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THE ROLE OF THE MEDIATORS IN MATRIMONIAL DISPUTES: THE ANALYSIS OF ALTERNATIVE DISPUTE RESOLUTION IN THE FAMILY LAW

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I. ABSTRACT

The issue of matrimonial disagreement constitutes one of the most emotionally charged and socially sensitive issues in the system of law. Conventional litigation tends to further the animosity among the partners and can cause a lengthy court battle which can be detrimental to the family, especially their children. In this regard, mediation has been a strong alternative dispute resolution (ADR) tool that boasts of dialogue, collaboration and win-win solutions. Mediators are important in ensuring the communication process, determining their underlying interests, and leading the parties to friendly solutions without giving a verdict. Mediation of matrimonial disputes has been an issue of importance in India, where institutional means of doing so have been established including Family Courts, mediation centres, and statutory provisions under procedural laws. Mediating matrimonial disputes (such as divorce, maintenance, custody and domestic) are increasingly referred to court prior to adjudication. The reason is that the process is supposed to maintain relationships where it can be maintained, lower litigation expenses, and lighten the burden of courts. Research has shown that mediation often results in faster settlements and greater compliance with the agreement since the results are negotiated by the parties themselves. This research paper analyses the role of mediators in marital conflicts, their functions, legal provisions, merits, and weaknesses, and issues that are practical. The paper also assesses the role of mediation in resolving disputes in the family law and also examines how mediation systems can be enhanced in India.

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II. KEYWORDS

Mediation, Matrimonial Disputes, Alternative Dispute Resolution, Family Courts, Settlement.

III. INTRODUCTION

Marriage is viewed as one of the essential social institutions upon which the family and community organizations are founded. Nevertheless, any disagreements emerging in marriage like the disputes over divorce, maintenance, property, in terms of child custody or domestic violence usually result in protracted litigation. Instances of matrimonial conflict cannot just be treated as legal battles but emotional, psychological and social.

Convictional court proceedings are adversarial where each side of the case tries to prove their case to be right against the other. Although such a strategy can establish legal allegations, it tends to escalate a hostile relationship among married couples and increases the duration of conflict. Additionally, trial on family issues can take years which can emotionally torment and economically stress both the individuals.

In accordance with these fears, the legal system has turned to use of alternative dispute resolution methods like mediation more often. Mediation is a voluntary and confidential process where a participating neutral third party, the mediator, facilitates the involved parties to the dispute to come to a mutually satisfactory agreement between parties. Mediators do not make judgments as judges or arbitrators do; however, they help parties to communicate and negotiate.

Mediation is especially important in matrimonial conflicts since it promotes reconciliation and collaborative resolutions. It enables couples to raise their issues in a contained operating room and discuss imaginative solutions that might not be provided by legal order. Mediation is also used to save relationships particularly when children are involved because of the understanding and collaboration instead of confrontation.

Legislations, institutional frameworks like the Family Court Act, 1984³, mediation centres, legal services authorities, and the Mediation Act 2023 support mediation of family disputes in India. Courts frequently refer matrimonial disputes to mediation before adjudication in order to encourage settlement and reconciliation between parties.

This paper will discuss the place of mediators in a matrimonial dispute and how effective is mediation as a method of dispute resolution in the family law.

A. Objectives Of the Study

The main goals of this study are:

1. In order to analyze the meaning and importance of mediation in marriage conflicts.
2. To examine the role and the duties of mediators in solving family conflicts.
3. To research into the legal framework in the mediation of matrimonial issues in India
4. To assess the strengths and weaknesses of mediation as an alternative dialogue resolution system.
5. To propose the steps to be taken to enhance the effectiveness of the mediation in cases of matrimonial dispute.

B. Research Questions

The following research questions are answered in the research:

1. What is mediation and how does it work in the matrimonial disputes?
2. How can mediators help in settlement of spouses?
3. What is the role of mediation in the solution of family conflicts compared to the conventional litigation?
4. What are the legal provisions that contribute towards mediation in matrimonial issues in India?
5. What are the problems in effectiveness of mediation in family law disputes?

