voluntary and out-of-court process under the Arbitration and Conciliation Act, But the new Act introduces a significant role for the courts in overseeing mediation. The courts can refer certain cases for mediation, and once a settlement is reached, they can convert it into a court order.<sup>54</sup> However, the process remains voluntary in terms of participation, and parties can still refuse to mediate. This balance between voluntary participation and judicial involvement ensures that mediation is not just an informal method of dispute resolution but one that is supported and validated by the legal system. Courts may also encourage parties to mediate when a case is taking too long in the judicial process.

### **3.1. 9. Institutionalization of Mediation**

MCI can recognize service providers and mediation institutions to accredit mediators and maintain panel of mediators, and for providing the services of mediation. It provides all facilities, secretarial assistance and infrastructure for the efficient conduct of mediation.<sup>55</sup> The disputes likely to affect families of any area or

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<sup>49</sup> *Id* at S.8(1).

<sup>50</sup> *Id* at S.22.

<sup>51</sup> *Id* at S.23.

<sup>52</sup> *Id* at S.27.

<sup>53</sup> *Id* at S.30.

<sup>54</sup> *Id* at S. 5.

<sup>55</sup> *Id* at S. 41.

locality may be settled through community mediation, but it should be done with prior mutual consent of the parties to the dispute.<sup>56</sup>

The Mediation Act, 2023 introduces several key peculiarities that set it apart from previous dispute resolution frameworks in India. By mandating pre-litigation mediation for specific disputes, formalizing the process with the establishment of mediation centers, and enhancing the professionalism of mediators, the Act aims to foster a more efficient and accessible system for resolving disputes. Its emphasis on confidentiality, the enforceability of settlement agreements, and the inclusion of online mediation provisions reflect a modern, adaptable approach to conflict resolution. The introduction of time-bound mediation processes and the role of the courts further enhances the effectiveness of this new framework. Ultimately, the **new law** marks a significant step forward in making India a more mediation-friendly jurisdiction, encouraging early dispute resolution and reducing the burden on the courts.

#### 4.1. GENESIS, STRUCTURE AND POWERS OF THE FAMILY COURTS

Family Courts have been in existence for several decades in countries like United Kingdom, Japan, Australia etc. However, the movement to establish Family Courts in India was initiated around 1958 by Smt Durgabhai Deshmukh, the noted Social Worker from Maharashtra.<sup>57</sup> The Family Courts Act, 1984 was a part of the trend of legal reforms concerning family disputes and has some positive impact on women. The immediate reason for setting up family courts was the mounting pressures from several associations of women, welfare organizations and individuals for establishment of special courts with a view to provide a forum for speedy settlement of family-related disputes.

The Committee on Status of Women recommended in 1975 that all matters concerning 'family' should be dealt with separately.<sup>58</sup> The emphasis should be laid on conciliation and mediation for achieving socially desirable results with the elimination of rigid rules of procedure and evidence. The Law Commission in its 54<sup>th</sup> Report had also stressed that, the courts ought to take an approach radically different from that adopted in ordinary civil proceedings and that reasonable efforts should be made towards settlement before the commencement of the trial. <sup>59</sup>The Code of Civil Procedure was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family. However, not much use has been made by the courts in adopting this conciliatory procedure and the Courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. The need was therefore felt, to establish Family Courts for speedy settlement of family disputes.

#### 4.2. Procedure of Family Court

1 The primary duty of the Family Court is to make efforts for settlement. 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 a procedure as it may deem fit.<sup>60</sup>

2 If it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, it may adjourn the proceedings for reasonable period, to enable them to affect a settlement.<sup>61</sup>

#### 4.3. General Procedure

1 The provisions of the Code of Civil Procedure, 1908 and of any other laws shall apply to the suits and proceedings in Family Court and it is deemed to be a Civil Court and shall have all the powers of such Courts.

2 The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings under Chapter IX of the Code. <sup>62</sup>

3 The family court from have power to lay down its procedure for arriving at a settlement or finding the truth of the facts alleged or denied by parties.

<sup>56</sup> *Id* at S. 43.

<sup>57</sup> Report on Working of Family Courts and Model Family Courts, NATIONAL COMMISSION FOR WOMEN 4 1. It was the report of the Workshop Held on 20 March 2002.

<sup>58</sup> Towards Equality, *Report of the Committee on the Status of Women in India, Ministry of Education and Social Welfare, Govt of India* 359-364 (1974).

<sup>59</sup> It was submitted by Justice P.B. Gajendragadkar (chairman of 6<sup>th</sup> Law Commission) on Feb. 1973. (May. 21, 2023, 09: 19 PM), <https://lawcommissionofindia.nic.in/https-cdnbbbsrchairman-s3waas-gov-in-s3ca0daec69b5adc880fb464895726dbdf-uploads-2023-06-2023060150-pdf/> accessed on 23/ 09/2023.

<sup>60</sup> See *infra note* 63 at S. 9.

<sup>61</sup> *Ibid*.

<sup>62</sup> S. 125 Cr PC relates to the maintenance of children, wife and parents.

#### 4.4. Salient Features of the Family Court Act

The selection of Judges of family courts is based on their commitment to protect and preserve the institution of marriage and to promote the welfare of the children and they are qualified by this exercise to promote the settlement of disputes by conciliation and counselling. The selection preference should be given to women.<sup>63</sup> It enables the family Court to function with the association of institutions or organizations engaged in social welfare or the persons working in the field of social welfare, with a view to effectively exercising its jurisdiction.<sup>64</sup> It provides for the association of social welfare agencies, counsellors, etc., during the conciliation stage and also secure the services of medical and welfare experts.

The Family Court can obtain assistance from counsellors, officers and employees for its functioning.<sup>65</sup> The court is responsible for making all efforts in bringing about an amicable settlement of disputes between the parties.<sup>66</sup> The Family Court is also conferred with the power to lay down its own procedure with a view to arrive at a settlement in respect of the subject matter of the suit. Thus, the Act frees it from the shackles of rigid rules of procedure by which ordinary courts are bound.<sup>67</sup> The law<sup>68</sup> permits the Family Court to secure the services of medical and welfare experts, preferably a woman where available, in discharging its functions. The party to a suit shall not be entitled to be represented by a legal practitioner but allows the family court to seek the assistance of a legal expert as an amicus curie.<sup>69</sup> Family court is not bound to follow Rules of evidence as to the relevancy or admissibility of evidence under the Indian Evidence Act, 1872, by which ordinary courts are bound.<sup>70</sup>

#### 4.5. Structure and Jurisdiction

The Family Courts are civil courts exclusively dealing with matters such as declaring marriage as null and void, restitution of conjugal rights, judicial separation and dissolution of marriage, declaration as to the matrimonial status, declaration as to the ownership of property of the party concerned, interim order or an injunction arising out of a marital relationship, declaration of the legitimacy or guardianship or custody, and right for maintenance etc. Family courts in Kerala are structured to handle a wide array of disputes of analogous nature. Each court operates with a unique sensitivity to the emotional and practical intricacies of these issues, ensuring that the proceedings are conducted in a manner that respects the privacy and dignity of the parties.

