



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 4 AND ISSUE 2 OF 2024

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Free and Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 4 and Issue 2 of 2024 (Access Full Issue on – <https://ijlr.iledu.in/volume-4-and-issue-2-of-2024/>)

Publisher

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Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

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THE ROLE OF MEDIATION IN RESOLVING FAMILY DISPUTES IN INDIA

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BEST CITATION – HIMANSHU GUPTA, THE ROLE OF MEDIATION IN RESOLVING FAMILY DISPUTES IN INDIA, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 4 (2) OF 2024, PG. 924-927, APIS – 3920 – 0001 & ISSN – 2583-2344.

INTRODUCTION

Mediation is a systematically structured process which helps the parties in resolving their dispute and settle at a mutually satisfactory solution. In mediation, parties are assisted by a neutral third party called mediator whose role is to facilitate the parties in communication and giving suggestions so that the parties can arrive at a conclusion mutually. The suggestions of mediator are not at all binding on the parties they are free to accept or reject the suggestions of the mediator. As mediation is an informal process compared to litigation so there are no strict or binding rules that govern it or a rigid process that the parties need to follow.

Mediation is a method of alternative dispute resolution i.e the methods which are used by the disputing parties to resolve their dispute without going to courts. Mediation can be used to resolve a variety of disputes like family disputes, matrimonial disputes, intellectual property disputes, employment law disputes, other disputes.

NEED IN FAMILY FEUD

Mediation as a method to solve family and matrimonial disputes has emerged largely in recent times due to its nature. As mediation provides a more confidential and safer platform to parties for resolving their dispute.

As compared to traditional litigation where parties are bound to follow a pre-defined rigid process of the court and parties are more likely to create a havoc of the situation instead of resolving the dispute and eliminating the root cause of issue whereas in mediation parties are assisted by a neutral third party called mediator who acts neutrally and encourage both the parties to settle their dispute peacefully and remove the barriers weakening their relationship.

Family and matrimonial disputes involve complicated relationships and emotions related to it due to which it creates a vulnerable space. Traditional court practices proceedings do not involve direct interactions between the parties as they are represented by their legal representatives in the courtroom which widens

the communication gap between the parties. Court proceedings are generally done in open court where some people are not comfortable to speak openly about their dispute in front of so many people. Where comes mediation which provides solution for all these problems as mediation involves direct face to face interaction between the parties which helps in preserving the relationship and promoting harmony between the parties. Mediation is a closed room process which helps in maintaining confidentiality of the matter. Mediation provides flexible ways to resolve family disputes.

By choosing mediation as a path to solve their dispute parties can save their time, efforts and money as compared to forever ongoing litigation battles which are expensive and time consuming. Mediation can provide parties with a more satisfactory way of resolving disputes as compared to litigation. There is no appeal or revision in a mediated case and all disputes are finally settled which also decreases the burden on courts.

In family disputes where emotional factor plays a major role, mediation also facilitates the parties in emotional healing. Mediation is a tested and verified method of alternative dispute resolution. Its impact in the field of family and matrimonial disputes has been significantly remarkable. The main focus in mediation is on maintaining a good relationship even after the mediation proceedings are over and this can only happen when both the parties agree to a mutually satisfactory decision unlike litigation where decision given by judge in favour of either party is binding on both of them leaving the other unsatisfied.

In *k. Srinivas Rao V. D.A. Deepa, 2013*, Supreme court stated that if it appears to the criminal court that there exist elements of settlement, it should direct the parties to explore the possibility of settlement through mediation. Further stated that Supreme court recognize 'mediation' as an effective method of alternative dispute resolution in matrimonial matters and that is the reason why we want the parties to explore the possibility of settlement through mediation in matrimonial disputes.

In *Dayawati V. Yogesh Kumar Gosain, 2017*, Supreme court stated that quite often, the cause of the misunderstanding in a matrimonial dispute is trivial and can be sorted out. Mediation as a method of alternative dispute resolution has got legal recognition now. We have referred several matrimonial disputes to mediation centres. Our experience shows that about 10% to 15% of matrimonial disputes get settled in this Court through various mediation centres. We, therefore, feel that at the earliest stage i.e. when the dispute is taken up by the Family Court or by the court of first instance for hearing, it must be referred to mediation centres.

In *Anita Devi V. Satish Kumar, 2020*, The Patna High Court recommended that the Family Courts shall make all efforts to settle the matrimonial disputes through mediation. Even if the counsellors submit a failure report, the Family Courts shall, with the consent of the

parties, refer the matter to the mediation centre. In such a case, however, the Family Courts shall set a reasonable time-limit for mediation centres to complete the process of mediation because otherwise the resolution of the disputes by the Family Court may get delayed. In a given case, if there is good chance of settlement, the Family Court in its discretion, can always extend the time.

