



A Multidisciplinary Indexed International Research Journal



ISSN : 2320-3714  
Volume : X



ADHYAYAN  
INTERNATIONAL  
RESEARCH  
ORGANISATION



## MEDIATION IN MATRIMONIAL DISPUTES: A GUIDE MAP TO SAVE MARRIAGES -AN APPRAISAL

**Dr. Supinder Kaur**

Assistant Professor

Dr. Anil K. Thakur

Assistant Professor, Department of Laws, PU, Chandigarh

**Declaration of Author:** I hereby declare that the content of this research paper has been truly made by me including the title of the research paper/research article, and no serial sequence of any sentence has been copied through internet or any other source except references or some unavoidable essential or technical terms. In case of finding any patent or copy right content of any source or other author in my paper/article, I shall always be responsible for further clarification or any legal issues. For sole right content of different author or different source, which was unintentionally or intentionally used in this research paper shall immediately be removed from this journal and I shall be accountable for any further legal issues, and there will be no responsibility of Journal in any matter. If anyone has some issue related to the content of this research paper's copied or plagiarism content he/she may contact on my above mentioned email ID.

### **Abstract -**

*The main objective of every legal system is to furnish justice, which forms the backbone for the existence of a democratic and civilized state. India as a nation is characterized by a huge and continuously increasing population, lack of education, lackadaisical and slow judicial system, enormous litigation expenses and limited resources, which makes 'justice for all' in India a distant dream even after 70 years of independence. One looks for alternate methods for resolution of conflicts in personal disputes. Mediation as a resolution method served as a panacea for all the problems. The concept has gained momentum in the last couple of years. Delhi has been one of the pioneer cities to implement this concept successfully and the credit goes to the efforts of Family Court whose methodology has been extremely effective there. But what about the other regions where such effective machinery is not available? The Authors through this paper intend to analyze the reasons for its success in the capital Delhi and failure in our country.*

**Key words** – mediation, negotiation, justice, disputes, legal system.

### **Introduction**

It is the spirit and not the form of law that keeps the justice alive.” LJ Earl Warren. The concept of Conflict Management through Alternative Dispute Resolution (ADR) has introduced a new mechanism of dispute resolution that is non adversarial. A dispute is basically ‘lis inter partes and the justice dispensation system in India has found an

alternative to Adversarial litigation in the form of ADR mechanism.<sup>1</sup>

New methods of dispute resolution such as ADR facilitate parties to deal with the

---

<sup>1</sup> Anushtha, Mediation in Divorce, <http://www.legalservicesindia.com/article/article/mediation-in-divorce-1424-1.html> accessed on 1-11-2017

underlying issues in dispute in a more cost-effective manner and with increased efficacy. In addition, these processes have the advantage of providing parties with the opportunity to reduce hostility, regain a sense of control, gain acceptance of the outcome, resolve conflict in a peaceful manner, and achieve a greater sense of justice in each individual case. The resolution of disputes takes place usually in private and is more viable, economic, and efficient. ADR is generally classified into at least four types: negotiation, mediation, collaborative law, and arbitration. (Sometimes a fifth type, conciliation, is included as well, but for present purposes it can be regarded as a form of mediation.

Alternative dispute resolution in India is not new and it was in existence even under the previous Arbitration Act, 1940. The Arbitration and Conciliation Act, 1996 has been enacted to accommodate the harmonization mandates of UNCITRAL Model. To streamline the Indian legal system the traditional civil law known as Code of Civil Procedure, (CPC) 1908 has also been amended and section 89 has been introduced. Section 89 (1) of CPC provides an option for the settlement of disputes outside the court. It provides that where it appears to the court that there exist elements, which may be acceptable to the parties, the court may formulate the terms of a possible settlement and refer the same for arbitration, conciliation, mediation or judicial settlement.

