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Family Mediation and Conflict Resolution: Legal Frameworks and Effectiveness

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ABSTRACT

This study aims to highlight the importance of mediation as one of the most successful approaches to family dispute resolution. It aims to discover the underlying causes of disagreements and investigates viable solutions through various dispute resolution procedures in marriage issues. Family mediation has numerous advantages. To solve these issues, the law has developed mechanisms for settling matrimonial conflicts through codifications included into several statutes as well as policies.

Furthermore, the acceptance of alternative dispute resolution (ADR) techniques such as mediation has increased in India. A mediator is an impartial third party that helps parties to a dispute communicate and work out a settlement that will satisfy them both. The procedure of mediation is optional. By being less formal and adversarial than traditional litigation, the approach seeks to resolve disputes more swiftly and cheaply. An overview of mediation in India is provided in this paper, with a focus on its use in family disputes.

When using mediation to address marriage problems, the presence of particular distinguishing elements that may have an impact on the mediation process must be considered. The parties to a problem can interact with each other and reach a resolution that is agreeable to both parties through the mediation process. This paper also examines the need for mediation and argues why it should be favoured over litigation and other forms of alternate dispute resolution.

Keywords: *mediation, matrimonial disputes, legal framework, Alternative dispute resolution, family dispute.*

I. INTRODUCTION

Family relationships are the foundation of our social fabric, impacting our emotional well-being and forming our identities. Marriage is the cornerstone of society, and as a critical relationship, it is the foundation of civilization. These relationships hold immense significance in the intricate web of human relationships, with the potential to profoundly impact the lives of those involved, bringing profound joy and support. However, when family and matrimonial issues emerge, they can cause significant harm to these treasured relationships. Such confrontations can have far-

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reaching consequences, affecting not just direct family members but also distant relatives and friends.³

The ever-changing social and family-related climate has presented new obstacles, particularly to the younger generation, such as increased insecurity, shifting roles of husband and wife, and the expectations of rapid living. All of this has resulted in an abrupt breakdown in marital harmony. Divorce data analysis are spreading alarmingly and in a geometric pattern all throughout the world. Marital or family Concerns are deemed too sensitive for the sympathy or unfavourable jurisprudence of the current legal system.⁴ Marriages that are on their knees need assistance and treatment. They walk with a limp and require medical attention

As a result, rather than engaging in protracted and difficult legal fights, our personal laws and courts aggressively support the idea of reconciliation and settlement through amicable agreements for matrimonial issues. Solving these difficulties through traditional litigation frequently exacerbates family acrimony and pressure, resulting in lengthy and expensive court fights that can further damage relationships.

II. MATRIMONIAL DISPUTES IN INDIA

Matrimonial disputes are on the rise as India's social fabric evolves, and with more literacy and economic freedom among spouses, marital conflicts are on the rise. When modern marriages become divorceable, the opposition mechanism does not comply with the demands of the parties concerned. Unlike other commercial issues, these are accompanied by diverse emotional, social and personal dimensions. The litigation procedure is frequently used.⁵ The dissatisfied party resorts to appeals and petitions and so on in the aim of obtaining a favourable judgment as a result of court orders that do not have mutual agreement of the parties.

The results through litigation is time-consuming and exhaustive process, also the cost rendered by parties is ineffective. There are several parameters that might cause conflict and, as a result, conflict between a couple due to their families or children. Thus, most spousal disputes occur early in the marriage, and a newly married pair is not very forgiving, whereas a couple is generally forgiving⁶. In long-term partnerships, one becomes more acquainted with and tolerant of the other. Another cause of dispute is that both husband and wife work in two distinct fields

³ Mediation In Family and Matrimonial Disputes: A Critical Study Kartik Arora https://www.sharda.ac.in/attachments/school_publication/10_Final_8.pdf

⁴ FORMULATING A MODEL LEGISLATIVE FRAMEWORK FOR MEDIATION IN INDIA Rashika Narain & Abhinav Sankaranarayanan <http://nujlawreview.org/wp-content/uploads/2018/04/11-%E2%80%931-%E2%80%93Rashika-and-Abhinav.pdf>

⁵ Vijendra kumar, Expanding Horizons of Divorce under the Hindu Marriage Act, 1955, A L T 2013 (5) 21-29

⁶ <https://brewminate.com/social-institutions-family-religion-and-education/>

and have little time for each other and have distinct personal objectives.