³ Family Courts Act 1984

C. Hypothesis

Mediation is a better and more human process of settling matrimonial dispute than the traditional adversarial litigation due to its ability to encourage communication, maintain relationships and guarantee mutually acceptable resolutions.

D. Scope Of the Study

This study will be restricted to the role of mediation of marital conflicts in the Indian law. The paper is dedicated to the struggles between the marital couples which are divorce, maintenance, custody of children, and other family conflicts.

The study will look at the role of mediators in such conflicts and how mediation works under institutional structures like family court and mediation centres. Although we may make comparative references to international mediation practices, the main emphasis is on the Indian law and practice.

E. Research Methodology

The approach to law research taken in this study is a doctrinal approach to legal research where the secondary sources are the main sources used like:

1. Laws and legislations.
2. Cases and judicial ruling.
3. The books and the journal articles are part of academic literature.
4. Mediation and family law reports and scholarly publications.
5. The paper examines these sources to determine the role of mediators and the power of mediation in a marriage dispute.
6. Hypothetical and Theoretical Foundations of Mediation in Matrimonial Children.

IV. MEDIATION DEVELOPMENT IN FAMILY CONFLICT SITUATIONS

The use of mediation as an approach to resolving disputes is not new since many centuries ago in many societies (such as traditional systems of community-based societies in India) the role of mediating on a dispute was played by the elders or, at

least, the head of the community. These informal systems were more concerned with reconciliation and social harmony as opposed to legal adjudication. The formal legal system, however, over time, more and more depended on disputes to be settled by means of an adversarial litigation, such as the disputes between matrimonial partners.⁴

The adversarial character of court processes usually did not suit well to the family conflicts as it was aimed at the establishment of legal rights and liabilities and not at the emotional and relationship problems. Matrimonial conflicts are often characterized by complicated personal relations such as a sense of betrayal, resentment, or lack of communication and it is impossible to solve the conflict using formal legal procedures.

In the realization of these shortcomings, contemporary law systems started to incorporate alternative dispute resolution systems into the family law. One of the approaches which proved to be the most effective is the mediation since it gives parties an opportunity to speak openly, share their point of view and find mutually acceptable solutions. Mediation in India in India, mediation was given much acknowledgement when the judiciary started encouraging the use of mediation as a way of eliminating case backlog and amicable settlements.

It has also been observed that family courts, especially, have started to use the mediation as a form of dispute resolution. The same focus on reconciliation and settlement is an indication of the larger goal of maintaining family relationships at all costs. This transformation is a departure not only towards less adversarial forms of justice but also more collaborative and restorative forms of justice.⁵

V. THE MEDIATION ACT 2023: STATUTORY RECOGNITION OF MEDIATION IN INDIA

The enactment of the Mediation Act 2023 represents a major development in the Indian alternative dispute resolution framework by providing statutory recognition

⁴ Malik Sb, *Family Law in India* (Eastern Book Company 2018)

⁵ Rao Pc and Sheffield W (Eds), *Alternative Dispute Resolution: What It Is and How It Works* (Universal Law Publishing 1997)

to mediation as an independent and structured dispute resolution mechanism. The Act defines mediation under Section 3(h) broadly enough to include both court-referred and pre-litigation mediation, thereby encouraging parties to resolve disputes before commencement of formal judicial proceedings.

Section 5 of the Act promotes pre-litigation mediation, which is particularly relevant in matrimonial disputes where early intervention may prevent escalation of hostility between spouses and preserve family relationships. The legislation thereby strengthens the role of mediation as a conciliatory and non-adversarial process within family law disputes.

The Act also recognizes limitations on mediation in certain categories of disputes through Section 7 read with the First Schedule. However, the First Schedule specifically permits mediation in disputes involving matrimonial matters, including those concerning the interests of children, provided that the process is conducted in a safe and appropriate manner. This reflects legislative recognition that family disputes are especially suited for mediated settlement because of their emotional and relational dimensions.