Due to extremely slow judicial process, there has been a big thrust on Alternate

Dispute Resolution mechanisms in India. While Arbitration and Conciliation Act, 1996 is a fairly standard western approach towards ADR, the Lok Adalat system constituted under National Legal Services Authority Act, 1987 is a uniquely Indian approach. The Law Commission of India has endeavored to bridge the difference between diverse personal laws in India at least in the matter of resolving family disputes. In its 129<sup>th</sup> report, it has recommended that ADR ought to be made obligatory on the courts after the issues have been framed. The settlement can be reached by conducting any of the ADR mechanisms.<sup>2</sup>

### **The Advantages of Mediation**

There are various advantages of mediation which can be used in divorces, real estate, and labour bargaining, and in other disputes, in an attempt to avoid taking a case to court. Some of them are cost, confidentiality, control, mutuality, compliance and support.

**Cost**—while a mediator may charge a fee comparable to that of an attorney, the mediation process generally takes much less time than moving a case through standard legal channels. While a case in the hands of a lawyer or a court may take months or years to resolve, mediation usually achieves a resolution in a matter of hours. Taking less time means expending less money on hourly fees and costs. **Confidentiality**—while

---

<sup>2</sup> Barnik Ghosh, "Conciliation in Settling Family disputes", <https://www.lakshmisri.com/News-and-Publications/Publications/Articles/Corporate/conciliation-for-settling-family-disputes> accessed on 10-11-2017

court hearings are public, mediation remains strictly confidential. No one but the parties to the dispute and the mediators know what happened. Confidentiality in mediation has such importance that in most cases the legal system cannot force a mediator to testify in court as to the content or progress of mediation. Many mediators destroy their notes taken during a mediation once that mediation has finished. The only exceptions to such strict confidentiality usually involve child abuse or actual or threatened

**Control**—Mediation increases the control the parties have over the resolution. In a court case, the parties obtain a resolution, but control resides with the judge or jury. Often, a judge or jury cannot legally provide solutions that emerge in mediation. Thus, mediation is more likely to produce a result that is mutually agreeable for the parties.

**Compliance**—because the result is attained by the parties working together and is mutually agreeable, compliance with the mediated agreement is usually high. This further reduces costs, because the parties do not have to employ an attorney to force compliance with the agreement. The mediated agreement is, however, fully enforceable in a court of law.

**Mutuality**—Parties to mediation are typically ready to work mutually toward a resolution. In most circumstances the mere fact that parties are willing to mediate means that they are ready to "move" their position. The parties thus are more amenable to understanding the other party's side and work on underlying issues to the dispute. This has the added benefit of often preserving the relationship the parties had before the dispute.

**Support**—Mediators are trained in working with difficult

situations. The mediator acts as a neutral facilitator and guides the parties through the process.

### Mediation in Matrimonial Cases –

The traditional understanding of mediation that focuses on its relational aspects is expressed in Professor Lon Fuller's description of mediation's "Capacity to reorient the parties towards each other, not by imposing rules on them, but by helping them to achieve a new and shared perception of their relationship, a perception that will redirect their attitudes and dispositions toward one another." Mediation, like equity, was conceived of as justice without law.<sup>3</sup>

Mediation in the context of matrimonial dispute is different in its form and content from that in the context of commercial and property disputes. The matrimonial disputes are distinct from other types of disputes on account of presence of certain factors which are not obtained in other disputes. These factors are motivation, sentiments, social compulsions, personal liabilities and responsibilities of the parties, the views of the two parties regarding life in general and to the institution of marriage in particular, the security for the future life, so on and so forth. Talking in terms of the mediation for matrimonial disputes one must remember that the factors that weigh the decisions of the parties are not controlled simply by rational factors. Very often irrational and