III. FAMILY DISPUTES IN INDIA

Family conflicts are common in India and can stem from a variety of issues, such as property disputes, marital issues, and inheritance issues. Family disputes can have a significant impact on all parties involved, particularly the children, and are typically complex and emotionally charged. Family conflicts can take many different forms, and they differ depending on the size of the family from large joint families to small nuclear families.⁷ The following is a list of the different conflicts that arise:

- *Divorce and separation issues:* One of the main sources of conflict in a family is divorce-related matters. A couple may decide to end their relationship for a variety of reasons, such as stress at work, stress from in-laws, problems with the kids, unstable finances, etc.
- *Inheritance:* Who will be the owner of the property? This is the fundamental reason for inheritance and property division disputes. Siblings fight over property and business, or the children have disagreements with their parents. This also occurs when there is a family business that is run by the siblings. Their disagreements become a common occurrence.
- *Post-divorce issue:* Partners still have a number of responsibilities to fulfil during their divorce, including child custody, money concerns, parenting plans, and other matters.
- *Parenting:* Parenting is another important source of conflict in families. The parents disagree over how the children should be cared for, which can become a major issue at times.
- *Extended family concerns:* The large joint family in which different people have diverse viewpoints, and these minor disagreements can often develop to a major disagreement that is difficult to overcome.
- *Elder care:* Disputes between siblings over who will care for the elders are common. And if one of them is in charge of caring for the parents, the others believe that the parents favour that sibling, which adds to the dispute.

IV. ROLE OF MEDIATION IN INDIA

A method of settling disagreements between parties outside of court is mediation. The Industrial Disputes Act of 1947 established the first legal recognition of mediation and conciliation. Subsequently, significantly more complex and useful rules for using arbitration and conciliation

⁷ Verma, A. (2020) *How mediation functions in Family Law Disputes*, iPleaders. Available at: <https://blog.ipleaders.in/mediation-functions-family-law-disputes/> (Accessed: 05 December 2023).

to settle disputes arising out of a legal relationship whether or not it was contractual were introduced by the Arbitration and Conciliation Act, 1996⁸. The conciliation settlement agreement was granted the same legal standing as a civil court, which also provided for the start of the conciliation proceedings, the appointment of conciliators, their responsibilities, and the support of an appropriate institution in this regard. The act also outlined conciliators' responsibilities in helping the disputing parties reach a mutually agreeable resolution.

Since the Arbitration and Conciliation Act of 1996 was passed, mediation has been acknowledged in India as an alternate method of resolving disputes.⁹ The Act provides for the arbitration, conciliation, and mediation of disputes. A mediator helps disputing parties reach a mutually agreeable resolution by promoting communication and negotiations between them. One characteristic of mediation is its voluntary nature. In India, mediation is usually used to settle legal and business disputes, while its application in family matters has increased recently.

Mediation is used in a variety of situations, including property disputes, contract disputes, and marital troubles. In recent years, the Indian government and judiciary have encouraged mediation as a means of resolving disputes quickly and economically, sparking renewed interest in the practice. Mediation has proven to be incredibly beneficial, particularly in the case of family issues¹⁰. The Family Courts Act of 1984 mandates that family courts in India promote mediation as a means of conflict resolution. The Act recognizes the unique nature of family conflicts and the need for a more collaborative approach to their settlement¹¹. Using skilled mediators who work with the parties to foster communication, identify common interests, and take into account alternate dispute resolution techniques is a common practice in family mediation in India.

In general, the evolution of mediation in India has been marked by a long legacy of community-based dispute resolution and a recent spike in interest in mediation as a means of resolving problems in a more cooperative and cost-effective manner. A strong legal framework, a growing network of licensed mediators, and mediation organizations all contribute to mediation's growing acceptability as an effective method of resolving family disputes.