#### 4.6. Functioning and Procedures

The functioning of Family Courts in Kerala is marked by several distinctive features:

1. **Specialized Approach:** Judges in these courts are trained to handle family disputes delicately, often employing mediation and counselling to facilitate amicable resolutions. This approach acknowledges the complexities of familial relationships and seeks to minimize acrimony.
2. **Mediation and Conciliation:** Kerala's Family Courts emphasize mediation and conciliation as primary methods for dispute resolution. Trained mediators assist parties in negotiating settlements that are mutually agreeable, reducing the adversarial nature of litigation.
3. **Legal Aid and Support:** Recognizing the diverse socio-economic backgrounds of litigants, Family Courts in Kerala provide access to legal aid services. This ensures that even those with limited resources can seek justice without financial impediments.
4. **Speedy Disposal:** One of the core objectives of this Court is to expedite the disposal of cases. This is achieved through dedicated case management techniques and regular hearings, aiming to resolve disputes within a reasonable timeframe.
5. **Protection of Rights:** Kerala's Family Courts prioritize the welfare of children and vulnerable parties. They intervene to protect the rights and interests of minors and dependents, by ensuring their well-being and uphold their interests throughout the legal process.

#### 4.7. Preference of Family Court over Civil Court

1. Voice of clients: Regular courts are filled with civil disputes and are controlled by advocates where clients have little say in the litigation proceedings and dispute resolution. But the family court requires the presence of the parties in dispute to participate in the conciliation and litigation process. Direct participation of the parties to the dispute has thus, to a great extent, facilitated their involvement in the decision-making process. The parties can determine the course of the litigation. The parties are helped to gain a better understanding of their respective position and the likely result, if they proceed with litigation. The litigants have the power as per the Act to express their views directly before the Judge in the open court.

<sup>63</sup> S. 4, The Family Court Act, 1984.

<sup>64</sup> *Id* at S. 5.

<sup>65</sup> *Id* at S. 6.

<sup>66</sup> *Id* at S. 9.

<sup>67</sup> *Id* at S.10(3).

<sup>68</sup> *Id* at S. 12

<sup>69</sup> *Id* at S. 6.

<sup>70</sup> *Id* at S. 14.

2. Sensitivity of judges in civil courts: Judges of the civil courts are neither expected nor show the sensitivity which is vital for dealing with family disputes.<sup>71</sup>
3. Expeditious relief: In civil court, expeditious relief cannot be expected by the litigants. Issues such as child custody require a human approach and the magistrates may not have the required sensitive approach and time to deal with such issues.<sup>72</sup> Moreover, the litigants, particularly the women litigants feel discomfort or disabled to appear before the civil courts.
4. Special adjudication environment: The Family Court is a special court to deal only issues related to family disputes and has a special adjudication environment, following non-adversarial procedures. An amicable settlement could be possible in most cases by preserving the delicate relationship of members of the family.

#### 4.8. Reasons for increase in number of cases in family courts

1. Lack of preparation for marriage,
2. Hasty marriages,
3. Changing economic roles of husband and wife,
4. Economic independence of women,
5. Growing individualism,
6. Emotional immaturity,
7. Economic insecurity,
8. Sexual incompatibility,
9. Lack of respect for elders and in-laws,
10. Increasing alcoholism
11. Rise in violence and cruelty,
12. Lack of trust in each other,
13. Alcoholism,
14. Problems of adjustment especially in a joint family,
15. Extra-marital affairs,
16. Physical illness,
17. Falling values etc.
18. If the woman had filed criminal cases and the husband and his family members experienced harassment by the law enforcement authority, the hostility will end up in determination to retaliate, resulting in breaking up of the marriage.

#### 4.10. Family Courts – Status in Thiruvananthapuram District

There are 830 Family Courts that are functional across the country.<sup>73</sup> The family courts play a pivotal role in the judicial system of Kerala, focusing exclusively on resolving disputes related to family matters. Established under the Family Courts Act, 1984, these courts aim to provide speedy and effective justice while upholding the sanctity of familial relationships and the welfare of all parties involved.

There are four family courts in Thiruvananthapuram district. On an analysis of the number of cases registered before the family courts at Thiruvananthapuram District during 2020-2023.

Family Courts	2020	2021	2022	2023
Thiruvananthapuram	1437	1732	1765	1643
Attingal	1271	1428	1633	1578
Nedumangad	1308	1690	1767	1484
Neyyattinkara	Recently constituted family court at 2023			

<sup>71</sup> Dr. Justice Dhananjaya Y. Chandrachud, *M E D I A T I O N – realizing the potential and designing implementation strategies* 5 (2023) (Jun.12, 2023, 08.00AM), ([https://cdnbbsr.s3waas.gov.in/s3caodaec69b5adc880fb464895726dbdf/uploads/2023/01/2023\\_010650.pdf](https://cdnbbsr.s3waas.gov.in/s3caodaec69b5adc880fb464895726dbdf/uploads/2023/01/2023_010650.pdf)), accessed on 16/02/2023.

<sup>72</sup> *Ibid.*

<sup>73</sup> Ministry of Law and Justice, Govt. of India (2023) (Apr. 14, 2023, 04.15 PM), <https://doj.gov.in/family-court/>.

### The data regarding the cases sent for mediation and settled through mediation

Family Courts	2020			2021		
	Referred	Settled	Not settled	Referred	Settled	Not settled
TVPM	325	182	143	321	163	158
NDD	162	58	104	241	80	161
ATL	227	108	119	329	163	166

Family Courts	2022			2023		
	Referred	Settled	Not settled	Referred	Settled	Not settled
TVPM	823	328	495	631	218	413
NDD	607	228	379	579	179	400
ATL	598	213	385	608	229	379

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 Ministry of Law, Department of Justice is the nodal Department concerned with the administration of the Act.

On that basis a new family court was constituted at Neyyattinkara during 2023 to settle the family disputes due to the alarming increase in the number of cases.

#### 4.9. Challenges and Innovations

Despite their efficacy, Family Courts in Kerala face challenges such as a backlog of cases and societal stigma associated with certain disputes. To address these issues, innovative approaches like mobile courts in rural areas and awareness campaigns promoting alternative dispute resolution methods have been implemented.

The Family Courts Act provides for the establishment of family courts to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs.<sup>74</sup> The setting up of Family Courts and its functioning lies within the domain of the State Government in consultation with their respective High Courts. As per the Act, it is mandatory for the State Government to set up a Family Court for every city or town whose population exceeds one million. In other areas of the States, the Family Courts may be set up if the State Governments deems it necessary.<sup>75</sup>

To overcome the challenges a proposal was submitted by the department of justice to the 14th Finance Commission and made submission to consider the financial expenditure (estimated 551.06 crore) to set up 235 Family Courts during 2015-2020 in districts where the same were not existing.<sup>76</sup> The Commission also urged State Governments to utilize enhanced fiscal space available through tax devolution (32% to 42%) for this purpose.<sup>77</sup>

### 5.1. IMPORTANCE OF MEDIATION IN FAMILY COURTS

In essence, mediation is more than just a mechanism for resolving disputes; it is a holistic journey of healing and transformation. By addressing the emotional, relational and psychological dimensions of conflict, mediation offers parties the opportunity to heal wounds, rebuild trust, and forge pathways towards reconciliation and mutual understanding.