---

<sup>3</sup> Malikaarjun, "ways of mediation in matrimonial disputes" available at <http://www.legalservicesindia.com/article/1383/The-Ways-of-Mediation-In-Matrimonial-Disputes.html> (last visited on 12-5-18 )

emotional factors also have dominant roles in creation of the dispute as well as in their settlement. In the context of matrimonial disputes the mediator cannot merely concentrate on the monetary or mundane aspects and overlook the emotional aspect. In fact he is concerned with happiness of the parties which is more a matter of sentiment than of reason. Further his/her objective is to discover a solution with no damage or minimum damage to the parties. He cannot simply go a between the two sides telling him how the other party may take suggestions for a solution.<sup>4</sup>

The Apex Court issued directions to all courts dealing with matrimonial disputes to settle all matrimonial disputes at first instance through the process of Mediation. The Supreme Court directed Family Courts and Criminal courts to refer parties to Mediation Centers to settle disputes through settlement under mediation. Mediation is an alternative process of resolution of disputes by trained mediators. The Supreme Court of India directed Family Courts in view of section 9 of the Family Court Act to make all possible efforts to settle matrimonial disputes especially in relation to maintenance, child custody etc. through the process of mediation and to refer parties to mediation centers with the consent of parties. The apex court observed that the family courts should endeavor settlement of disputes through the process of mediation even after the filing of failure reports by counselors. The Family Courts take the help of Counselors in settling matrimonial

disputes during the course of trial. The Court further observed that family court should set reasonable time-limit for the completion of the mediation process by the mediation centre so as to not cause any further delay in resolution of disputes by the family courts and observed that they may extend the time limit for mediation proceedings<sup>5</sup>. The court issued all these directions in view of the deplorable situation of matrimonial disputes in India so as to provide an opportunity to settle disputes amicably.

The Apex court held in case of **K. Srinivas Rao v. D. A. Deepa**<sup>6</sup>, a petition filed by husband against the order of High Court wherein a matrimonial dispute stretched to an extent that it strained the relationship beyond repair. The Decree of divorce was granted in the favor of Appellant-husband by the Family Court but the High court set aside decree of divorce and thereafter the above mentioned appeal was filed by the appellant-husband against the said order. Justice Ranjana Prakash Desai pronounced the judgment and issued the above mentioned directions in view of the interest of victims of matrimonial disputes. The Court observed that the present dispute could have been settled amicably through mediation if the parties had been referred to Mediation Center.

The matter pertained to matrimonial dispute between the Appellant-husband and respondent-wife who were living separately

---

<sup>5</sup> Courts to settle matrimonial disputes at first, available at <http://www.lawsenate.com/news/courts-to-settle-matrimonial-disputes-at-first-under-mediation.html> (last visited on 14-05-18)

<sup>6</sup> Civil Appeal No. 1794 of 2013

---

<sup>4</sup> ibid

soon after the solemnization of marriage owing to some dispute that sufficed between both appellant and respondent's families. The respondent wife with intention of pressurizing the appellant-husband to take her back home filed a criminal complaint alleging misbehavior by appellant – husband's mother. This was followed by series of counter-complaints by both spouses and series of events that strained the relationship and caused mental cruelty to the Appellant-husband who filed petition for divorce on the ground of mental cruelty and was respectively granted the said relief by the family Court.<sup>7</sup> The High Court reversed this order on the petition of the respondent-wife and observed that family court order was perverse in nature and observed that filing of complaint by the respondent-wife could not have amounted to mental cruelty and cannot be held as a ground of divorce under the Hindu Marriage Act. The High Court also observed that the question of treating each other with cruelty cannot arise in the case as the appellant and the respondent had not stayed with each other for a long time.

The Supreme Court relying on various judicial precedents held in favor of the appellant-husband and granted decree of divorce and set aside the order of the High Court. The Apex Court observed that the conduct of the respondent- wife in fact caused mental cruelty to the appellant-husband and the marriage has been irretrievably broken down.

