

A STUDY ON ROLE OF MEDIATION AS DISPUTE RESOLUTION MECHANISM WITH RESPECT TO MATRIMONIAL DISPUTES

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ABSTRACT

Among Social Institutions marriage and family are important institutions. They form the basis of society. From time immemorial, marriage is considered to be sacrament, permanent, indissoluble in Hindu mythology while in religions such as Muslims, Parsis, Christians etc marriage is nothing but is a special civil contract. With the evolution of society, the concept of marriage also changed. Such an attitude of society towards marriage has not only affected the morality in society but at the same time has also flooded the Indian Judiciary with millions of pending litigations. In order find the alternative for this problem it was found that Alternative Dispute Resolution forums such as Mediation is an effective solution for dealing with matrimonial dispute as Matrimonial Mediation saves precious time, energy and money of parties, apart from saving them from the harassment and hassles of a prolonged litigation. Its procedure is simple, informal and confidential and reduces worry and tension associated with litigation. The main objective of this paper is to study how mediation is helping in resolving disputes between parties. The paper has conducted an empirical study with primary and secondary sources with the response of 200. The results provide that mediation reduces the burden of Indian judiciary as well as solve the issue among parties without much struggles.

KEYWORD: mediation, disputes, mythology, sacrament, matrimonial.

INTRODUCTION :

Mediation as a mechanism of ADR i.e. 'Alternative Dispute Resolution' can be used very efficiently. The litigation proceedings in respect of matters like family, matrimonial, the trial of Juvenile Offenders or any other property cause are seen in legal terms. Mediation is a remedial supplementary process for giving resolution of disputes between disputants within reasonable time with no additional costs. Mediation is especially helpful in family disputes because of the unique nature of family law. It is a structured, voluntary, Non Judicial, confidential and interactive negotiation process by which a neutral third party, the mediator, facilitates negotiations between the parties to the disputes and assists them to explore

each other's point of view, enabling the disputants to reach to a settlement of the dispute, amicably. Mediation, like equity, was conceived of as justice without law. Patanjali said, 'Progress comes swiftly in mediation for those who try hardest, instead of deciding who was right and who was wrong'. The Indian History witnesses several instances where the disputes were used to be resolved by means of mediation like the panchayat system where older people used to resolve the dispute. The concept of mediation received legislative recognition in India for the first time in the Industrial Disputes Act, 1947. In tales Ramayana people used to go to Ram darbar, where Lord Ram, heard their disputes and settled amicably by applying common sense. The traditional

'Justice Delivery System' all over the world has come over burdened, due to the explosion of litigation yeah which necessitated again searching for 'Alternative Dispute Resolution' System. The aim of this article is to suggest an alternative dispute resolution method-mediation as a worthy option for resolving family conflicts.

Various types of matrimonial disputes are found which are as follows, though these are very few reasons like behavioural disorder i.e use of violence or abusive language, lack of concern by one party psychological problems where one of the parties to a marriage has the habit of doubting the other party. The partners to a marriage think that their economic and financial needs are not being satisfied, lack of physical compatibility and other medical reasons like problems of mental disorder in one of the two parties or the wife being sterile. inappropriate match of couple. Us to solve their problem amicably and enable parties to reach a mutually agreeable solution. The agreement laying the terms of settlement is to be signed by the disputants in the presence of the mediator and countersigned by the mediator. In case of court annexed mediation, the agreement is to be laid before the court and thereby passing the appropriate orders and in case of pre litigation mediation it is possible for the process to be conducted as conciliation.

OBJECTIVE:

- To study about alternative disputes resolution
- To create awareness about ADR
- To analyse about mediation
- To examine the advantages of mediation in matrimonial disputes

LITERATURE REVIEW :

