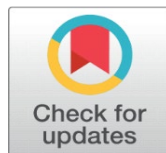
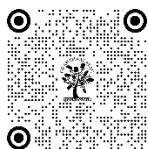


MEDIATION IN MATRIMONIAL DISPUTES

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ABSTRACT

Matrimony refers to the state of being married, and marriage is regarded as a deeply sacred institution in most religions that are practiced in our country today. The dissolution of a marriage is often accompanied by various taboos and is still looked down upon by many traditional members of society. From a legal perspective, family law in India, which covers a wide range of matrimonial issues, is relatively new and still evolving. While many people view the end of a marriage as an undesirable situation that should be avoided, the reality is that issues leading to divorce contribute significantly to the backlog of cases faced by courts at all levels. In this context, much like in commercial disputes, alternative dispute resolution offers a modern approach to resolving conflicts, benefiting both the parties involved and helping to alleviate the litigation burden on the courts.

1. INTRODUCTION

India's social fabric and culture have evolved. Families have changed from being joint to becoming nuclear, at least in urban areas. The rise in nuclear families, individual financial independence, and increased public awareness of education causes expectations for marriage to fall off naturally, which in turn causes marital disputes. The overburdening of the Indian judiciary with an excessive number of cases has resulted in substantial delays and a backlog of unresolved disputes. To address this issue, it became necessary to implement an alternative dispute resolution (ADR) mechanism, a method that provides an alternative to traditional litigation. On December 4, 1993, the Chief Justice and Ministers of the many states conducted a conference in New Delhi, which was hosted by the then Chief Justice of India former and the Prime Minister of India. The Conference resulted in the birth of resolution that read as follows:

"The heads of government and the highest judges agreed that the courts couldn't handle everything and that some conflicts were better suited to being settled through arbitration, mediation, or negotiation. They stressed the value of parties to a disagreement using alternative dispute resolution, which can provide procedural flexibility, save time and money, and reduce the emotional and mental strain of going to trial"

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a wide range of matrimonial issues, is relatively new and still evolving. While many people view the end of a marriage as an undesirable situation that should be avoided, the reality is that issues leading to divorce contribute significantly to the backlog of cases faced by courts at all levels. In this context, much like in commercial disputes, alternative dispute resolution offers a modern approach to resolving conflicts, benefiting both the parties involved and helping to alleviate the litigation burden on the courts.

Matrimonial disputes encompass a wide range of issues, including alimony, divorce, maintenance, and child custody, among others. Several statutes and legislations govern these disputes, such as “the Hindu Marriage Act, 1955, the Parsi Marriage and Divorce Act, 1936 (amended in 1988), the Indian Christian Marriage Act, 1872, the Muslim Personal Law Application Act, 1937, the Dissolution of Muslim Marriages Act, 1939, the Special Marriages Act, 1954”, and others. Disputes of this nature amongst members of different communities are adjudged by designated courts or judicial forums based on the relevant laws. Furthermore, the Parliament introduced the Family Courts Act, 1984, to not only specialize and expedite cases of this nature but also to provide an opportunity equipped with an understanding of the influence of judicial verdicts in matrimonial disputes, while promoting conciliation between parties to help preserve the family and the marriage.

2. LITIGATION V/S MEDIATION

In litigation, one party emerges victorious while the other loses, often resulting in the severance of social ties between the two. While this approach may be appropriate for criminal cases, it is not always the best solution for civil or matrimonial disputes. In such cases, even though one party may be at fault, the situation is not necessarily irreparable. Instead of resorting to litigation, where both sides are pitted against each other, civil disputes can often be resolved through mediation. In mediation, both the parties are brought together with a mediator, allowing them to express their expectations and seek a mutually agreeable solution, such as compensation or damages. This approach is particularly crucial in matrimonial disputes, where personal relationships are more vulnerable to being damaged by the litigation process. In marriage, not only the couple but also their extended families are interconnected, making it essential to use every available dispute resolution mechanism to preserve these relationships and reach an amicable resolution.

Recognizing the significance of maintaining the integrity of relations through dispute resolution, all acts governing matrimonial disputes, divorce and marriage laws emphasize or recommend alternate dispute resolution methods.

Here are a few examples:

1. THE HINDU MARRIAGE ACT, 1955:

- Section 23(2): “Before granting any relief under this Act, the court must, wherever possible, make every effort to facilitate reconciliation between the parties, in line with the nature and circumstances of the case”.

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- Section 23(3): “To assist the court in fostering reconciliation, the court may, if the parties wish or if it deems appropriate, adjourn the proceedings for up to fifteen days and refer the matter to an individual chosen by the parties or, if they fail to do so, to someone appointed by the court. This individual will report back on whether reconciliation has been achieved, and the court will consider the report when making its final decision.”

2. SPECIAL MARRIAGE ACT, 1954

Section 34(2) mandates that the court's primary duty is to make every conceivable effort to boost reconciliation between the concerned parties, considering the specific facts and circumstances of each case before granting any relief. Section 34(3) further grants the court the authority to adjourn proceedings for a reasonable period and refer the matter to a person nominated by the parties in dispute. If the parties fail to nominate someone, the court may appoint an individual for this purpose. This person is required to report back to the court on the likelihood and degree of reconciliation and whether it can be achieved, aiding the court in resolving the case.