Family court cases often involve financial considerations, such as determining child support, alimony, and division of assets, where understanding income levels, expenses, and asset valuation is essential. The importance are:

#### 5.1.1. Equitable Decision-Making

The mediation ensures that decisions are based on a representative value, leading to more equitable outcomes for both parties. Equitable decision-making in mediation of family court cases focuses on fairness and impartiality in resolving disputes related to divorce, child custody, support, and division of assets. Mediation serves as an alternative dispute resolution process where a neutral third party, the mediator, assists the involved parties in reaching mutually acceptable agreements.<sup>78</sup> This process is underpinned by the principle of

<sup>74</sup> See *supra* note 63 at S. 3(1).

<sup>75</sup> *Id* at S. 3(2).

<sup>76</sup> Proposal of Department of Justice to the Fourteenth Finance Commission 29 (2019) (Mar.20, 20:23 AM), [https://www.wbja.nic.in/wbja\\_adm/files/Proposal%20of%20Department\\_1.pdf](https://www.wbja.nic.in/wbja_adm/files/Proposal%20of%20Department_1.pdf) accessed on

<sup>77</sup> Report of the Fourteenth Law Commission, Vol.1 (2020) 309 (ar. 12, 12L15 PM), <https://fincomindia.nic.in/asset/doc/commission-reports/XVFC%20VOL%20I%20Main%20Report.pdf>.

<sup>78</sup> NEERAJ UPADHYAYA, MEDIATION WHAT? WHERE? HOW? 139 (Law Publishers India Ltd., 2013).

equity, aiming to ensure fair outcomes for all parties involved. The mediator's role is to remain neutral, facilitating discussions without favouring either party. This neutrality ensures that each party's interests and concerns are fairly considered. Parties are provided with relevant information and encouraged to disclose all financial and personal details honestly. This transparency is crucial for making informed and fair decisions. Ensuring that both parties understand their rights, the legal implications and the long-term impact of their decisions contributes to equitable outcomes. The mediator helps balance power dynamics between the parties, ensuring that neither party feels pressured or disadvantaged. Techniques such as separate sessions (caucuses) can be used to address imbalances and ensure that both parties have equal opportunities to voice their concerns.

Equitable decision-making involves considering the needs, interests, and circumstances of both parties. The goal is not necessarily an equal split but a fair distribution that takes into account various factors such as income, assets, debts, and future earning potential. Child custody and support decisions are made with the best interests of the children as the primary focus, ensuring that their needs are met and their well-being is prioritized. Mediation allows for flexible and creative solutions that may not be available through traditional court processes. This can include tailored agreements that better suit the unique needs of the family. Solutions are crafted to address specific concerns, such as parenting plans that accommodate work schedules or financial arrangements that consider future education costs for children. Mediation is a confidential process, which encourages open and honest communication. This confidentiality helps parties feel more secure in discussing sensitive issues. Privacy in mediation fosters a more cooperative environment, as parties are not subjected to public scrutiny or adversarial courtroom procedures. Parties in mediation have the autonomy to make their own decisions, which can be empowering and lead to more satisfactory outcomes. The voluntary nature of mediation ensures that agreements are reached collaboratively and willingly, increasing the likelihood of adherence to the terms.

Equitable decision-making in the mediation of family court cases is centred on fairness, transparency, and impartiality. By focusing on balanced negotiations, informed choices, and creative solutions, mediation helps parties achieve fair and sustainable agreements that address the unique needs of their family. This approach not only resolves disputes but also fosters a cooperative spirit, paving the way for better post-divorce relationships and improved outcomes for children.

### **5.1.2. Child Support and Alimony**

Courts often consider the median income of both parents to determine fair child support and alimony payments. This approach ensures that support amounts are reasonable and reflective of typical financial circumstances. The median helps avoid unfairly high or low support payments that could arise from outliers in income data. Child support and alimony are crucial elements in the mediation of family court disputes, particularly in cases involving divorce or separation. Here's a note outlining their significance and how mediation typically addresses these issues:

Mediators help parties understand state guidelines for calculating child support <sup>79</sup>based on factors like each parent's income, the child's needs, and the custody arrangement. Mediators facilitate discussions to reach agreements on the amount and frequency of child support payments that are fair and reasonable for both parties. Mediation allows for flexibility in modifying child support arrangements if circumstances change, such as a change in income or the child's needs. The mediation process can also include discussions on enforcement mechanisms to ensure that child support payments are made consistently and on time. <sup>80</sup>Alimony, also known as spousal support or maintenance, is financial support paid by one spouse to the other after divorce or separation. Its purpose is to help the lower-earning or non-earning spouse maintain a standard of living similar to that during the marriage. In mediation, the following aspects are typically addressed. Mediators assist in determining whether alimony is appropriate based on factors such as the duration of the marriage, each spouse's income and earning capacity, and contributions to the marriage. Amount and Duration: Parties negotiate the amount and duration of alimony payments, considering factors like the recipient's financial needs and the payer's ability to pay.

Mediation can help to clarify whether rehabilitative (temporary), permanent, or lump-sum alimony is suitable based on the circumstances of the case. Mediation allows for discussions on modifying or terminating alimony payments if there are changes in circumstances, such as remarriage or significant changes in income. Professional teams of mediators have effectively enhanced the process of adjudication and conflict

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<sup>79</sup> Child support refers to the ongoing financial obligation that a non-custodial parent (the parent who spends less time with the child) has towards the custodial parent (the parent with whom the child primarily resides). The purpose of child support is to ensure that the child's basic needs, such as housing, food, education, and healthcare, are met. In mediation, the following aspects are typically addressed:

<sup>80</sup> See *supra* note 72 at 137.

settlement.<sup>81</sup>Therefore, child support and alimony are critical aspects of family court mediation, where skilled mediators assist parties in reaching fair and workable agreements that consider the best interests of all involved, particularly the children, well-being and financial stability of both parties.

### **5.1.3. Asset Division**

In cases of asset division, mediation helps people to settle the dispute and use their property for their needs. Mediation helps people to divide the property without going through various civil procedures like preliminary and final decree etc. It leads to a fair basis for splitting property. This ensures that both parties receive a proportionate share of the total assets, based on typical values rather than extremes. Mediation encourages open communication, which can help family members maintain or even improve their relationships. It allows parties to express their concerns and feelings in a controlled, respectful environment, which can be harder to achieve in adversarial legal proceedings. Without wasting time for (on) litigation mediation helps parties focus on resolving present issues and future needs rather. This forward-thinking approach can be particularly helpful in family matters where ongoing cooperation is important.

## **5.2. Different styles of Mediation**

Mediation styles refer to the approaches mediators use to facilitate negotiations and resolve disputes. These styles differ in how much control the mediator exerts the strategies they employ, and the goals they prioritize. The main styles of mediation include:

### **5.2.1. Facilitative Mediation**

The mediator focuses on guiding the process without influencing the content of the discussion or the outcome. They facilitate communication between the parties and help them identify their interests and options. Mediators adopt a neutral role and therefore he does not provide opinions or solutions but encourages parties to explore underlying needs rather than positions. It proposes party-driven outcomes and agreements developed by the parties themselves. It is suitable for disputes where relationships need to be preserved or where parties are open to working collaboratively.

