

Mediation In Family and Matrimonial Disputes: A Critical Study

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Abstract

The two very foundations of Indian society are marriage and family. Marriage is the most fundamental societal building block. Marriage has always been the pillar of stability in society. The Indian family is a web of complicated relationships, emotions, and sentiments. As the smallest unit of society, family is often affected by dissolution, separation, and all types of disputes. A Court case involving family matters necessitates a unique approach. Bad communication is the root of all relationship issues. Family or matrimonial problems are deemed to be too delicate to be left to the whims or combative jurisprudence of the current legal system, which entails a great deal of mudslinging on both sides by its very essence. Today new approaches of resolving matrimonial disputes are crucial to save the family system, particularly mediation, which saves time and money. Through this article the concept of a mediation and its role in resolving the matrimonial disputes is discussed by taking into account the country's diverse culture, and current legal and social situation.

Key Words: *Matrimonial disputes, traditional courts, consensual decision-making, mediation*

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1. INTRODUCTION

Marriage is a stable, long-term partnership between two individuals who have mutually supported each other. It serves as the basis for the family and the organization, and it is defined by six social functions: sexual behavior regulation, succession, child care and protection, socialization, growth, and consumption, and the transmission of assigned statuses like race. The most critical of these ideals is inheritance, which underpins marriage and family life.¹ Marriage is a social event as well as a legal obligation.² Tolerance, adjustment, and mutual respect are the foundations of a healthy marriage. There are many variations between and among individuals, classes, and nations in life. There are cultural variations, personal factors, point of view variations, and contextual variation. Disagreements arise as a result of unresolved discrepancies. Disagreements are a source of problems. Unresolved disagreements become a conflict. Unresolved disagreements transform into conflicts.³ A matrimonial dispute occurs when a couple has a disagreement about the institution of marriage. A disagreement may turn into a conflict. The family, as the smallest unit of society, is often targeted for dissolution, separation, and other types of conflict.

The constantly changing social and family climate has posed new challenges, particularly to the younger population, such as growing insecurity, shifting roles of husband and wife, and the pressures of fast living. All of this has led to a breakdown in marital peace. Divorce rates are that alarmingly and in a geometrical pattern around the world.⁴ Marriages on their knees need help and treatment. They act with a limp and require medical care.⁵ Family or marital concerns are considered too sensitive an area for the pity or the unfavorable jurisprudence of the present legal system.⁶

2. MATRIMONIAL DISPUTES IN INDIA

The social structure of India is constantly evolving, and with increased literacy and economic freedom among couples, matrimonial conflicts are on the rise. When modern partnerships become open to divorce, the opposition mechanism does not comply with the requests of the parties concerned. These disputes, unlike other contractual disputes, are accompanied by various emotional, social and personal dimensions. The standard process of litigation is often incompatible with these requirements. The unsatisfied side turns to appeals, reviews petitions and so on in the hope of reaching a favorable judgment due to court orders that do not have mutual consent of the parties.⁷ This results in a time-consuming and emotionally exhausting

¹ Hemendranath Reddy & Manohar Gogia, Marriage & Divorce Law, ALT publications, Pg.8.

² V. Hemalatha Devi, Rural Women Legal Awareness, Supreme Court Journal - 1990, Vol-3(Sep-Dec).

³ [http://supremecourtindia.nic.in/MEDIATION% 20TRAINING% 20MANUAL% 20OF% 20INDIA.pdf](http://supremecourtindia.nic.in/MEDIATION%20TRAINING%20MANUAL%20OF%20INDIA.pdf) accessed on 10 April 2021 .

⁴ Vijendra kumar, Expanding Horizons of Divorce under the Hindu Marriage Act, 1955, A L T 2013 (5) 21-29

⁵ [www.lawsenate.com/..courts -to-settle. matrimonial disputes](http://www.lawsenate.com/..courts-to-settle-matrimonial-disputes) accessed on 11 April 2021.

⁶ Nagasila, Family courts - Anti women accessed through manupatra visited on 11 April 2021.