3. FAMILY COURTS ACT, 1984

Section 9 outlines the duties and powers of Family Courts to work toward amicable settlements in matrimonial disputes. Sub-Section (1) specifies that the court must dissipate all possible efforts to assist and persuade the parties to contemplate a settlement and should, subject to the orders of the High Court, adopt whatever procedures it deems necessary. Clause

(2) states that if the court sees potential for a settlement, it may adjourn proceedings for a reasonable time to allow the

parties to reach an agreement.

These provisions demonstrate a clear intent to explore all possible methods of resolving disputes before resorting to litigation.

3. CURRENT STATUS OF MEDIATION IN MATRIMONIAL DISPUTES

A number of legislators have supported mediation as an alternative dispute resolution process for families, and this position has developed over the past several years. Section 89 of the Code of Civil Procedure, 1908 gives the court the power to direct parties seeking an agreeable conclusion to mediation. With regard to resolving a variety of problems, whether or not they are business-related, the Mediation Act, 2023 sought to advance and simplify mediation, especially institutional mediation. The objectives of this initiative are to uphold settlement agreements reached through mediation, create a directory for mediators, encourage community mediation, and improve the efficiency and recognition of online mediation. Related or incidental issues are also covered.

Ahuja v. Ahuja act as an excellent representation of the court's determination to promote peaceful resolutions. In this instance, the court aggressively promoted mediation as a way of conflict resolution before formal legal action was taken by the parties. This reflects a larger trend in the legal system, where judges are realizing more and more how beneficial mediation is in fostering peaceful settlements while reducing the costs and responsibilities associated with drawn-out legal disputes. The court hopes to foster collaboration and communication between parties through mediation, with the ultimate goal of achieving just and satisfying results outside of the courtroom.

It has been established that alternative dispute resolution mechanisms serve the interests of both parties in matrimonial disputes better than litigation. Among these mechanisms, mediation is particularly well-suited for such cases. Mediation aims to facilitate a dialogue between the disputing parties with the assistance of a neutral third party (the mediator), who listens to both sides and helps them reach a mutually agreeable solution. Mediation is deemed successful when both parties accept the solution. However, if one party does not agree with the proposed outcome, the mediation is considered inconclusive, and the case is referred back to court for trial.

The mediator does not provide legal counsel or make decisions throughout the divorce process. Rather, the mediator's only responsibility is to assist the two couples in determining how to resolve their issues in a peaceful way. Regarding any material disclosed during the meetings, the mediator must always keep it private. They are restricted from disclosing to other parties any information about the case. Moreover, there is a higher level of confidence in using mediation to settle divorce disputes because the entire procedure is not recorded.

The key principle of mediation is to find a solution that satisfies both parties. In matrimonial disputes, this means that either both spouses meet halfway regarding their original demands or they both achieve the outcomes they sought. Since mediation allows both parties to attain at least part of what they want, it helps prevent the complete breakdown of their relationship, leaving room for reconciliation.

Mediation Centers and Growing Popularity

- **FAMILY COURT MEDIATION CENTERS:** Several mediation centers have been established across the country, particularly in metropolitan areas like Delhi, Mumbai, and Bangalore. These centers specialize in family disputes and have trained mediators to handle sensitive matrimonial matters.
- **INCREASED REFERRALS:** Matrimonial cases are increasingly being referred to mediation by courts, with a significant number of cases being resolved through this process. In cities like Delhi, many Family Courts now routinely send cases to mediation, reflecting its growing acceptance among both courts and litigants.

• In India, mediation in matrimonial disputes has gained significant traction as an alternative to traditional litigation, reflecting the growing recognition of its benefits in resolving sensitive family matters. While the legal framework and courts are increasingly encouraging mediation, challenges remain in its implementation.

4. MEDIATION IN MATRIMONIAL DISPUTES: ADVANTAGES

1. **CONTROL AND MUTUALITY:** In mediation, both parties maintain significant control over the process, unlike in a trial where the judge independently makes a decision after hearing both sides. Mediation allows both parties to actively participate in reaching a mutually agreeable resolution, rather than leaving the outcome entirely in the hands of the court.
2. **EFFECTIVE SOLUTIONS:** A successful mediation results in a decision that both parties agree to, with the

mediator's guidance. This increases the likelihood that both parties will comply with the agreed-upon terms, as opposed to a trial outcome where the losing party may appeal or avoid fulfilling the court-ordered obligations.

3. **SPACE FOR DIALOGUE AND CONFIDENTIALITY:** Mediation provides a platform for both parties to communicate openly and understand each other's point of view in a confidential environment. The mediator helps facilitate this dialogue, encouraging the parties to resolve the dispute amicably and find a solution that works for both.

In many other countries, one of the key benefits of mediation is that; it allows parties to resolve their disputes in a more structured and institutionalized manner, while providing greater autonomy compared to a trial. Additionally, mediation often involves the presence of counselors who are skilled in understanding the psychological aspects of both parties, enabling them to identify the root cause of the conflict more effectively.