The Apex court observed that living under one-roof is not a pre-condition for mental cruelty and observed that a spouse can cause mental cruelty by his/her conduct while he/she is not staying under one roof. The court observed that the spouse while is staying away can cause mental agony and make life of other spouse miserable by sending vulgar and defamatory letters or notices or filing complaint containing indecent allegations or initiating judicial proceedings.

The Apex court further observed the Indian courts have always considered irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating factors while granting decree of divorce. The Apex court observed that it has advised the Union of India to incorporate irretrievable breakdown of marriage as a ground for divorce under the Marriage Act, 1955. The apex court looking into facts and circumstance of the case also observed that the husband and wife had been living separately for long period of 10 years and thereby the creating unbridgeable distance between the two leading to breakdown of marriage beyond repair and thereby held in favor of the appellant and granted decree of divorce and also directed the appellant - husband to pay alimony to respondent wife in view of the litigation battle fought by her for almost a decade and in view of her dependence on her parents and brother coupled with the fact of the appellant – husband was earning well<sup>8</sup>.

**In the case of Smt. Sandhya Shrinath**

---

<sup>7</sup> Supra note 7

---

<sup>8</sup> Supra Note 8

**Dhurve & Ors. Vs. Shri Shrinath Ekriath  
Dhurve<sup>9</sup>**

A petition under Section 125 Cr.P.C for grant of maintenance was filed on behalf of the petitioner/wife against the respondent/husband claiming maintenance on her behalf as well as on behalf of two minor children for a sum of Rs.1 lakh per month along with litigation expenses on 02.05.2016. As per the case of the petitioner they had been married according to Hindu rites and ceremonies on 27.05.2005 and two children were born out of the wedlock on 23.04.2008 & 17.07.2013 respectively. There were ups and downs in the marriage from time to time which gradually survived but after the birth of baby girl on 17.07.2013, the relations between the husband and wife further deteriorated. Finally, the petitioner/wife was brought along with two minor children by her brother at the parental home in Delhi. In the meantime, father of the petitioner/wife expired on 21.11.2015 and the cremation was attended by her husband and father-in-law but the efforts for reconciliation failed. Finally, the separation resulted in filing of petitioner under Section 125 Cr. P.C by the wife thereby claiming maintenance from the husband.<sup>10</sup>

The matter had been pending since 02.05.2016 and even the mediation proceedings initiated by the Predecessor failed. After the posting of undersigned in the Family Court, efforts for reconciliation

were made afresh and the parties were also referred for counseling. With the intervention of the court and effective counseling, the parties agreed for settlement by living together in a rented accommodation. However, during the course of proceedings despite the willingness of the parties, there still appeared to be a bottleneck as the respondent/husband had a reservation in proceeding to bring back the wife from her parental home despite having agreed to live together as it would invite social stigma from his relatives having conceded to demands of wife. The parties during the process of conciliation also admitted that there was no custom in the families to go for a divorce as they were Astrologers by profession and believed that the bonding of marriage was made in heaven. Finally, during Lok Adalat proceedings, it was suggested that since the Courts also happen to be 'temple of Justice' the wife could be taken back from the Lok Adalat itself and the children could be jointly picked by both the parents from the parental home of the wife. The religious orientation of the parties in view of their background beliefs enabled them to agree that the Courts are temple of Justice and the proceedings happily culminated in both the petitioner as well as respondent joining together from the Lok Adalat itself. It was also agreed that steps shall be taken for quashing of FIR lodged under Section 498A/406/34 IPC. The Lok Adalat, as such helped in bringing harmony in the lives of the parties, who had been living separately

---

<sup>9</sup> North-West District Rohini.MT No. 138/16, lok Adalat of 08-04-2017

<sup>10</sup> ibid

over a period of about three and a half years since 17.07.2013.<sup>11</sup>

**In another case of Sharmila Vs. Sunil Kumar**<sup>12</sup> Petitioner was accompanied by her parents. The following cases were stated to be pending between the parties as:-