### **5.2.2 Evaluative Mediation**

The mediator provides assessments, opinions, or recommendations about the strengths and weaknesses of each party's case. The mediator may suggest potential outcomes or settlement terms and often use mediators with a legal background to evaluate claims and risks. It focuses on legal rights and helps parties to understand the likely outcome if the dispute proceeds to litigation. This style is used commonly in disputes involving legal or technical issues, such as commercial or insurance claims.

### **5.2.3. Transformative Mediation**

The mediator focuses on empowering the parties and improving their relationship by fostering understanding and communication. It helps parties to see the other's perspective and work toward mutual recognition. The mediator uses minimal intervention and avoids steering the conversation or suggesting solutions. It aims for long-term benefits and aims to transform how parties interact, not just to resolve the immediate conflict. This style is ideal for conflicts where relationships are central, such as family disputes or workplace conflicts.

### **5.2.4. Narrative Mediation**

This approach involves re-framing the parties' narratives to create new, constructive stories that promote resolution. The mediator helps parties identify and challenge dominant, conflict-driven narratives. Tries to shift perspectives and encourages parties to view the conflict from alternative angles. Mediator provides creative solutions and new narratives often lead to unexpected and innovative resolutions. It is effective for deeply entrenched conflicts, such as cultural or identity-based disputes.

### **5.2.5. Settlement-Oriented Mediation**

The primary goal is to reach a settlement as quickly as possible, with less emphasis on underlying interests or relationship dynamics. It prioritizes efficiency over in-depth exploration of issues and the mediator may propose solutions to expedite agreement. It is outcome-oriented: and emphasis is on tangible results rather than process. <sup>82</sup>This style often used in high-stakes disputes, like financial settlements or corporate negotiations.

### **5.2.6. Online Mediation**

Mediation is conducted via digital platforms and offers flexibility and convenience and it uses virtual processes like video conferencing, chat, or email for communication. It allows parties in different locations to participate

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<sup>81</sup> S. SUSHEELA, *MEDIATION READERS HAND BOOK* 74-76 (Asia Law House, 5<sup>th</sup> ed. 2000).

<sup>82</sup> See *supra* note 71.

and can incorporate aspects of other mediation styles. This style becomes increasingly popular for cross-border disputes or when in-person mediation is not feasible.

The choice of mediation style depends on the nature of the dispute, the relationship between the parties, and the desired outcome. Mediators often blend elements of different styles to meet the specific needs of the situation.

### 6.1. MEDIATION IN FAMILY LAW DISPUTE

Despite initiatives at various levels to enhance women's position in Indian society, the multifaceted issue of violence against women remains a real challenge. Even with the progress of education and employment, the scenario has not changed very much. It is hard to understand why victims of family violence have to tolerate the intolerable behaviour as long as they do. The underpinnings behind such a proposition are that many women continue to accept a secondary status within marriage due to strong socialization factors. They feel the onus of making the marriage as a workable institution is on them.

It has been more than a decade domestic violence becomes as an issue in societies and it riveted the attention of women's movements and activist groups. While in 1980s violence against women including rape, molestation, and witch hunting, was the main focus of the women's movements, in the late 80s and early 90s the family too was seen as a site of violence and home is no longer a sacrosanct and 'safe' domain - immune to the conditions that violate woman's rights to life, liberty and freedom.

The Family Court Act was conceived as part of the legal reform to improve the position of women in family. The Act also brought civil and criminal jurisdictions under one roof. This was seen positive measure to centralize all litigations concerning women. It provides to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith by adopting an approach radically different from that adopted in ordinary civil proceedings. Thus, it encouraged and empowered various state governments to set up sufficient number of courts in their respective jurisdictions. The first State to set up a Family Court was Rajasthan in 1986.

### 6.2. Legal Background

Order 32 A of CPC <sup>83</sup>provides that ordinary judicial procedure is not suited to personal relationships. Litigations involving affairs of the family seem to require a special approach in view of the serious emotional aspects involved. Family counselling was adopted as a method of preserving family and therefore the settlement is recognised as a strong tool to solve disputes. The court is required to try settlement by offering support when it is feasible.<sup>84</sup>If the court determines that there is a chance to reach a settlement, it will adjourn the proceedings. The court may enlist the aid of a welfare expert who works for the welfare of the family in order to fulfil this obligation.<sup>85</sup> Since S.89 of the CPC was reformed by amendment in 2002, the idea of using ADR has completely changed. S.89 states that the court shall draft the conditions of the settlement and provide them to the parties for their feedback if it appears that there are elements of settlement that may be acceptable to the parties. After the parties have responded, the court may develop a potential settlement and refer it to mediation, arbitration, conciliation, or judicial settlement, which may include settlement through Lok Adalats. But specific legislation introduced special forum and procedure to address family issues.

The Family Court Act was passed to establish Family Courts to facilitate the conciliation of marriage and family-related disputes, as well as matters related thereto, by taking a very different approach from that of

<sup>83</sup> See *supra* note 27 at Order 32A. It was included in 1977 CPC Amendment Act.

*"(1) The provision of this Order shall apply to suits or proceedings relating to matters concerning the family.*

*(2) In particular, and without prejudice to the generality of the provisions of sub-rule (1), the provisions of this Order shall apply to the following suits or proceedings concerning the family, namely:-*

*(a) a suit or proceeding for matrimonial relief, including a suit or proceeding for declaration as to the validity of a marriage or as to the matrimonial status of any person;*

*(b) a suit or proceeding for a declaration as to legitimacy of any person;*

*(c) a suit or proceeding in relation to the guardianship of the person or the custody of any minor or other member of the family, under a disability;*

*(d) a suit or proceeding for maintenance;*

*(e) a suit or proceeding as to the validity or effect of an adoption;*

*(f) a suit or proceeding, instituted by a member of the family relating to wills, intestacy and succession;*

*(g) a suit or proceeding relating to any other matter concerning the family in respect of which the parties are subject to their personal law.*

*(3) So much of this Order as relates to a matter provided for by a special law in respect of any suit or proceeding shall not apply to that suit or proceeding."*

<sup>84</sup> *Id* at Rule 3 Order 32 A.

<sup>85</sup> *Id* at Rule 4.

regular civil proceedings. <sup>86</sup>The family court's obligation to support and convince the parties to reach a settlement regarding the subject matter is outlined in S. 9. <sup>87</sup>Additionally, the Family Court has the authority to postpone the case as long as it is necessary to reach a settlement.

Under section 89(2)(d) of CPC, the Supreme Court ordered the preparation of model rules for ADR and in *Salem Bar Association v Union of India* <sup>88</sup>and *Alternative Dispute Resolution and Mediation Rules 2003* provide that the parties seeking to use an ADR mode must be guided by the court, which will do this by understanding pertinent factors that the parties must consider before agreeing on a specific mode of settlement. In cases where the parties' relationships need to be maintained, it will be in their best interests to refer the matter to mediation or conciliation. It further states that disputes pertaining to child custody, maintenance, and marriage will be handled as situations in which the parties' relationship must be maintained.<sup>89</sup> The rule also states that while pending the resolution of marital and child custody disputes, the provisions of these rules may be applied to actions before the courts, including Family Courts established under the Family Courts Act.<sup>90</sup>

## 6.4. Theories of Mediation

### 6.4.1. Thomas Killman's model of dispute resolution and management

Thomas Killman conflict mode instrument developed by Kenneth W. Thomas and Ralph H Kilmann in the 1970's is a valuable tool for understanding how individuals respond to conflict situations. This model identifies five distinct styles of conflict resolution each characterized by a unique combination of assertiveness and cooperation.<sup>91</sup> They are:

Competing: high assertiveness, low cooperation

Avoiding: Low assertiveness, low cooperation

Accommodating: Low assertiveness, high cooperation

Collaborating: High assertiveness, high cooperation

Compromising: Moderate assertiveness, moderate cooperation.