Family disputes are explained under the Family Courts Act as:

- A lawsuit or other legal action brought by one spouse against the other to obtain a decision of nullity—that is, a declaration that the marriage is void or, in some cases, annuls the marriage—restoration of conjugal rights, judicial separation, or dissolution of the marriage.
- A legal action or procedure to determine the legality of a marriage or an individual's marital status.
- A lawsuit or other legal action involving the parties to a marriage and their respective property.
- A legal action or procedure seeking a decree or injunction in situations resulting from a marriage.
- A legal action or procedure seeking a determination of someone's authenticity. a maintenance lawsuit or claim process.
- A lawsuit or other legal action pertaining to guardianship, access to, or custody of an individual who is minor.

Family mediation addresses emotional and relational concerns in addition to legal ones, frequently with the goal of bringing parties back together.

There are two main types of mediation:

1. Sessions in which both parties engage in free communication and
2. Caucus sessions: One party meets alone with the mediator.

A caucus's goal is to bring up topics that aren't publicly discussed. Caucus meetings can be more successful since family issues are filled with emotion. Particularly in divorce situations, some experts support "shuttle mediation," which minimizes in-person contact. Due to the complexity of family conflicts, such as those involving child custody and property distribution, a more involved mediator could be necessary. Because their own prejudices shouldn't affect the communication process, the mediator's professionalism and objectivity are essential in these situations.

5. CHALLENGES IN IMPLEMENTATION

While a significant number of matrimonial disputes in and around Delhi are being settled or referred to mediation, a major challenge lies in the lack of proper infrastructure. Given the sensitive nature of these disputes, it is crucial for mediators to provide a space where parties can engage in the process comfortably, without concerns about confidentiality. However, inadequate infrastructure often results in multiple mediation sessions being held in the same room, compromising privacy and discouraging open and honest participation. Another practice that could be espoused from the American dispute resolution system through mediation could be, involving a counselor alongside the mediator, which would help achieve a deeper understanding of the conflict and lead to more tailored and effective solutions for the parties involved. However, this can also raise potential challenge as to the true intent of the personal counselor, therefore a neutral counselor could be a better option for the parties to reach to conclusion of mediation proceedings

6. SUGGESTIONS AND CONCLUSION

The preservation of marital relationships is a cornerstone of societal stability. As such, the dissolution of marriages should be a deliberate and considered process. While acknowledging the right of individuals to terminate their marriages, the law should strive to balance this right with the public interest in maintaining the institution of marriage. Mediation offers a promising alternative to litigation, providing a more collaborative and less adversarial approach to resolving marital disputes. By fostering communication and compromise, mediation can help parties reach mutually agreeable solutions, thereby reducing the emotional and financial toll often associated with contentious legal proceedings.

The following positive outcomes have been observed as a result of engaging in mediation:

- **REDUCED LITIGATION BACKLOG:** Mediation has been effective in easing the burden on courts, especially with the growing number of matrimonial disputes. By encouraging parties to settle their disputes out of court, it

reduces the litigation backlog and speeds up the resolution process.

- **AMICABLE RESOLUTIONS:** Since mediation fosters dialogue and mutual agreement, it has proven to be an effective tool in resolving disputes amicably, which is especially important in matrimonial matters where preserving relationships, such as those involving children, is often a priority.

The following points may be considered for further improvement:

- **COUNSELOR INVOLVEMENT:** There is a growing demand for involving counselors or psychologists in the mediation process, as is done in other countries like the U.S., to help address the emotional and psychological dimensions of the conflict.
 - **EXPANDING INFRASTRUCTURE:** Expanding infrastructure and creating more dedicated spaces for mediation, especially in smaller towns and rural areas, is crucial for ensuring the confidentiality and effectiveness of the process.
- Alternative dispute resolution (ADR) mechanisms, such as mediation, offer a valuable means of preserving relationships and fostering peaceful resolutions to conflicts. By providing a supportive environment for open communication and compromise, mediation can help couples navigate their differences and find mutually beneficial solutions.

The legal system has a responsibility to promote the use of mediation whenever appropriate. By doing so, we can reduce the burden on the courts, streamline the resolution of disputes, and increase the overall satisfaction of the parties involved. However, the success of mediation depends on a number of factors, including the availability of skilled mediators, effective case management, and a supportive organizational structure.

Research has consistently shown that mediation in matrimonial dispute is generally more cost-effective and time-efficient than traditional litigation. This is due in part to the fact that processes are often less formal and more flexible than court proceedings, allowing parties to participate more actively in the resolution of their disputes. As a result, mediation can help to reduce the backlog of cases in the courts and provide parties with more satisfactory and sustainable outcomes. While mediation in matrimonial disputes is gaining momentum in India, particularly in urban areas, it still faces challenges related to infrastructure, awareness, and training. With continued support from the judiciary and improvements in the mediation framework, it holds great potential as an effective tool for resolving family disputes.

CONFLICT OF INTERESTS

None.

ACKNOWLEDGMENTS

None.

REFERENCE

[1 \(2021\) 1 SCC 414](#)