Present petition filed under Section 125 Cr.P.C. - Petition filed under Domestic Violence Act which is pending before the Court of Ms. Meenu Kaushik , Ld. MM, Tis Hazari Court, Delhi.HMA petition filed under Section 13 (I) (ia) of Hindu Marriage Act before the Court of Shri Yashwant Kumar, Ld. Family Judge, Tis Hazari Court, Delhi.Petitioner was accompanied with her father and advocate and respondent, who was constable, was present. Both were stated to be about 30 years of age and were willing to settle down again in their respective lives, however, there were disputes regarding the alimony. Father of the petitioner apprised the Lok Adalat Judge that he was willing to settle the matter for Rs. 7 lakhs for his daughter, Respondent who was present in person stated that he could settle the matter for Rs. 5 lakhs, however, on persuasion and by holding sessions with the parties by the

Lok Adalat Judge, the respondent agreed to settle the matter for Rs. 7.5 lakhs and all the aforesaid cases were settled by recording joint statement of the parties. Petitioner had also agreed to file quashing petition under Section 482 Cr.P.C before the concerned High Court for quashing of FIR No. 65/2015 registered against the parents of the respondent/husband namely Shri Nemi Chand & Ms. Kaushalya Devi.<sup>13</sup>

### **Position of Mediation Centers and Execution of Mediation in National Capital Delhi**

---

With an alarming increase in the number of couples heading for divorce in the Capital, judges have now stood up to save the sanctity of marriage. From advising the couple to give their marriage a second chance to making them understand the practicality of life, the judges are doing everything that can change the mind of the couple heading for separation.

The concept of mediation centers is rapidly gaining popularity, and with a success rate of 63%, this new role of the gravel-hammering judges has earned them accolades from everywhere. According to recent court figures, more than 1, 36,000 marriages take place every year while some 8,000-9,000 divorce cases are filed each year. In fact, an average of 10 cases is filed per day in just one court. However, the new Additional Dispute Resolution (ADR) method has given the judiciary a more humane approach in resolving the matter. For instance, A couple which had filed for a

---

<sup>11</sup> **Date of Lok Adalat 08.04.2017**,Name of District: North-West District Rohini.MT No. 138/16 , available at <http://dlsa.org/2017/09/19/story-no-4-familymatrimonial-dispute/> ( last visited on 12-5-18)

<sup>12</sup> **Date of Lok Adalat 11.02.2017**Name of District: West DLSA, MT No. 98/2015 and HMA No. 213/2016 available at <http://dlsa.org/2017/09/19/story-no-1-familymatrimonial-dispute/>( last visited on 12-5-18)

---

<sup>13</sup> supra note 8

divorce recently went back to give their marriage a second chance after attending sessions in the mediation centers. "The main problem with the couple was a communication gap as both were working. So, when they approached us, all we told them was to talk, be more expressive and resolve their issues over a cup of coffee. It worked for them and within 5 sittings, they decided to give it another shot," said a mediator judge who refused to be named<sup>14</sup>. Earlier, this wasn't the role of Mediation Centers. The case was generally forwarded to the civil courts if the couple was not ready to reconcile. However, the new ADR method involves an enhanced role of the judge. The Centers have taken the help of ADJs to do the job of the mediators. In the mediation centre at Gole market, which comes under Delhi Legal Services Authority, there are five district and sessions judges, who meet couples everyday between 8am to 7pm. similar mediation Centers can be found in Tis Hazari and Karkardoma. "The role of the judge in these mediation centers is not only to mediate between the couples but also to understand the dispute between the two parties and come up with an amicable solution," Sanjay Sharma, the project officer of Delhi Legal Services Authorities, told Times of India.<sup>15</sup>

"Mediation in the context of matrimonial disputes is different in form and content from commercial and property disputes. So we give advice on things like motivation, sentiments, social compulsions, personal

liabilities, and responsibility to solve the matter," said a mediator judge on the condition of anonymity.<sup>16</sup>