⁷ <http://brewminate.com/social-institutions-family-religion-and-education> visited on 13 April 2021

process with no meaningful results much of the time, the costs borne by the parties are rendered ineffective as compared to the expense of the subject of the suit property.

There are a number of factors which can cause conflict and subsequently dispute a couple due to their families or children. Thus, most spousal conflicts occur early in the marriage, and when a couple is recently married, they are not very forgiving, whereas a couple is generally more familiar and tolerant of the other in long term relationships. Another reason for a dispute is that both husband and wife participate in two different areas of career, have little time for the other, and have various aspirations for life.⁸

Some scholars say that children can also trigger marriage stress, while others claim they can provide stability to a married life, but that the expenditure increases and that marriage breaks significantly. Another point of contention is household chores. Women also face this challenge since they care for their families and children for several years. For a woman it is a struggle and it gets harder as she gets it as she is charged with two responsibilities: care for her home and children and caring for her job and career. When a woman weds a man, and a man weds a woman, they both marry the family of each other. As a consequence, in India, there is a lot of involvement of each other's family in marital life, which can sometimes trigger issues.

3. ROLE OF MEDIATOR

All relationship problems stem from a lack of communication. Mediation is a means for the promotion of dialogue, understanding and settlement, through a neutral mediator. Mediation is particularly appropriate for divorce and other cases of family law, because the parties are likely to maintain a relationship, especially in the event of minor children. Mediation helps many divorcing wives avoid the high burden of litigating divorce. Costs are reduced because normally the settlement is quicker. Mediation also helps pairs avoid trial uncertainty, preserves confidentiality and decreases stress. Mediation allows couples to escape the possibility of a lawsuit, preserve confidentiality, and reduce volatile conflicts. Mediation may also shield the children of the marriage from the pain of parental conflict. Couples who mediate their divorce settlement are far happier than those who go to trial because the parties sign their own contracts. Furthermore, pairs learn how to resolve future disputes.⁹

During mediation, the parties may choose to either part ways on mutually agreeable terms or patch up and remain together. In this case, the suit must be dismissed in order for the settlement to go forward. In that case, they will go to the High Court to get the lawsuit dismissed. They will, however, pursue the case if they refuse to settle. There is no one who loses in this exercise. If a settlement is reached, the parties will be spared the trials and tribulations of a criminal case, and the pressure on the courts will be reduced, which is in the public interest. Obviously, the High Court can dismiss the case only if it considers a number of factors. The High Court will obviously only quash the case if it deems the arrangement to

⁸https://www.psychologicalscience.org/journals/cd/12_1/Fincham.cfm visited on 13 April 2021

⁹<http://family.findlaw.com/divorce/divorce-mediation-overview.html#sthash.KzIKVRbt.dpuf> accessed on 13 April 2021

be fair and real after consideration of all circumstances. Such a course is useful to those who sincerely wish to give their marriage disputes some peace of mind. The courts also consider 'mediation' as an appropriate alternative means of settling matrimonial conflicts and that's why the courts want the parties to examine the possible resolution of marriage disputes by mediation.

Frequently, the source of a matrimonial dispute's confusion is minor and easily resolved. Mediation is now legally recognized as a form of alternative dispute resolution. Several matrimonial disputes were also referred to mediation centers by the courts.¹⁰ As a result, we believe that the dispute should be referred to mediation centers at the earliest possible time, i.e. before it is taken up by the Family Court or a court of first instance for hearing.

In its 10th report, the Law Commission of India emphasized that when dealing with family disputes, the Court should take a somewhat different approach than in ordinary civil cases, and that it should make fair attempts at arbitration before proceeding to trial. Furthermore, it is a legal requirement to resolve such conflicts quickly and fairly for the litigants, and it is highly recommended that marriage and divorce cases be treated separately. Since they have been trained in the art of mediation, they produce positive results.¹¹ Mediation before trial has become more commonplace now. Following widespread publicity, some mediation centers set up "Help Desks" in prominent locations, such as facilitation centers at court facilities, to conduct pre-litigation mediation.