A number of notable initiatives have been developed in recent years to promote the use of

⁸ *Application of ADR methods in family and matrimonial disputes* (no date) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: <https://www.legalserviceindia.com/legal/article-8068-application-of-adr-methods-in-family-and-matrimonial-disputes.html> (Accessed: 05 December 2023).

⁹ *An introduction to mediation in India with reference to family disputes* (no date) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: <https://www.legalserviceindia.com/legal/article-12501-an-introduction-to-mediation-in-india-with-reference-to-family-disputes.html> (Accessed: 05 December 2023).

¹⁰ *Supra* note 8.

¹¹ THE FAMILY COURTS ACT, 1984

mediation in family disputes in India. For example, the Delhi High Court has established a mediation and conciliation centre that specializes in family conflicts and provides free mediation services to parties involved in family court proceedings¹². The mediation method has been well received by the parties, and the centre has been successful in resolving consider number of cases.

V. WHAT IS FAMILY MEDIATION

Family mediation is a type of dispute resolution where parties concerned analyse the situation and come to their own decisions about the issues at hand with the help of a mediator, who acts as an impartial third party¹³. According to the Family Courts Act, 1984, family mediation in India is described as "conciliation or mediation done with the assistance of a conciliator or mediator appointed by the court in a family dispute".¹⁴

This idea highlights the mediator's role as an unbiased third party appointed by the court to assist parties in resolving their conflicts. Theoretically, any kind of dispute involving family members, including those involving maintenance, parent-child ties, and contact rights, can be resolved through mediation in family settings. Concerns regarding adoption, the grandparents' relationship to their grandchildren, and surrogate motherhood, etc.

Family mediation is typically used, nevertheless, when there is a dispute among a couple married or not during a family crisis. Mediation in these situations is always about assisting the parties in resolving disputes that from the split: from practical child-rearing arrangements, to overseeing the family home, to other financial concerns such preservation.¹⁵

VI. ROLE OF MEDIATION IN FAMILY AND MATRIMONIAL DISPUTE

In the society we live in, it used to be common practice to discuss disagreements among family members while seated together. At the village level, disputes were frequently referred to the panchayats, who heard both sides before making a decision. Similar to this, the mediation process allows family members to try to resolve their differences through discussion rather than going to court. In family relations, maintaining harmony and peace among family members is crucial. To protect the institution of the family, disputes in the family or a marital relationship

¹² n. baruah and a. bhalla (2019). family mediation: a survey of the literature. 6(2), 88-92 international journal of research and analytical reviews

¹³ Marta (no date) *Family Mediation: A Comparative Survey, Mediation in Europe at the cross-road of different legal cultures*. Available at: https://iris.unipa.it/retrieve/handle/10447/101666/246226/Final_Research_Report_Mediation_in_Europe.pdf#page=183.

¹⁴ Family courts act, 1984

¹⁵ *Supra* note 13.

that can be repaired must be mediated and settled through sewing and patchwork rather than simply severing ties by going to court and separating from each other.

In cases involving family and matrimonial disputes, mediation is the most effective alternative dispute resolution strategy. This method is useful because it focuses on a non-coercive and consensual process for resolving disputes between parties. This method not only saves time, but it also reduces the likelihood and possibility of ill will and estranged relationships as a result of the parties' decision to go to court.