Another significant feature of the Act is the establishment of the Mediation Council of India, which is entrusted with the responsibility of promoting professional standards, accreditation of mediators, and development of mediation practice across the country. The institutionalization of mediation under the Act is expected to strengthen public confidence in mediation and improve the quality and effectiveness of matrimonial dispute resolution in India.

VI. MATRIMONIAL DISPUTE CHARACTERISTICS

Matrimonial conflicts are consequences of the conflicts in marriages and are usually characterized by legal, emotional, financial, and social problems. Ordinary matrimonial conflicts go into divorce, maintenance, child custody, marital property wrangles, and cruelty or domestic violence accusations.

Matrimonial conflicts, as opposed to commercial or contractual disputes, are the ones that are extremely personal and that not only the spouses are involved but also their

children and extended families. Most of these conflicts are as a result of communication failures, lack of compatibility with expectations, financial pressure, or cultural and social strains.

Matrimonial litigation may even make these conflicts worse. During the court proceedings, parties are forced to provide evidence and arguments which can portray the other spouse negatively. Such confrontational proceedings often intensify hostility between the parties and make reconciliation more difficult.⁶

The other option available is mediation that is concerned with a solution to underlying issues instead of only establishing that there is legal liability. It facilitates positive communication and facilitates mutual understanding between the parties. Mediation offers a more comprehensive approach to solving matrimonial conflicts, as it meets the needs of legal and emotional issues.

VII. GENERAL RULES OF MEDIATION

Mediation effectiveness in the matrimonial disputes relies on various basic principles which are used in the process. These principles bring equity, transparency and participation.

- 1. Voluntary Participation:** Mediation is essentially voluntary. Parties are engaged voluntarily and are at liberty to pull out of the process in case they believe it not to be profitable. This is voluntary in nature as compared to litigation or arbitration, where decisions can be forced to the parties.
- 2. Unbiasedness and Objectivity:** The mediator should also be neutral and impartial during the process. The mediator is not affiliated to any of the parties and should not engage in any actions that might give an impression of partisanship. Being impartial is the key to establishing trust between the sides and the credibility of the mediation process.
- 3. Confidentiality:** Another important principle of mediation is confidentiality. Negotiations which are made during mediation proceedings are typically

⁶ Diwan P, Family Law (Allahabad Law Agency 2019).

confidential and may not be presented in the court of law. This helps parties to be open and frank on their issues and interests.

4. **Party Autonomy:** During mediation, it is the parties themselves that hold the key. A judge, on the other hand, imposes a verdict, a situation that the mediator only facilitates a discussion and a negotiation. The ultimate compromise would be achieved when both the parties come to an agreement of terms on their own free will.
5. **Flexibility:** Mediation offers a flexible process and result. Parties are able to find innovative solutions which are not provided by the conventional legal solutions. As an example, when it comes to child custody cases, parents can work out their personalized options that would fit their family-related conditions instead of following the regular court decisions.⁷
6. **Capabilities and Characteristics of a Good Mediator:** The mediator of the marriage conflict situation demands a special set of legal skills, interpersonal skills, and emotional intelligence. A good mediator should have the capability of handling the conflict, but at the same time, he should also be calm and neutral.
7. **Communication Skills:** Communication is among the most significant skills of a mediator. The negotiator should promote free communication between the parties without making the discussions disrespectful and unconstructive. This will entail active listening, paraphrasing statements and clarification of understanding.⁸
8. **Emotional Intelligence:** Anger, grief, or frustration are some of the common emotions in matrimonial conflicts. Mediators need to be in a position to identify and control these emotions without letting them wreck the mediation process. Emotional intelligence helps the mediators to be more sensitive to the interests of both sides and help the parties develop an atmosphere that will support the negotiation process.