The latest figures at the Tis Hazari mediation centre are encouraging. The success rate of settled cases in Tis Hazari is as high as 63% while at Karkardoma it's close to 60%. "Out of 7,473 cases handled by the mediation centre in the past three years, 7,264 have been disposed of by now. About 4,605 cases have been settled successfully," informed Kapoor, the judge in charge of the mediation centre in Tis Hazari courts. "Our main job is not to tell them what to do, but to mediate between the two parties. We motivate these couples to sort out their differences and the judges here try to talk to them about issues like personal liabilities and responsibilities to solve the matter," Kapoor added. The judges at the mediation centers believe that the mindsets of the people have changed over the years. While earlier getting a divorce was considered the last resort for a couple, now they consider it their first option.<sup>17</sup>

### **Mediation In India And United States Of America – A Comparison**

In the United States, lawyers and the local and state bar associations, as well as the American Bar Association and the Federal Bar Association, were as enthusiastic as the judges in their promotion and utilization of mediation. American lawyers understood that the legal system was overloaded and on the point of collapse from the courts being

---

<sup>14</sup> Simriti Singh, 'Where judges save the marriages,' the Times Of India, 06 October 2008

<sup>15</sup> Supra note 14

---

<sup>16</sup> *ibid*

<sup>17</sup> Supra note 1

wrongly utilized for disputes that could be better and more efficiently handled by mediation and other ADR procedures. By the mid-1980's, lawyers and State Bar Associations had professionalized mediation in the US, by developing mediator training standards, by providing lawyer training in mediation and by prescribing ethical standards for lawyers when acting as mediators and when acting as advocates in mediation. As a result, trained lawyer mediators made mediation a substantial part of their law practice. By responding positively and emphatically to incorporate mediation as a welcome and useful ADR tool in the American legal system, lawyers have not lost business to mediation, but have rather become ensconced as mediators and as the gatekeepers for mediation in the US legal systems. In the US, although lawyers initially felt threatened by mediation and resisted it as an unwanted change in the status quo, the lawyers quickly realized that mediation was just another tool in their lawyer tool bag.<sup>18</sup>

In India, while judges have been quick to recognize increased use of mediation as a helpful mechanism for reducing case backlogs and delays. Indian lawyers have not rushed to embrace mediation. As with American lawyers in the early 1980's, Indian lawyers are conservative. They do not like change and are reluctant to expose their

clients to the uncertain risks of an unknown ADR process. Also, understandably, Indian lawyers view mediation as potentially depriving them of income by settling cases prematurely and thereby obviating legal fees that would otherwise be earned. The same has been true for American lawyers during the growth of mediation in the US over the last twenty (20) years. In the first place, by their early acceptance and use of mediation, lawyers became not only the best trained and most qualified mediators (incorporating their mediator work into their law practices), but the lawyers who did not become mediators became the gatekeepers for mediation, selecting over 80% of the cases that are mediated and choosing the mediators for such cases.<sup>19</sup>

### Conclusion -

So in Delhi, the Family Courts have taken up the matrimonial matters in mediation in a very quick and positive manner. In other states of country, the process of mediation is not encouraged in the way it has been in Delhi. But the other truth of the story is that the mediation depends upon the working of Family Courts which further depends upon the infrastructure and facility provided to the Family Courts. This is true about Delhi Family Courts but not for other states. Mediation is an only way which can save the marriage the nature of which is sacramental. To achieve the goals, the need is to take into consideration the execution of Supreme Court orders which states that in matrimonial disputes first preference must

---

<sup>18</sup> Mediation In India As Compared To Mediation In United States Of America, available at <https://mediationhub.org/2017/01/26/mediation-in-india-as-compared-to-mediation-in-united-states-of-america/> (last visited on 12-5-18)

---

<sup>19</sup> *ibid*

be given to the mediation and counseling which is very much part of HMA,1955 and Family Courts Act, 1984 as well.

---