### 6.4.2. Scarf model<sup>92</sup>

David Rock's scarf model is a conceptual framework that outlines five key social domains that significantly impact our behaviour and perceptions.

#### Status

Our sense of status is about how we perceive our relative importance and value compared to others. When our status is threatened, we may feel defensive and resentful.

#### Certainty

The need for certainty is our desire for creditability and control over our involvement. We have a sense of certainty, we feel comfortable and able to make decisions.

#### Autonomy

The need for autonomy is our desire to have control over our own choices and actions. When it is threatened we feel resentful.

#### Relatedness

The need for relatedness is our desire to feel connected and accepted by others. When we feel isolated we may experience loneliness, depression and a lack of motivation.

#### Fairness

The need for fairness is about the desire to be treated equitably and respectfully. When we treat fairly, we feel trust and become cooperative and also willing to contribute to the benefit of the group.

<sup>86</sup> K.A. Abdul Jalees v T.A. Sahida, (2003) 4 SCC 166).

<sup>87</sup> See *supra* note 63 at S. 9.

<sup>88</sup> (2005) 6 SCC 344.

<sup>89</sup> Rule 4, The Alternative Dispute Resolution and Mediation Rules, 2003

<sup>90</sup> *Id* at Rule 8.

<sup>91</sup> CMQOE, CQA, CQE, Management, Team, *Conflict Resolution (Thomas-Kilmann Model)*, (Jan 20, 2023, 04.10 PM), <https://www.qualitygurus.com/conflict-resolution-thomas-kilmann-model/#:~:text=The%20Thomas%2DKilmann%20Model%20is,one%20according%20to%20the%20situation.>

<sup>92</sup> David Rock, *CARF: a brain-based model for collaborating with and influencing others*, 1 NEURO LEADERSHIP JOURNAL 3-7 (2008), (Dec. 12, 2023, 02.15 PM), <https://schoolguide.casel.org/uploads/sites/2/2018/12/SCARF-NeuroleadershipArticle.pdf>.

### 6.5. Success of the Mediation Process

Mediation is basically dispute resolution through negotiation, with the help of a neutral facilitator called a mediator who is well-versed in communication skills. It is voluntary, confidential, informal and party centred.

It is defined as a voluntary, party-centered, structured negotiation process where a neutral third party assist the parties in amicably resolving their disputes by using specialised communication and negotiation skills. Mediation applies to a wide range of contexts including family disputes, workplace conflicts business negotiations etc.

Mediation place in meditation plays a crucial role in conflict resolution for various reasons and it extends to a wide range of settings from interpersonal conflicts to international disputes. The success implies: -

1. Confidentiality - The process is confidential and parties can really discuss their concerns and express their views without fear of information being used against them later.
2. Neutrality - A mediator is an external person who is neutral to the dispute.
3. Self-Determinative - The crucial aspect is that a mediator cannot impose a result on the parties. The mediator controls the process, the outcome is always in the hands of the parties.
4. Impartiality of the mediator - The mediator remains impartial and does not take sides, advocate for any party or have a personal interest in the outcome. the parties with a genuine commitment choose to participate and the less adversarial nature of mediation tends to reduce stress to the parties involved.
5. Participation and informed consent - Mediation is typically a voluntary process and parties willingly participate in the resolution of their dispute. Parties have the right to actively involve in the process and informed consent ensures all participants understand the voluntary nature of mediation. <sup>93</sup>
6. Fairness - The mediator ensures a fair and neutral process treating all parties with respect and avoiding any bias. It often results in quick resolutions compared to traditional litigation. mediation aims to preserve or rebuild relationships.
7. Time-bound - As per the rules of KSMCC, it is 90 days plus 30 days. Asper the new mediation law it has to be completed within 120 days which may be extended for further 60 days.
8. Direct and active participation - In mediation the parties directly participate and get an opportunity to convey their grievances and perspectives directly to the opposite side as well as to the mediator.
9. Finality - Once it is settled in mediation, it is final and binding to the parties.

### 6.6. Key elements in mediation

There are two principal aspects to the role of a mediator when helping couples to resolve their issues during mediation. One relates to the substance and the other has to do with the process itself. Substance refers to the issues that must be addressed and resolved during separation or divorce. The process relates to the ground rules established and how the conversations take place and move along, ultimately to the resolution. The specific issues needed to be discussed in divorce mediation are based on the skill of mediator. <sup>94</sup> A mediator should facilitate conversation between the couple and he must help the couple move their discussion along to set the pace problem and solve and explore options for many issues that need to be addressed. They have duty to sensitive power imbalances between the parties, whether they be overt or less obvious. They should try to hold the space for the couple so that they feel safe and heard during the mediation process.

## 7.1. DATA ANALYSIS & INTERPRETATION

The data was collected from 60 respondents who had come for Dispute Redressal at Family Courts Thiruvananthapuram with the help of Questionnaires. The collected data were classified, coded and tabulated for analysis and interpretation. The various statistical tools used for this purpose are Percentage Analysis Method and Chi-square test.

### 7.1.1. Percentage Analysis

The percentage analysis is the method to represent raw streams of data as a percentage (a part of 100%) for a better understanding of the collected data. Thus percentage analysis is applied to create a contingency table from the frequency distribution and represent the collected data for a better understanding. Data collected are edited and coded by using the tally bars. This helps in converting the gathered data into a tabular or tabulated grouped data.

Percentage analysis is computed by using the following formulae.

$$\text{Percentage(\%)} = \frac{\text{Number of Respondents}}{\text{Total Number of Respondents}} \times 100$$

<sup>93</sup> See *supra* note 81.

<sup>94</sup> See *supra* note 71.

### Total Population of the sample

The data has been analysed and interpreted pictorially using graphs and diagrams. It is one of the methods that simplifies the complexity of the quantitative data and makes it understood easily. The analysed and tested results are represented by formulating tables and charts, based on the information gathered.

#### 7.1.1.1. Part-1-Analysis & Interpretation of General Information of The Respondents

**Table -7.1.1.1.1. Gender details of the respondents**

Category	Frequency	Percentage
Male	26	43.33
Female	34	56.67
Total	60	100

Source: Primary data

Table 3.1 shows the details of the different categories of respondents involved in the survey. Among the table, the major percentage belongs to female respondents (56.7%) and male respondents (43.33%).

**Table 7.1.1.1.2. Marital status of the respondents**

Category	Frequency	Percentage
Separated	38	63.33
Divorced	16	26.67
Widowed	6	10
Total	60	100

Source: Primary data

The total respondents are divided into 3 mutually exclusive categories separated, divorced and widowed. It can be inferred from Table 3.2 that out of the 60 respondents, 63.33% are separated, 26.67% are Divorced and 10% are Widowed.