⁷ Singh A, *Law of Arbitration and Conciliation* (11th Edn, Eastern Book Company 2021)

⁸ Agarwal Ak, 'Mediation in Family Disputes: A Critical Analysis' (2019) 5 *Indian Journal of Dispute Resolution* 45

9. **Problem-Solving Ability:** Mediators help parties to find possible solutions to their conflicts. This involves analytical thought and creativity in order to assist the parties to investigate options that will respond to their interests and worries.⁹
10. **Patience and Persistence:** The mediation of matrimonial issues is a process that is time consuming. The mediators are to be patient and persistent particularly in cases where parties are uncooperative in their initial stages or antagonistic with one another.
11. **Ethical Conduct:** The ethical standards that the mediators need to follow to include confidentiality, conflict of interest, and that the process is fair to both sides.
12. **Mediation Process Stages of Matrimonial Disputes:** The mediation process is usually structured into a number of steps that are aimed at ensuring that the process of discussion and negotiation is productive.
13. **Opening Session:** Mediation process normally starts with opening session where the mediator clarifies rules and goals of mediation. The mediator presents the principles of confidentiality, neutrality, and voluntary participation. Both sides are then allowed to air their point of view in relation to the dispute.
14. **Issue Identification:** At this step, the mediator discovers the most important problems that should be resolved. The areas of dispute in matrimonial disputes could be divorcing terms, provision of child custody, financial support on the other hand or property division.

VIII. EFFECTS OF MEDIATION ON CHILDREN OF MATRIMONIAL CONTROVERSIES

Among the greatest benefits of mediation in matrimonial conflicts, one can distinguish the positive influence it has on children. The conventional litigation may subject children to strife among parents and cause long-lasting traumas. Custodial court

⁹ Galanter M And Cahill M, 'Most Cases Settle: Judicial Promotion and Regulation of Settlements' (1994) 46 *Stanford Law Review* 1339

battles can also drive the animosity in the warring couples, and so cooperative parenting becomes hard.

On the other hand, mediation plays to the advantage since parents are pushed to consider the best interest of their children. The process facilitates collaboration and communicating which are paramount to successful co-parenting after separation or divorce.¹⁰

Parents who use mediation to settle custody cases have high chances of honoring agreements since they were active in formulating the solutions. This may result in healthier and peaceful family set-ups among children.

A. Mediators in particular Matrimonial Issues

Mediators are very important in solving various forms of marital conflicts. Although the general goal of mediation will always be to establish communication and to achieve mutually agreeable settlements, the nature of a dispute may differ based on its nature.

The cases of divorce are usually accompanied by emotional stress and personal complicated issues. In situations where couples are in courts seeking divorce of marriage, the courts often urge them through mediation before they embark on court battles. This is not always with the intention of forcing a reconciliation but to offer a platform on which a dialogue and resolution could be offered.

When it comes to divorce cases, mediators assist spouses in pinpointing the root of conflict in the marriage and determining whether they can be redeemed. In other situations, mediation can result in salvaging of the marital relationship. Nevertheless, in the situations when reconciliation is no longer possible, mediation may assist the parties to negotiate the terms of separation in an amicable fashion.

As an example, couples can make deals on the property division, finances, or interactions in the future. Through mediation in solving these problems, the parties

¹⁰ Menkel-Meadow C, 'Whose Dispute Is It Anyway? A Philosophical and Democratic Defense of Settlement' (1995) 83 *Georgetown Law Journal* 2663

will be able to save themselves the time of extended court battles and manage to have some level of respect towards each other.

B. Mediation in Maintenance and Alimony Disputes

Controversies on maintenance or alimony are common during or after divorce proceedings. Such conflicts tend to include disagreements in financial ability, standards of living, and dependants needs.

The mediators help the parties to negotiate about their financial situation and come up with feasible plans that would be acceptable to both parties. Rather than basing on pure calculation of laws, mediation will enable parties to take into consideration practical considerations like future job, cost of educating children and financial stability.