4. MEDIATION UNDER LEGISLATIONS

All the laws and legal rules relating to the settlement of matrimonial disputes are the Hindu Marriage Act of 1955, the Special Marriage Act of 1954, the Family Court Act of 1984, Civil Procedure Code, 1908 and the Legal Service Authority Act of 1987. The Legal Services Authority Act laid down the concept of arbitration, mediation, conciliation and agreement in order to dispute resolution. Where conflicts in courts of law are pending, the said law allows for the holding of Lok Adalat's. The concept of a family court means that dysfunctional families are provided with integrated, broad-based programs to sustain the family and help to stabilize marriage. To avoid the conventional adversary or fault-oriented approach, the family Court system envisions establishing a less formal process in which legal technicalities and technical protocols are not to be followed. The aim should be to provide a dignified means for parties to resolve their disputes and negotiate amicable settlements without resorting to litigation; to help prevent unnecessary litigation; and to promote pre-trial negotiation and resolution.

The main purpose of the Act¹² is to create Family Courts in order to facilitate conciliation and ensure a timely resolution of disputes relating to marriage and family affairs and related matters. Despite the fact that the Family Courts Act of 1984 was conceived on the simple

¹⁰<http://www.lawyersclubindia.com/articles/Arbitration-and-its-relation-to-family-laws-7229.asp> visited on 13 April 2021

¹¹*Sushil Kumar Sharma v. Union of India*, AIR 2005 SC 3100 Para 18

assumption of quick resolution or reconciliation, litigation in metropolitan cities has become extremely contested and involves high financial stakes. In metropolitan cities, matrimonial litigation is becoming increasingly complex, extending well beyond the idea of a quick settlement or reconciliation.¹³

Mediation is an excellent choice for matrimonial disputes, especially those involving child custody, support, and other issues. Section 9¹⁴ of the Family Courts Act allows the Family Court to make fair efforts to settle matrimonial disputes, and Counselors' assist the Family Court in this effort. Even if the Counselors' efforts fail, the Family Courts should refer the parties to mediation centers where competent mediators can mediate the conflict.

The law is explicit that the intention of the Legislature, not the language used to convey that intent, determines whether a statute is mandatory or advisory. The purpose and significance of the legislative body should prevail, and this should be decided by looking not only at the phraseology of the provision, but also at the essence, the design and the implications of its construction. If the family court does not direct the parties to reconcile, the final judgement of the court is not rendered invalid for non-compliance with Section 9 of the Family Court Act, 1984. As a consequence, the provision is neither "mandatory" nor "directory," but imposes on the Court an onerous duty to make a fair attempt to find a compromise in order to keep the estranged pair from drifting apart.

5. COURT AS A MEDIATOR

The judiciary is now leaning toward mediation as the most realistic method for resolving disputes. While an offence punished under Section 498 - A of the IPC is not compoundable, the Apex Court¹⁵ recently stated that in appropriate circumstances, if the parties are willing and the criminal court believes there are elements of resolution, it should order the parties to explore the possibility of settlement by mediation. This is clearly not to water down the rigor, efficacy, or purpose of Section 498-A of the IPC, but to identify cases where a matrimonial conflict can be resolved fairly. In their qualifications, the judges must guarantee that this exercise is carried out correctly. In their experience, the judges must guarantee that this exercise does not proceed to the wrong partner by means of mediation in order to escape the rules.

The educated owners of the Bar have a huge social duty to ensure that the social fabric of family life is not ruined or destroyed. They must be such the exaggerated versions of minor events do not appear in felony charges. The vast majority of lawsuits are lodged on their recommendation or with their approval. The learned members of the Bar who belong to a noble career shall uphold its noble values by treating any case filed under Section 498A of the Indian Penal Code as a simple human issue and making a sincere effort to assist the parties in reaching an amicable settlement. They must carry out their responsibilities to the government.

¹³Flavia Agnes, *Family Law Vol. II, Marriage, Divorce, and Matrimonial Litigation*, Oxford Publication Page.319

¹⁴ Ibid

¹⁵*Ram Gopal v. State of M.P*, 2010 SCALE 711 .