A family dispute is not only a matter of law and facts, but also of the feelings of the parties involved. Mediation is thus an alternative dispute resolution method that aims to assist two disputants in reaching an agreement that is beneficial to both of them and also meets the needs of both disputants. By advocating communication, the family mediator aims to assist the parties in coming to an amicable resolution. The family law system promotes mediation, which can be carried out in a number of ways, including with the assistance of friends or family, informally at meetings, or through the use of a unique mediation procedure that is governed by Australian law.¹⁶

Under the Family Law Act of 1975, also referred to as Family Dispute Resolution, a practitioner who is not connected to any of the parties directly assists individuals in resolving their disputes. There are references to mediation/conciliation in family dispute resolution in the Family Courts Act of 1984, the Civil Procedure Code, the Hindu Marriage Act, and the Legal Services Authorities Act of 1987, which gives Lok Adalats a special status because they have been very effective in mediating family disputes.¹⁷

The most important aspect of this process is that the parties to the dispute decide and come to an agreement together, instead of having a third party someone they don't even know impose a decision that might not even be acceptable to both of them. The use of appropriate skills by the mediators to enhance the discourse between the disputants and assist the parties in coming to a mutually beneficial agreement is another crucial aspect of mediation. A mediator's job is to guide the parties involved in a dispute toward a likely resolution by encouraging them to communicate and negotiate in that way. Like equity, mediation was meant to be justice without the rule of law.

¹⁶ Rai, D. (2020) *The theoretical and conceptual framework of Family Law Mediation*, *iPleaders*. Available at: <https://blog.ipleaders.in/the-theoretical-and-conceptual-framework-of-family-law-mediation/> (Accessed: 05 December 2023).

¹⁷ *The role of mediation in family and matrimonial disputes* (2023) *Legally Flawless*. Available at: <https://legallyflawless.in/role-mediation-family-matrimonial-disputes> (Accessed: 05 December 2023).

VII. BENEFITS OF MEDIATION IN FAMILY AND MATRIMONIAL DISPUTES

The mediator's job is to gather information from both sides of the dispute and rephrase it so that the parties can concentrate on the real points of contention rather than wasting time on non-essential details. This will allow the parties to consider innovative solutions that might not be feasible in a court case that is imposed by a third party. In order to ensure that the parties are crystal clear about where they agree and disagree, the mediator may also speak with each of the disputing parties one-on-one without the other party present.

The mediation process for matrimonial disputes differs greatly from that for commercial or property disputes due to the unique factors that distinguish matrimonial disputes from other types of disputes. These factors include feelings, personal liabilities, responsibilities, sentiments, and the institution of marriage itself. Resolving matrimonial disputes is largely dependent on emotional and irrational factors.¹⁸

The mediator has to take care to ensure that he does not, under any circumstances, ignore the emotional component of the conflicts giving rise to that specific dispute. Since matrimonial cases tend to be more emotional than rational or factual, he should actually be more concerned with the satisfaction and happiness of both parties. He cannot just approach both parties and advise them on what to do or how to implement the suggestions made by the other parties. His goal is very clear: he wants to find a way to resolve the dispute or disputes in question with the least amount of harm to the parties involved, if any.

In order to guide the parties to an amicably acceptable resolution to the dispute or disputes that would bring about enduring peace between the disputants, the mediator must act as a counsellor or a conciliator.¹⁹ In addition to giving the parties advice, the mediator might need to use diplomacy to persuade them to concentrate on the advantages of a suggested solution. Either of the two parties or the mediator may suggest a resolution to the disputes at hand.

It may take more than one mediator to assist the parties in reaching a mutually agreeable resolution during the mediation process. It depends on the nature of the disagreements between the parties as well as their respective emotional and mental states. Each party can take their lawyers' advice and suggestions at any stage of the mediation procedure, avoiding the

¹⁸ Polina (2021) *Five benefits of family mediation*, McQuarrie Legal Services. Available at: <https://www.mcquarrie.com/articles/benefits-family-mediation/> (Accessed: 05 December 2023).