(Narayan, n.d.) Although the institution of marriage is considered sacred, disputes and matrimonial causes are inevitable. Litigation has previously played a key role in resolving such matrimonial causes. However it is

increasingly becoming obvious that for various reasons Alternative Dispute Resolution (ADR) mechanisms are probably more suitable for matrimonial causes. (Parkinson and Robinson 2011) explains the importance of ADR. No doubt the system of judiciary or adjudication needs drastic improvement and policy makers are compelled to innovate alternate mechanisms. While considering the legal aspect the parliament in India introduced the Legal Service Authority Act And Arbitration and Conciliation Act. The need of Alternative means amicable settlement of disputes, speedy justice, economic settlement, time saving management, legal recognition. The matrimonial issues have a direct effect on individuals and life. Hence the need for speedy justice is very important. Every individual has not only the right to justice But also the right to speedy justice. (Tyagi 2021) gives the direction for implementation of ADR. Mediation Rules 2003 with or without amendment are to be given effect to those who have seen these model rules. The institutional framework must be three stages: first is awareness, second is acceptance and third is implementation. The awareness through seminars, workshops etc. Campaign must take for change in attitude or mindset of disputant, lawyer and judges. The acceptance through training is necessary to facilitators, mediators and conciliators. It is also necessary to have trained welfare experts, family councillors not only with the knowledge of law but also deal with psychology, sociology etc. The implementation through training to judicial officers identifies the cases which are capable of solving through ADR mechanism. (Gu 2021), Research in the field of domestic violence indicates in family assault the need for implementation of laws as well as private counselling. The method of mediation bears fruitful results to deal with family violence. For that the establishment of family courts, free legal aid, counselling for young people. Means shelter of mediation and counselling is to protect women as well as her matrimonial relations and will change the criminological

view towards violence in family. (**Roberts 2014**) describes the type of marriage. Hindu marriage is Sacrament, permanent, indissoluble and not regarded as a contract. Marriage among the Muslims is not a sacrament but purely a civil contract. The parsi marriage is also regarded as contracted through the religious ceremony of Ashirvad and solemnized by a parsi priest in presence of two witnesses. A christian marriage in India is also a contract solemnised by a marriage registrar. It means marriage is nothing but a special civil contract. But fulfilment of every contract is impossible. It means the attitude of society towards marriage is, while there is no rose which has no thorns but if what you hold is all thorn and no rose, better throw it away. but no problem without solution and the mediation and conciliation is the good solution rather than breakdown of relation. (**Panchu 2011**) comment on Irretrievable breakdown of marriage. Its true that the irretrievable breaking of marriage is not one of the statutory grounds on which court can direct dissolution of marriage, the view of court to do the complete justice and shorten the agony of the parties engage in long drawn legal battle, in those cases direction to dissolution of marriage. but that cases are exceptional cases. When there is no chance of their coming together or living together again. (**Kühne and Willenbacher 2019**) analysis of mediation in matrimonial dispute. In matrimonial disputes, the decisions of parties are not taken by rational factors but by emotions. The reasons are promoted by the entire family including children or economic or emotions. The negative emotions such as ego, fear, hate, guilt, bitterness and agreed are contributors to a strained relationship. The lack of cooperation and emotional conflict results from lack of cooperation and emotional conflicts. Mediation is important in solving family disputes, the duty of court to make every endeavour for conciliation between parties when the nature and circumstances of case permit it to do for maintenance of marital bond. (**Evans 2011**) while explain the divorce by mutual consent describe some cases. The Supreme

Court allowed the appeal of rejection of application for exemption by family court in *Roopa V Santosh Kumar* AIR 2005 All 172, that the family Court ought to have considered the application on merit. Family Court Act does not allow advocates to appear before family court. Technicalities cannot be allowed to prevail upon substantial interest of justice. Procedures are made to achieve ultimate object to dispense justice.(at p.174) Also, there was nothing to indicate that the husband was not agreeable to the consent or that he wished to resolve from what he had stated in the petition signed jointly by him and his wife. Therefore, no reasons to reject the consent petition. The wife's appeal was accordingly allowed; the family court decree was set aside and the original petition for divorce was restored and remanded to the family court for being decided on merits. (**Fuller 2021**)comment on nature of marriage. Marriage is relationship beside blood and is not the only relationships that exist between men and women. Such other relationships between men and women can be beautiful, complex and difficult. They may be live-in or any combination thereof. Some of these relationships are encouraged by society, some are tolerated, and some other is despised. The view of society of matrimonial relationship is generally reflected by its laws. For provide better quality of marriage life legislature take some efforts. But not fulfil some lacunas like no total protection was ensured for women who were in a relationship in the nature of marriage and rule of monogamy was not introduced for muslim. (**Irving and Benjamin 2002**)views expressed by the respondents regarding the effectiveness of panchayat court as an ADR mechanism are summarised. The ADR mechanism of dispute resolution is referred to as judicial procedure. It is inexpensive and expeditious. The litigants never rejected as resolution are arrived at on mutual consent. The service of panchayat court members is voluntary. The panchayat ensures the services of such persons having the qualities of social commitment, trustworthiness, impartiality, confidentiality, patience, credibility,