By means of negotiation and compromising, mediation might lead to more sustainable and agreeable maintenance arrangements between both parties. Since the parties are personally committed to such arrangements, the adherence to mediated settlements is usually higher than the one achieved by the court order.¹¹

C. Child Custody and Parenting Disputes, Mediation

Some of the most sensitive topics of conflict within the matrimonial conflicts include child custody issues. A traditional litigation can result in business wars where each of the parents will strive to prove that the other parties are unfit to have custody. Such battles may lead to some adverse psychological effects upon children.

The role of mediators is important to change the priorities of the conflict between parents to the best interests of the child. They urge parents to bear in mind emotional, educational and developmental needs of their children when negotiating on custody arrangements.

¹¹ Law Commission of India, *Report No 238: Amendments to the Arbitration and Conciliation Act 1996* (2014) <https://Lawcommissionofindia.Nic.In> Accessed 10 March 2026

Through mediation, parents are able to come up with their own parenting arrangements which consider their personal situations. Such plans can involve visitation, decision making duties and holiday or education options.¹²

Since mediation encourages the use of collaboration and communication, it assists divorced or separated parents in developing a system of effective co-parenting.

IX. DOMESTIC CONFLICT AND RECONCILIATION BY MEDIATION

Matrimonial disputes do not always result in divorce. Couples in most instances seek help in order to fix their issues and enhance their relationship. Mediators are able to assist spouses to recognize their negative communication strengths, resolve complaints, and restore trust.

Mediation can be applied in those cases, when some reconciliation is possible, to rebuild the harmony in the marriage promoting positive communication and understanding. Nevertheless, mediators should also be very wary in situations where there is severe domestic violence or coercion where a mediation might not be suitable.¹³

A. The Court Attitude to Mediation in Matrimonial disputes

The Indian law courts have long been appreciating the role of mediation in solving family disputes. Courts have pointed out that issues concerning matrimonial needs should be handled with a permissive and reconciling attitude and not necessarily adversarial litigation.

Particularly, settlement and reconciliation between parties is the mandate of the family courts. Matrimonial disputes are often referred to matrimonial mediation centres in courts or legal services authorities by the judges.

¹² Ministry Of Law and Justice, 'The Mediation Act 2023' <https://legislative.gov.in> Accessed 10 March 2026

¹³ National Legal Services Authority, 'Mediation and Conciliation' <https://nalsa.gov.in> Accessed 10 March 2026

The courts have noted that mediation does not only assist in solving disputes effectively, but also in saving relationships as well as safeguarding the interests of children. Ignoring the fact that litigation is already going on, courts frequently promote mediation because they are aware that it is better to settle a case than subject it to extended adversarial litigation.

Over the past few years, mediation within the Indian context has been institutionalized, with the formation of court-annexed mediation centres, which have gone a long way in enhancing the institutions. These centres offer mediation services, which are offered by trained mediators who help parties to settle their disputes outside the courtroom setting.

X. CASES OF LAWS LESSONS IN FAVOR OF MEDIATION

The Indian courts have contributed greatly towards encouraging mediation among matrimonial disputes. The value of alternate dispute resolution measures in family affairs has been brought into the limelight of a number of court rulings.

1. **Salem Advocate Bar Association v Union of India (2005):** This landmark judgment recognized the importance of alternative dispute resolution mechanisms under Section 89 of the Civil Procedure Code, 1908. The Supreme Court upheld the constitutional validity of the amendments relating to ADR and emphasized the need for courts to actively encourage mediation, conciliation, arbitration, and judicial settlement in appropriate cases in order to reduce judicial backlog and promote amicable dispute resolution. The Court also played a significant role in facilitating the formulation of model mediation rules and encouraging the establishment of mediation centres across courts in India.¹⁴
2. **Afcons Infrastructure Ltd v Cherian Varkey Construction Co. (2010):** The Supreme Court, in this case, clarified the interpretation and application of Section 89 of the Civil Procedure Code, 1908. The Court identified the categories of disputes that are suitable for ADR mechanisms and specifically