**Table 7.1.1.1.3. Age Group of the Respondents**

Category	Frequency	Percentage
20-30	18	30
30-40	30	50
40-50	10	16.67
Above 50	2	3.33
Total	60	100

Source: Primary data

Interpretation from Table 3.3 is that out of the 60 respondents 30% fall into the age group of 20 – 30, 50% are between the age of 30-40, 16.67% are of in the age in between 40-50 and 3.33% are above 50 years of Age.

**Table 7.1.1.1.4. Educational Qualification of The Respondents**

Category	Frequency	Percentage
Secondary School	6	10
Higher Secondary	16	26.67
Degree / Diploma	28	46.67
Post - Graduation	10	16.67
Total	60	100

Source: Primary data

From Table 3.4 it is evident that out of the 60 respondents, 10% have Secondary School qualifications 26.67% have Higher Secondary qualifications, 46.67% possess a Degree/ Diploma and 16.67% are Postgraduates.

### Part 2: Analysis and Interpretation of the Responses from the Questionnaire

The response strongly agree indicates excellent, agree refers to Good, Neither Agree nor disagree shows a neutral attitude, disagree means Bad and Strongly disagree implies extremely bad.

**Table 7.1.1.1.5. Nature of the Dispute**

Category	Frequency	Percentage
Divorce	12	20
Child Custody	5	8.33
Property Settlement	5	8.33
Maintenance	20	33.33
Recovery of Money & Gold Ornaments	18	30
Total	60	100

Source: Primary data

From Table 3.5 it is understood that out of 60 respondents, 20% filed Cases for Divorce, 8.33% for the Interim/ Permanent Custody of a Child, 8.33% disputed for property, 33.33% filed cases for maintenance and 30% filed cases for Recovery of Money and Gold ornaments which are given at the time of marriage.

**Table 7.1.1.1.6. Duration of Dispute**

Category	Frequency	Percentage
Less than 1 Year	9	15
1 -2 Years	21	35
2-4 Years	24	40
More than 4 years	6	10
Total	60	100

Source: Primary data

From the analysis of the e 3.6, it is understood that 15% of the Litigations are filed with a period of less than 1 Year, 35% of the litigations are 1-2 years old, 40% of the litigations are 2-4 years old and the remaining 10% are more than 4 years.

### Part 3: Perception And Experience with Mediation

**Table 7.1.1.1.7. Classification of Respondent based on Awareness of Mediation**

Category	Frequency	Percentage
Yes	49	81.67
No	11	18.33
Total	60	100

Source: Primary data

From the analysis of Table 3.7, it is understood that 81.67% of the Litigants are aware of mediation as a method of dispute resolution in Family Courts and 18.33% are not aware of mediation as a method of dispute resolution in Family Courts.

**Table 7.1.1.1.8. Classification of Respondent based on Source of Mediation**

Category	Frequency	Percentage
Lawyer	20	33.33
Court Officials	33	55
Friends	4	6.67
Media	3	5
Total	60	100

Source: Primary data

From the analysis of Table 3.8, it is understood that knowledge of mediation was obtained 33.33% from Lawyers, 55% from Court Officials, 6.67% from Friends and 5% from Media.

**Table 7.1.1.1.9. Classification of Respondents Based on Application of Mediation in their Disputes**

Category	Frequency	Percentage
Yes	46	76.67
No	14	23.33
Total	60	100

Source: Primary data

From the analysis of Table 3.9, it is understood that 76.67% of the Litigations have undergone mediation for their dispute resolution in Family Courts and 23.33% have not undergone mediation for their dispute.

**Table 7.1.1.1.10. Classification of Respondent based on Number of Appearances in Mediation**

Category	Frequency	Percentage
1-2 Sessions	25	54.35
3-5 Sessions	15	32.61
More than 5 sessions	6	13.04
Total	46	100

Source: Primary data

From the analysis of Table 3.10, it is understood that the number of sessions attended by the Litigations is 1-2 sessions 54.35%, 3-5 Sessions 32.61% and more than 5 sessions 13.04%.

**Table 7.1.1.1.11. Classification of Respondent based on Satisfaction Level on Mediation**

Satisfaction Level	FREQUENCY	PERCENTAGE
Very Satisfied	26	43.33
Satisfied	20	33.33
Neutral	12	20.00
Dissatisfied	2	0.04
Very Dissatisfied	0	0
Total	60	100

Source: Primary data

From the analysis of Table 3.11, it is understood that the satisfaction level of the Litigants in the mediation process is 43.33% are very satisfied, 33.33% are satisfied, 20.00% are Neutral, .04% are Dissatisfied and 0% are Very Dissatisfied.

**Table 7.1.1.1.12. Classification of Respondent based on helpful aspects of mediation**

Category	Frequency	Percentage
Confidentiality	35	58.33
Neutral Mediator	30	50.00
Cost-Effectiveness	28	46.67
Time- Saving	40	66.67
Emotional Support	36	60.00
Other(Please specify)	10	16.67
Total	60	

Source: Primary data

From the analysis of Table 3.12, it is understood that the aspects of mediation the litigants find as most helpful are 58.33% on Confidentiality, 50% on Neutral Mediator, 46.67% on Cost-Effectiveness, 66.67% on Time-Saving, 60% on Emotional Support and 16.67% on others. In this analysis, the respondents have opted for different choices.

**Table 7.1.1.1.13. Classification of Respondent based on Result in Mediation**

Category	Frequency	Percentage
Yes	25	41.67
Partial	10	16.67
No	25	41.67
Total	60	100

Source: Primary data

From the analysis of Table 3.13, it is understood that 41.67% of the litigants have got a resolution for their dispute, 16.67% of the litigations have got partial resolution for their dispute and 41.67% of the Litigations have not got a resolution for their dispute.

**Table 7.1.1.1.14. Classification of Respondent based on the Failure of Mediation**

Category	Frequency	Percentage
Lack of cooperation from the other party	34	56.67
Inadequate mediation sessions	12	20
Complex nature of the dispute	36	60
Lack of trust in the mediator	14	23.33
Other (Please specify)	17	28.33
Total	60	

Source: Primary data

From the analysis of Table 3.14, it is understood that in the aspects of mediation, the litigants have got a resolution for their dispute in partial or no resolution, the reasons for the mediation not being fully successful due to the Lack of cooperation from the other party is 56.67%, Inadequate mediation sessions is 20%, Complex nature of the dispute is 60%, Lack of trust in the mediator is 23.33% and others are 28.33%. From the respondent's viewpoints, there are different reasons for the failure of mediation.

**Table 7.1.1.1.15 Classification of Respondent based on Neutrality of Mediator**

Category	Frequency	Percentage
Strongly Agree	34	56.67%
Agree	10	16.67%
Neutral	5	8.33%
Disagree	6	10.00%
Strongly Disagree	5	8.33%
Total	60	

Source: Primary data

From the analysis of table 3.15, it is understood that the mediation was impartial and unbiased.56% of the respondents strongly agreed that the mediation was not biased 16.67% agreed that the mediators were impartial and 8.33% of the respondents said that the mediators are neutral and 10% disagree and 8.33 % strongly disagree that mediators are impartial.