articulate skill, empathy and respectability. **(Ali 2018)** focuses on challenges and reforms of breakdown of marriage. The challenges to the present marital laws are due to the following factor- Distribution of matrimonial property, Irretrievable breakdown of marriage, live in relationship, same sex marriage, ceremonies of marriage, Non-registration of marriage, Dilatory and costly litigation, Child marriage, bigamy by conversion to Islamic religion, maintenance rights. Hence for the solution of these challenges there is an urgent need of revising the existing law in the context of modern demands of young minds who want more freedom and less responsibility. **(Richbell 2014)** Emphasis on cost of litigation. ADR is the weapon to meet the challenge of raising the cost of litigation and reducing the pendency of litigation. But the fact that if anyone is going for arbitration, will end up paying more than what he would in courts as arbitrators are charging above Rs 10,000 per sitting, the lawyers fees and burden due to adjournment are extra. Lokadalat also failed as it cannot take a decision, if one of the parties does not agree for settlement. The formalities to get legal aid is away because of illiteracy of people and dependency for filing application forms officers of legal aid are denied aid in some cases. **(Whatling 2012)** explains the importance of ADR. No doubt the system of judiciary or adjudication needs drastic improvement and policy makers are compelled to innovate alternate mechanisms. While considering the legal aspect the parliament in India introduced the Legal Service Authority Act And Arbitration and Conciliation Act. The need of Alternative means amicable settlement of disputes, speedy justice, economic settlement, time saving management, legal recognition. The matrimonial issues are direct effect on individuals and life. Hence the need for speedy justice is very important. Every individual have not only the right to justice But also the right to speedy justce. **(Lempereur et al. 2021)** Explain the Supreme Court given the importance to ADR. The Supreme Court of India handed down

a landmark judgment in *Bharat Aluminium v. Kaiser Aluminium* (“Bharat Aluminium”) on 6 September 2012. The Court held that Indian courts would no longer exercise authority to annul awards, or remove and appoint arbitrators in arbitrations seated outside India. In that the Court relied on international authority to domestic decisions in which Indian courts had claimed the right to set aside awards made outside India. It is important to recall that India was one of the first signatories to the New York Convention in 1958 and that the Indian Parliament was one of the first **(Winslade and Monk 2000)** stated the importance of Family Settlement. The consideration for family settlement is the expectation that such settlement will result in establishing or ensuring amity and goodwill about the relations and after that consideration has been passed by each of the disputants, the settlement consisting the recognition of the right asserted by each other cannot be impeached. The court held that the consideration for the family settlement being compromise between parties even to a previous suit would be a family settlement. When we put the world right in order then we must first put the nation in order and to put the nation in order then we must first put the family in order. When to put the family in order then we must first cultivate our personal life and ultimately for that we must first set our hearts right. **(Choi et al. 2022)** emphasizing the Need to maintain the institution of marriage. The conjugal rights is not merely a creature of statute but inherent in the very institution of marriage. The matrimonial dispute should not be driven to a better legal finish. Every possible effort must be made so as to restore conjugal home and harmony between husband and wife. There should be an approach of the court of law in matrimonial matters that is much more constructive, Affirmative and Productive rather than abstract, theoretical or doctrinaire. Court must make an attempt to bring about reconciliation, irrespective of the stage of the case. **(Pynchon 2012)** explains the stages of mediation. At First stage of mediation, the