¹⁴ Salem Advocate Bar Association V Union of India (2005) 6 SCC 344.

observed that family and matrimonial disputes are particularly appropriate for mediation because of their personal and emotional nature. The judgment recognized mediation as a flexible and effective mechanism for resolving conflicts involving continuing relationships and emotional sensitivities.¹⁵

3. **K Srinivas Rao v DA Deepa (2013) 5 SCC 226:** This judgment is one of the most important Supreme Court decisions concerning mediation in matrimonial disputes. The Court observed that matrimonial disputes are “pre-eminently fit for mediation” and emphasized that courts should make serious efforts to encourage reconciliation before proceeding with adversarial litigation. The Supreme Court directed that all mediation centres should establish pre-litigation desks to facilitate early settlement of family disputes and reduce unnecessary criminal and matrimonial litigation. The Court further stressed that Family Courts should ordinarily refer matrimonial disputes to mediation centres and highlighted the need for professionally trained mediators capable of handling sensitive family conflicts. The judgment also addressed misuse and settlement of complaints under Section 498A of the Indian Penal Code and observed that amicable settlement through mediation can play an important role in restoring social harmony and reducing prolonged hostility between spouses.¹⁶

XI. SUGGESTIONS AND RECOMMENDATIONS

In order to strengthen the effectiveness of mediation in matrimonial disputes, certain legal and institutional reforms are necessary.

1. Mandatory pre-litigation mediation should be introduced in suitable matrimonial disputes to encourage amicable settlement before initiation of adversarial proceedings.
2. Specialized training programmes should be conducted for family mediators so that they are equipped to address the emotional and psychological dimensions of family conflicts.

¹⁵ *Afcons Infrastructure Ltd V Cherian Varkey Construction Co (P) Ltd* (2010) 8 SCC 24

¹⁶ *Afcons Infrastructure Ltd V Cherian Varkey Construction Co (P) Ltd* (2010) 8 SCC 24

3. Proper screening mechanisms should be established before referring disputes to mediation, particularly in cases involving allegations of domestic violence, coercion, or unequal bargaining power. Mediation should only be encouraged where the process is safe and voluntary for both parties.
4. Mediation centres attached to Family Courts should be strengthened through adequate infrastructure, professional counsellors, and continuous monitoring mechanisms.

The effective implementation of the Mediation Act, 2023 and the operationalization of the Mediation Council of India are also essential for ensuring uniform standards, ethical practices, and professional accountability among mediators. Public awareness programmes should further be conducted to educate individuals regarding the advantages of mediation in resolving matrimonial disputes peacefully and efficiently

XII. CONCLUSION

Matrimonial conflicts are special situations that do not simply revolve around the law regarding the rights and duties. These conflicts have emotional, psychological, and social aspects that do not always solve by the conventional adversarial litigation.¹⁷

Mediation will provide a positive alternative whereby dialogue, cooperation and understanding are of importance. Mediators can assist in determining underlying issues through enabling communication between parties, and chaperon spouses to find the solutions that will be mutually acceptable. This strategy does not only solve conflict in a better way but also saves relationships and enhances long term peace.

The mediators are thus important in settling the marital disputes both sensitively and justly. By applying their abilities in communication, negotiation, and conflict management, mediators are able to establish a situation where parties are allowed to find solutions that are relevant to their interests and needs.

Indian judiciary and legislature have come to appreciate the importance of mediation in the family law cases. Through further encouragement, training and awareness, mediation can become a pillar in the matrimonial dispute in India.

¹⁷ *K Srinivas Rao V Da Deepa* (2013) 5 Scc 226

Finally, there is the humane, progressive form of justice, the form that is based on reconciliation and collaboration and is concerned with what is beneficial to families more than the confrontational form of justice.

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