¹⁹ *Supra* note 13.

adversarial nature of the litigation process.²⁰

VIII. MEDIATION UNDER LEGAL FRAMEWORK

The Hindu Marriage Act of 1955, the Special Marriage Act of 1954, the Family Court Act of 1984, the Civil Procedure Code of 1908, and the Legal Service Authority Act of 1987 are all laws and legal rules governing the resolution of matrimonial disputes. In order to resolve disputes, the Legal Services Authority Act established the concepts of arbitration, mediation, conciliation, and agreement.²¹ In order to resolve disputes, the Legal Services Authority Act established the concepts of arbitration, mediation, conciliation, and agreement. When disputes in courts of law are pending, the law allows for Lok Adalats to be held. A family court provides integrated, broad-based programs to dysfunctional families in order to sustain the family and help to stabilize marriages.²²

To avoid the traditional adversarial or fault-oriented approach, the family Court system intends to establish a less formal process in which legal technicalities and technical protocols will not be followed. The goal should be to provide a dignified forum for parties to resolve disputes and reach amicable settlements without resorting to litigation; to help prevent unnecessary litigation; and to promote pre-trial negotiation and resolution. When it comes to resolving marital conflicts, mediation is a great option.²³ Section 914 of the Family Courts Act permits the Family Court to attempt to settle disputes fairly, and counsellors support the Family Court in this endeavour. If the Counsellors are unable to resolve the conflict, the Family Courts should refer the parties to mediation centres where trained mediators can mediate the issue.

The main purpose of the Act is to establish Family Courts in order to facilitate conciliation and ensure the timely resolution of disputes relating to marriage and family affirmations, among other things. Despite the fact that the Family Courts Act of 1984 was designed with the simple assumption of quick resolution or reconciliation in mind, litigation in major cities has become highly contested and involves high financial stakes. In the case of *S.Thankikodi v. Ramuthayee*, the Court was required by section 23(2) of the Hindu Marriage Act, 1955, when dealing with matrimonial cases, to attempt to reconcile the parties in the matrimonial case in the first instance. The Court, however, states that it can only attempt reconciliation if it believes there is a chance of saving the marriage, and not otherwise. Matrimonial litigation in metropolitan areas

²⁰ *Mediation in family and matrimonial disputes* (no date) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: <https://www.legalserviceindia.com/legal/article-1715-mediation-in-family-and-matrimonial-disputes.html> (Accessed: 05 December 2023).

²¹ *Supra* note 18.

²² *Sushil Kumar Sharma v. Union of India*, AIR 2005 SC 3100 Para 18

²³ *Flavia Agnes, Family Law Vol. II, Marriage, Divorce, and Matrimonial Litigation*, Oxford Publication Page.319

is becoming increasingly complex, going far beyond the idea of a quick settlement or reconciliation.²⁴

The law expressly states that whether a statute is mandatory or advisory is determined by the Legislature's intent, not the language used to convey that intent. The purpose and significance of the legislative body should take precedence, and this should be determined by considering not only the phraseology of the provision, but also its essence, design, and implications.

If the family court does not order the parties to reconcile, the court's final judgment is not rendered invalid for failing to comply with Section 9 of the Family Court Act, 1984. As a result, the provision is neither "mandatory" nor "directive," but imposes on the Court an onerous duty to make a reasonable effort to reach an agreement in order to keep the estranged couple from drifting apart.

IX. CONCLUSION

The majority of cases referred to mediation in court-administered systems involve matrimonial disputes. As a result, society requires mediators in this field who can handle disputes with compassion and empathy while also assisting parties in resolving the issue of the dissolution of deeply personal relationships. Parties will quickly realize that mediation far outweighs the alternatives, and they will seek it out sooner rather than later.

Marriages cannot be quickly dissolved or interrupted in the interests of societal peace. It is in the public interest to preserve matrimonial relations and, to the greatest extent possible, to keep them from being broken up at the request of any of the marriage's parties. This method of conflict resolution not only saves time, but it also reduces the acrimony and strained relationships that can result from litigation. Mediation is becoming more popular in India, particularly in the case of marital disputes.

If relief in a marital proceeding is delayed, the entire object of relief is nullified, and the parties are physically and emotionally destroyed, with little to no chance of remarriage. Alternative conflict resolution strategies are preferred for the sake of future relationships and should be used to bring about peace. The situation has been so tumultuous that there has been an unprecedented increase in divorce proceedings in recent years, but mediation offers a ray of hope to many couples seeking to settle their differences. It is our responsibility to protect marital relationships through advice and conciliation services.

²⁴ AIR, 1986 Madras 263