**Table 7.1.1.1.16. Classification of Respondent based on previous information on mediation and expression of opinion during Mediation**

Category	Frequency	Percentage
Strongly Agree	32	53.33
Agree	14	23.33
Neutral	6	10
Disagree	5	8.33
Strongly Disagree	3	5
Total	60	100

Source: Primary data

From the analysis of the table and chart, it is understood that the mediation process was explained before mediation and expressed their views on mediation 53.33% strongly agreed 23.33% agreed and 10% became neutral regarding the explanation of the mediation process before mediation and they had expressed their views at the time of mediation. 5% disagree and 3% strongly disagree with this aspect.

**Table 7.1.1.1.17.** Classification of Respondent based on time limit and potentiality of Mediation

category	Frequency	Percentage
Strongly Agree	18	30
Agree	22	36.67
Neutral	7	11.67
Disagree	8	13.33
Strongly Disagree	5	8.33
Total	60	100

Source: Primary data

From the analysis of table 3.17, it is understood that the mediation conducted is prompt and 30% strongly agree and 36.67% agree and 11.67% become neutral regarding time management and it helps to resolve family disputes better than litigation. 13.33% disagree and 8.33% strongly disagree with this aspect.

**Table 7.1.1.1.18.** Change in attitude of the opposite party during Mediation.

Category	Frequency	Percentage
Yes, Very Positive	16	26.67%
Yes, Slightly Positive	18	30.00%
No Change	14	23.33%
Negative Change	12	20.00%
Total	60	

Source: Primary data

From the analysis of e 3.18, it is understood there are significant changes in the attitude of the opposite party after mediation 26.67% become very positive and 30% become slightly positive which shows that a total of 56% of respondents changed their attitude after mediation.

**Table-7.1.1.1.19.** Classification of Respondent based on suggestions and improvements on Mediation.

Category	Frequency	Percentage
More awareness programs	18	30.00%
Training for mediators	15	25.00%
increased number of mediation sessions	12	20.00%
Better facilities at the mediation centre	10	16.67%
Other (Please specify)	5	8.33%
Total	60	

Source: Primary data

From the analysis of table 3.19 it is understood that certain improvements are suggested in the mediation process to the respondents and the respondents answered different views on that basis the, suggestions are limited to 5 points and the respondent opted for 2 or 3 points.

**Table 7.1.1.1.20.** Percentage Analysis of Respondent based on improving quality of Mediation.

category	Frequency	Percentage
Legal Counseling	20	33.33%
Psychological Counseling	18	30.00%
Post-mediation follow-up	12	20.00%
Financial advice	8	13.33%
Other (Please specify)	2	3.33%
Total	60	

Source: Primary data

From the analysis of table 3.20, it is understood that some additional support is opted for by the respondents to enhance the quality of the mediation process and respondents answered 2 or 3 points to enhance the quality of mediation.

**7.2. The Chi- Square Test**

The Chi- Square distribution in merely the distribution of the sum of the square of a set of normally distributed random variables. It value stems from the fact that the sum of random variables from any distribution can be closely approximated by a normal distribution as the sum included a greater and great number of samples . Thus the test is widely applicable for all distributions. The test is one of the simplest and widely use non= parametric tests in statistical work. The symbol is the Greek letter Chi. It was first used by Karl Pearson in the year 1990. The quantity describes the magnitude of the discrepancy between theory and observation. It is defined where O refers to the observed frequencies and E refers to the expected frequencies.

**Table 7.2.1. Chi-square**

Satisfaction Level	FREQUENCY	PERCENTAGE
Very Satisfied	26	43.33
Satisfied	20	33.33
Neutral	12	20.00
Dissatisfied	2	0.04
Very Dissatisfied	0	0
Total	60	100

Source: Primary data

**Chi-Square test for test of independence**

Ho: There is no association between the nature of the dispute and the level of satisfaction with mediation

H1: There is an association between the nature of the dispute and the level of satisfaction with mediation

Observed (O) frequencies						
NATURE OF DISPUTE	Level of Satisfaction with mediation					
	very satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	
Divorce	6	3	3	0	0	12
Child Custody	3	0	2	0	0	5
Property Settlement	2	1	2	0	0	5
Maintenance	9	8	2	1	0	20
Recovery of Money & Gold Ornaments	6	8	3	1	0	18
	26	20	12	2	0	60

Expected (E) frequencies					
	very satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
Divorce	5.2	4	2.4	0.4	0
Child Custody	2.166666667	1.666667	1	0.166667	0
Property Settlement	2.166666667	1.666667	1	0.166667	0
Maintenance	8.666666667	6.666667	4	0.666667	0
Recovery of Money & Gold Ornaments	7.8	6	3.6	0.6	0

(O-E)^2/E					
Nature of Dispute	Level of Satisfaction with mediation				
	very satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied
Divorce	0.12308	0.25	0.15	0.4	not defined
Child Custody	0.32051	1.667	1	0.16667	not defined
Property Settlement	0.01282	0.267	1	0.16667	not defined
Maintenance	0.01282	0.267	1	0.16667	not defined
Recovery of Money & Gold Ornaments	0.41538	0.667	0.1	0.26667	not defined

$\chi^2$  8.417  
 95  
 df = (r-1)\*(c-1) 12  
 0.751  
 p-value 68

Since p-value (0.75618) is greater than 0.05, study accepts the null hypothesis. Therefore, it can be interpreted that there is no association between the nature of the dispute and the level of satisfaction with mediation.

### 8.1. FINDINGS, CONCLUSIONS AND SUGGESTIONS

The doctrinal analysis suggests that ADR techniques may help lower court arrears. Simultaneously, the study of empirical data reveals that, despite all efforts, there remains a significant discrepancy between the number of cases that are resolved each year and the total number of cases that remain open in the courts. Several reasons are being examined. Since the ability of ADR to reduce workload is highly dependent on how creatively it is implemented, and therefore remedial approaches are also being investigated.

The study tries to cover the major objectives with different statistical methods and structured questionnaires. The methodology used for this study includes the percentage analysis, description analysis and statistical tools like the Chi-square test. The population selected for the study is infinite in number so the method of random sampling is based on the availability of the respondents. Practical scenarios like the availability of mediators, advocates and litigants were chosen with utmost care and confidentiality with ethical considerations.

#### 8.2. A summary of the findings

1. Gender Analysis: females are the majority category among the litigations and they face family issues more severely in our society.
2. Marital status analysis: it is revealed that the majority of the respondents are married and separated either partial or full separation without divorce and some of them are widows.
3. Age group analysis: majority of the participants in the survey belong to age the group of 30-40. It shows that middle-aged respondents are more involved in the family disputes.
4. Education qualification analysis: majority of the respondents who participated in the survey are either have a degree or diploma in a different subject. The next higher category is with qualification of higher secondary and the equivalent qualification.
5. Analysis of types of disputes: most of the respondents involved in cases relating to maintenance followed by recovery of money and gold ornaments given at the time of marriage by way of gift.
6. Duration of different disputes: most of them are extended to a time frame of 2-4 years. It reveals that the proceedings of the court are delayed due to the enormous number of cases filed in different levels.
7. Satisfaction level of mediation analysis: it revealed that majority of them were either in the group of very satisfied litigants or satisfied litigants. Only less than 1% of the litigants expressed their dissatisfaction with the family proceedings.