They must carry out their responsibilities to the best of their ability in order to maintain the social fabric, stability, and tranquility of the society. Members of the Bar can therefore ensure that a single complaint does not result in several instances.

Unfortunately, the claimant does not fully comprehend the ramifications and repercussions of filing the case, which will result in unimaginable harassment, agony, and discomfort for the complainant, accused, and his near relatives.¹⁷ The ultimate goal of justice is to discover the facts, punish those who are guilty, and defend those who are innocent. In the vast majority of these allegations, uncovering the facts is a Herculean task. It is also not unusual for the husband and all of his immediate family members to be implicated. And after a jury proceeding has ended, it will be impossible to determine the true facts. In dealing with these cases, the courts must be highly vigilant and cautious. In dealing with these grievances, the courts ought to be exceedingly vigilant and careful and must consider pragmatic facts in the context of matrimonial litigation. The claims of abuse of intimate contacts between husbands who lived in other cities and who had never visited the site where the claimant was residing would have very different facial characteristics. The complaint's claims are to be carefully and carefully examined.

Length and drawn-out jury cases have a history of causing animosity, acrimony, and resentment in the parties' relationships. It is also common knowledge that in lawsuits brought by the wife, whether the husband or the husband's relatives are required to stay in prison for even a few days, the hopes of an amicable solution are completely ruined. Suffering takes a long time and is excruciatingly uncomfortable. In India, there is an increasing need for matrimonial mediation.

"In recent years, there has been an uptick in matrimonial disagreements. Marriage is a religious ceremony whose primary goal is to help the young couple settle down in life and live happily ever after. However, small matrimonial quarrels escalate out of nowhere, frequently leading to the commission of heinous crimes in which family elders are also implicated, rendering those who should have counseled and brought about reconciliation powerless as they are named as defendants in a criminal case. There are numerous other reasons that matrimonial lawsuits need not be encouraged so that the partners can reflect on their mistakes. There are several other reasons not to be mentioned here for failing to promote legal proceedings such that the parties can consider and resolve differences friendly by mutual agreement instead of fighting it in a Court of Justice, in which a "young" time is taken for years and years to conclude, in chasing cases in different courts. the parties lose their "young" days."¹⁸

The aim in law is to reconcile or alleviate as much suffering as possible. The aim of law, like life itself, according to Bentham, is to achieve the greater benefit of the greater number of

¹⁶*Preethi Gupta v. State of Jharkhand*, AIR 2010 SC 3363

¹⁷ National Judicial Data Grid <https://njdg.ecourts.gov.in/njdgnew/index.php> visited 14 April 2021

¹⁸*Satish Sahni & Others v. State of Punjab & Another* at <https://indiankanoon.org/doc/138110329/> visited on 13 April 2021

people.¹⁹ There is an urgent need for family law issues to be resolved through a proper legal system. Arrest is humiliating, restricts mobility, and leaves permanent scars. There is a need to establish a system for resolving disputes that would secure relationships.²⁰ Matrimonial conflict resolution forums may be traditional or new, legal or non-judicial, political or non-governmental.²¹

The Court²² is a crucial and extraordinarily powerful tool for maintaining and controlling social order. Courts play a critical role in achieving peace, harmony, and long-term congeniality in society, and resolving a dispute by a compromise between two warring groups should draw the immediate and prompt attention of a Court, which should strive to give full effect to the compromise, unless it is incompatible with the society's lawful composition or willfully violates the law. As a result, the High Court has unrestricted authority to dismiss criminal proceedings relating to such cross - fig. As a result, the High Court has unrestricted authority to quash criminal prosecutions relating to such cross-fights based on a lawful arrangement. The law established in the above judgments is "mutatis mutandis" completely valid in this case and provides a complete solution to the problem at hand.