MEDIATION ACT, 2023

The government of India enacted 'Mediation Act, 2023' on 15 September 2023 which aims to promote and facilitate mediation especially to encourage community mediation, to make online mediation as acceptable and cost effective and provide for a body for registration of mediators.

This act particularly defines the duties of mediator and rights of parties to safe guard their interest. This act helped in building up a structured legal framework and create a standardised system for domestic and international mediation. This act seeks to mainstream the mediation process.

PROCESS OF MEDIATION

Mediation involves a very flexible process which can be altered according to the needs of the parties. It is a voluntary process and consent of both the parties is necessary to start the process of mediation. If either party declines for initiating then the process of mediation cannot start. According, to Supreme court of India parties involved in mediation needs to follow this process:

• INTRODUCTION

In the initial stage, mediator introduces himself to the parties tells them about the process and establishes his neutrality. He explains the basic rules and urges the parties for co-operation during the proceedings so as to reach a mutually satisfactory outcome.

Having a neutral person to mediate the proceedings gives party a assurance that the settled decision will not be bias towards any party and will be beneficial for both the parties.

- **JOINT SESSION**

In this session, mediator listens to both the sides and gathers all the information about what the issue is, reliefs claimed by the parties, root cause of the issue, etc.

Mediator during this session plays an active role in encouraging parties to communicate freely and communicate about their problems. It is the job of mediator to create a safe and secure environment for the parties so they can talk freely.

- **SEPRATE SESSION**

After the joint session with both the parties, mediator conducts a separate session with both the parties to further know their grievances.

Mediator provides suggestions after listening to both the parties which they are free to accept or reject as they are not binding on the parties.

- **AGREEMENT**

In this final stage, the findings of the proceedings are conveyed to the parties and if both the parties are satisfied with the conclusion a concise and binding agreement is formed and signed between the parties.

Parties are free to accept or rejects the decision but once agreed and signed, both the parties are bound to follow the agreement.

TYPES OF MEDIATION

With the gaining popularity of mediation in India. There are several types of mediation that are practiced in India. With each type of mediation having its own set of procedure and objectives. Which type of mediation will suit you the best? Depends on the nature of dispute and interest of parties. Some common types of mediation are:

- **COMMUNITY MEDIATION**

This type of mediation is practiced mostly by local communities in rural areas where access to justice is limited. This process is facilitated mostly by local leaders or community heads. It is used to resolve the disputes within the community.

- **COURT REFERRED MEDIATION**

Mediation generally is defined as a voluntary act done by parties but courts also have the authority to refer the parties to mediation as part of the judicial process. The legal services authority act,1987 and section 89 of code of civil procedure, 1908 provides the power to court. The main objective of referring is to meet the ends of justice but if the parties are unwilling to go to mediation proceeding then it is likely to be done just to comply with the formalities with no positive outcome.

- **FAMILY MEDIATION**

In this type of mediation main focus is to provide a less adversarial process for families. Family court also encourages the parties to go through mediation as it is specialised in solving family disputes like property matters, divorce, and child custody. The objective is to remove the barriers obstructing the parties in reaching a mutually satisfactory solution.

- **ONLINE MEDIATION**

In online mediation the parties interact with virtually to resolve their dispute which makes the proceeding more convenient and accessible for the parties. But it may also have some drawbacks like widening the gap between the parties as physical interaction between them will be missing.

- **PRIVATE MEDIATION**

this type of mediation is facilitated by professional mediators and conducted in mediation centres. It is beneficial for businesses and individuals who want to settle their dispute outside the court.

- **INSTITUTIONAL MEDIATION**

This is a properly structured mediation services provided by various established institutions and organisation such as Delhi high court mediation and conciliation centre (samadhan). This type of mediation is reliable as there are trained mediators assisting the parties and strong administrative support which reduces the burden of the disputing parties.

CONCLUSION

Mediation is emerging as one of the most effective and efficient method of resolving the dispute specially in family and matrimonial matters. As mediation promotes tailored solution, collaboration between the parties and flexibility.

Mediation lets the parties create a win-win scenario for them specially in family disputes where blood relations are on the stake. Mediation is a speedy and inexpensive method compared to litigation.

In family disputes where relations are of utmost importance mediation helps in preserving the relationship and tries to bring a harmonious solution to dispute. It gives parties the power to control the proceedings according to their needs and enables the parties to settle their own terms of agreement.

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