The collected opinions from the respondents on different aspects of the mediation procedure regarding confidentiality time savings etc. More than half of the respondents indicated that confidentiality of the mediation process helping them. Another important aspect pointed out by the respondent is the emotional support received from the system. Based on the data analysis regarding the character of the mediator most of them revealed that the mediator was impartial and unbiased in different stages of mediation processes. It also analysed the potentiality of the mediation regarding time limit and the participants agree with the statement 'Do you believe mediation sessions were conducted promptly and have the potential to resolve family disputes better than litigation.' But the analysis of the data for other aspects of the study establishes that the current legal framework urgently needs modification.

### 9.1. CONCLUSION AND SUGGESTIONS

After a general introduction to Alternate Dispute Redressal, a comprehensive discussion on different aspects of law and procedure, in relation to the conduct of arbitration in India was carried out. Later in turn of time, this began to deal with the law and practice of negotiation, mediation, and conciliation. Detailed coverage of the latest Supreme Court decisions and discussion of their implications on the law and its practice were detailed. The implementation of S. 89 CPC, for popularizing court-annexed ADR and practical tips for conduct of arbitration, mediation, conciliation and negotiation were discussed. The Practical Implementation of Mediation Act 2023 in family courts is also discussed. Mediation is a time-bound process and the Act lays down a procedure for the appointment of mediators and conduct of mediation, but practically it is not time-bound, sometimes the mediated settlement agreements are not executable. The suggestions are:

#### i) Selection panel for mediators and criteria for selection of mediation team to be widened.

All put a strong appeal that utmost care should be taken in selecting the mediators. While some advocates opined that the selection panel should have a representation for advocates, others considered it not necessary. Some even insisted that the mediation panel should have medical personnel in addition to the mediators and advocates. At present two counsellors are sitting on every counselling day. The counsellors can assist the parties in resolving their disputes from the social and psychological dimensions. The advocates can facilitate the process by providing legal inputs and making the clients aware of their legal rights and possible relief within the legal framework. As many disputes have medical components as underlying causes, the presence of medical

personnel is necessitated. Thus, the panel could assist the litigants to arrive at an amicable settlement easily and quickly.

### **ii) Number of mediators and their attitudes**

Suggestions were also made to increase the number of mediators, as of now, one mediator is spending a maximum of 15 minutes for each case, which is not sufficient for the parties of the litigation to free their minds and be receptive to the efforts of the mediators to arrive amicable settlement. The mediators should not restrict their role to mediation for reunion. They should make efforts for amicable settlement, even if mediation for a reunion failed. The time gap between two successive mediating sessions for a single case is 15 – 30 days. The mediating days should be increased, to expedite the settlement.

### **iii) Adopting different mediation strategies for different types of cases**

In matters related to maintenance, and interim maintenance and expenses of the proceedings, the advocates opined that an amicable settlement could be arrived at in a few sittings. The mediators have to make the parties understand that the claim for maintenance is a right and obligation of the parties. The counsellor has to assess whether there was an association between the parties as husband and wife for a considerable time, the economic independence of the parties, the sources and the quantum of income. With this limited information, the proposal for a settlement could be placed before the parties. In the matters of restitution, both sides of the parties are loaded with emotions and grievances. If they are listened to patiently and genuinely, and if the parties feel that they were heard to their satisfaction, then the grounds for their discord can be assessed and resolved. If either of the parties placed conditions for a family reunion, that could be worked out. If one opted for restitution and the other pressed for divorce and if there is no possibility for a reunion, then a proposal for mutual consent divorce could be placed.

In the case of mutual consent divorce, the mediator's role is just to assess whether there is any element of force operating in their decision. Thus, most of the matrimonial disputes could be reconciled and an amicable settlement could be arrived at by the efforts of the mediators, leaving limited petitions to proceed to the trial stage.

Most of the advocates interviewed admitted that they do pre-litigation mediation and strive to bring about amicable settlement between the parties even before preparing legal complaints. They said they encouraged their clients to bring their marital partners for open talk, to weed out the difficulties, differences and accumulated irritations. Mostly, they said, they could persuade only one of the parties to rebuild the distorted marital relationship, as the other side failed to support. Even after such persuasion, if the parties are not willing to restructure the marital bond, they have no option but to prepare the legal complaints. Just to strengthen the case, they have to incorporate false allegations against the opponent. Almost all the advocates said that they too have a social responsibility and as such their primary role, especially in matrimonial cases is to protect the institution of marriage and family. They reiterated that they are not for breaking up the marriage though they fight aggressively to win a suit in other cases.

The alternative option could be that a reputed institution providing professional mediation services can be identified by the Court and notified. If the parties so desire, they can seek the services of the said institution. The institution should have the authority to demand the presence of both parties. The probability of success could be more before the litigation stage. The report provided by such an institution may be included as a document at the time of filing a legal petition before the Family Court. The report of the institution may be considered while posting the case for conciliation. The unnecessary delay due to attempting mandatory mediation proceedings could be avoided. Though this proposal was welcomed, many feared and questioned the uprightness of such institutions, in the present situation of unhealthy competition to obtain recognition to provide the mediating services.

### **iv) Transfer of delayed cases to Mediation and Conciliation centres**

Many advocates expressed that they prefer to settle the case through the 'Mediation and Conciliation Centre' in the District Court which has a panel of experts in the fields of law, medicine, social work, psychiatry and social welfare. The counsellors take an unduly number of sessions to reconcile the parties for reunion, against the wishes of the parties. If pending cases before the counsellors are transferred to a Mediation Centre by the advocates, with the mutual consent of both the parties, speedy and smooth settlement can be ensured for the parties.

### **v) Encourage Private Mediation**

Where the parties can voluntarily choose a person specialised in their relevant field as mediator, they will get more control over the process. The settlement agreement entered through the selection of mediators by the parties voluntarily is binding, executable enforceable and it provides strict confidentiality and is enforceable.

### **vi) Promote Voluntary pre-litigation mediation, Online mediation etc.**

Parties must attempt mediation before approaching a court or tribunal for familial disputes. Community mediation can also be used to solve disputes affecting peace, harmony, or families and can be referred to mediation with the consent of the parties. Family disputes including matrimonial and inheritance matters may

see a continued shift towards mediation as an alternative to the lengthy court battles. Awareness campaigns and legal reforms might encourage families to opt for mediation.

Online mediation bridges the geographic gaps and makes dispute resolution faster and more convenient. Through online mediation and technology integration, mediation platforms mushroomed across the country, especially in Metro Cities. The adoption of online mediation platforms and the integration of technology in dispute resolution processes will continue to grow in India. This can enhance accessibility and efficiency, particularly given the vast spread of the country.

**vii) Need Specialised Mediation Centres**

There could be a rise in specialised mediation centres catering to specific industries or sectors such as commerce health care and family disputes. These centres may offer mediators with expertise in particular challenges faced by those sectors.

**viii) Encourage Institutionalisation of mediation**

With the passing of the Mediation Act 2023, it is going to promote private mediation, private institutions, establishment of formal mediation institutions and accreditation of mediators may become more common. This institutionalisation can contribute to the credibility and acceptance of mediation as a mainstream dispute resolution method.