In the case of *S.Thankikodi v. Ramuthayee*²³, the Court, when dealing with matrimonial cases, was required by section 23(2) of the Hindu Marriage Act, 1955 to attempt to reconcile the parties in the matrimonial case in the first instance. However, the Court states that it can only attempt to reconcile if it believes there is a possibility of saving the marriage, and not otherwise.

"Before proceeding to grant any relief under this Act, it shall be the duty of the Court, in the first instance, in every case where it is possible consistent with the nature and circumstances of the case, to make every effort to bring about reconciliation between the parties," says Section 23(2) and (3) of the Hindu Marriage Act, 1955. This responsibility must be carried out in accordance with the essence and circumstances of the situation.²⁴ The aim of this provision is to provide all assistance to the estranged couple in maintaining marital relations and restoring peace. However, it is emphasized that the Court should take action "in the first place" to facilitate reconciliation between the parties. To put it another way, the effort should be made right at the start of the event. This does not, however, imply that attempts at mediation should only be made at the beginning of the case and not at any other time. The court should make an effort in this direction if the circumstances of the case warrant it.

The Supreme Court of India issued a historic judgment in "*Salem Advocate Bar Association, Tamil Nadu v. Union of India*"²⁵, holding that mediation, conciliation, and arbitration must be used in court cases. The Supreme Court of India's decision would be a watershed moment in

¹⁹ A.V. Dicey, *Law & Public Opinion In England*, 414 (Universal Law Publishing Co. Delhi, 3rd Indian Reprint, 2003).

²⁰ Madabhushi Sridhar *Alternative Dispute Resolution*, Lexis Nexis pg.79

²¹ Prof. Kusum *Family Law Lectures Family Law 1* third edition Lexis Nexis Pg.425

²² *Sanjeev Kumar & Others v. State of U.P & Others* 1999 (1) AWC 853

²³ AIR, 1986 Madras 263

²⁴ Section 23(2) of Hindu Marriage Act, 1955

²⁵ (2003) 1 SCC 49

the history of mediation in India. However, the expansion of mediation should be carefully shaped so that the mechanism earns the confidence and respect of litigants.

6. CONCLUSION

Matrimonial disputes account for the majority of cases referred to mediation in court-administered systems. As a result, society requires mediators in this area that can handle disputes with compassion and empathy and assist parties in finding solutions to the issue of the dissolution of deeply personal relationships. Parties will quickly discover that mediation far outweighs the other types of conflict settlement, and they will seek it out sooner rather than later.

Marriages cannot be quickly dissolved or interrupted because it is in the best interests of society's peace. It is in the public interest to preserve matrimonial relations and, to the extent practicable, to prevent them from being disrupted at the request of any of the parties to a marriage. This form of conflict resolution not only saves time, but also reduces acrimony and strained relationships that may arise from litigation. In India, mediation is becoming increasingly common, especially in the case of marital disputes.

If relief is deferred in a marital proceeding, the whole object of relief is nullified, and the parties are physically and emotionally wrecked, with little to no hope of remarriage. Alternative conflict resolution strategies are preferred to maintain future relationships and should be the remedy for peace. The situation was so tumultuous that there has been an unprecedented increase in divorce proceedings in recent years, but mediation provides a ray of hope for many couples seeking to settle their differences. Via advice and conciliation services, it is our duty to protect marital relationships.

Suggestions:

The following suggestions for the effective implementation of mediation to resolve the matrimonial disputes are purposed as under:

1. Mediators should be given periodic trainings so that they are able to identify the cases in which mediation is suitable.
2. Mediation can only be used effectively if it is properly implemented and widely publicized. Awareness campaigns, such as seminars and conferences, should be held to inform the general public about the benefits of such amicable conflict resolutions.
3. Lawyers play a significant role and would strive to resolve conflicts by mediation rather than gaining charge of the situation and profiting from increased disputes.
4. Legal education in this attire of conflict resolution must be offered to law students.
5. Advocates, judges, law students, and volunteers must all actively participate in the growth of mediation.
6. The role of non-governmental organizations (NGOs) in the promotion of mediation should be encouraged because they are the nearest to the underprivileged and ignorant segments of society.