mediator lets lawyers and clients know what to expect and how to prepare. At the second stage Mediators explain the process and procedural guidelines. At the third stage identifying the problems. At the fourth stage mediators assist in exploring the problem through values, needs and interest. At the fifth stage that mediator and parties identify and evaluate options for resolving the disputes. And at the last concluding the mediation with confirmation of parties understanding and acceptance of the agreement and future responsibilities of the parties and acknowledge conclusion of mediation. (Rein et al. 2022) comment on the ways of dealing with Mediation, It may need more than one mediator to help them arrive at mutually acceptable agreement. Different people have different needs. The emotional or social issues are best handled by mental health mediators such as psychiatrists, psychologists or social workers. The financial issues are best dealt with by a specially trained mediator. Legal issues are best dealt with by an attorney mediator. This mediation team approach effectively enables a couple to have what might be called a successful or positive divorce. Whatever particular problem or issues needs resolving by the couple and can be worked on by the expert-mediator most particularly suited to that type of problem. (Tsymbal, Refeld, and Kuchur 2022) takes Book Review of Family Law. Today's picture about family is that the neutral wife prefers the singular identity but its negative impact is there is a lack of other support except for the spouse hence the relationship goes towards loss. Sometimes the first marriage of a husband still exists though the adulterous relationship with others and its petitions fail sometimes because of the rigidity of procedural

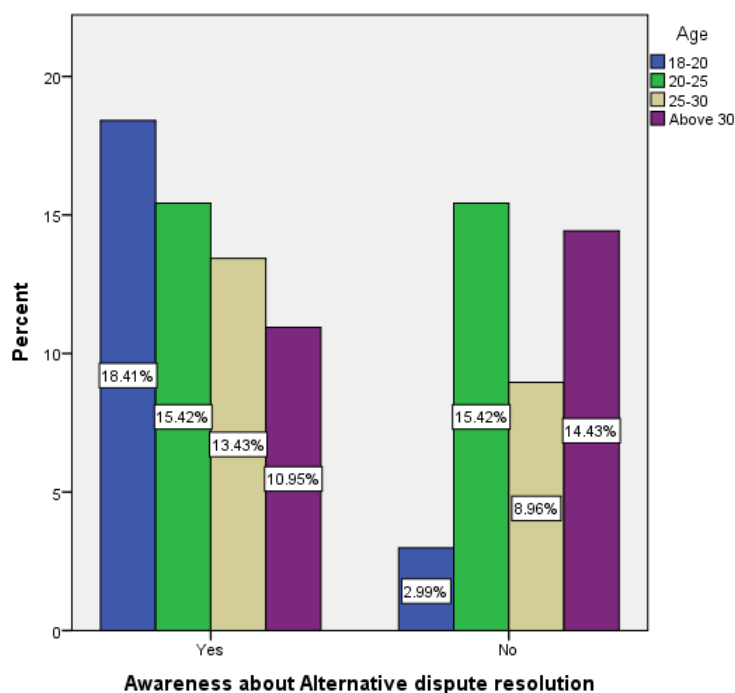
law and concrete evidence. Hence the procedure must be easy and speedy for tying the marriage relationship. (Spasskaya et al. 2022) while discussing the restitution of conjugal right consider the case, T.sareetha V.Venkata Subbaiah AIR 1983 AP 356 Court held that, section 9 of the Hindu Marriage Act was termed as savage, barbarous and uncivilised and as offending constitutional provisions and hence declared as null and void. It means the provision is held Ultra Virus But in Mohinder Singh V. Preet Kaur 1981 HLR 321 (P&H) petition for restitution by husband, the Court held that the wife had a reasonable ground to withdraw from the society of her husband who has become totally handicapped visually just after six month of the marriage. Means the section is not Ultra virus. When the question arises about section 9 is ultra virus or violate the article 14, 19 and 21 of constitution ,then its depend on fact and circumstances

METHODOLOGY :

The main objective of the study is to create awareness and help the public know about alternatives dispute resolution . The present study used both the primary and the secondary information collected from various sources. The secondary information pertaining to the study was collected from books, journal articles and online sources. The primary information was collected from 200 sample respondents through a simple random sampling method. The tools of analysis used in the study are SPSS and graphs. The independent variables taken for analysis are age, gender, educational, occupation and the dependent variables are the ADR, mediation and reason for matrimonial disputes.

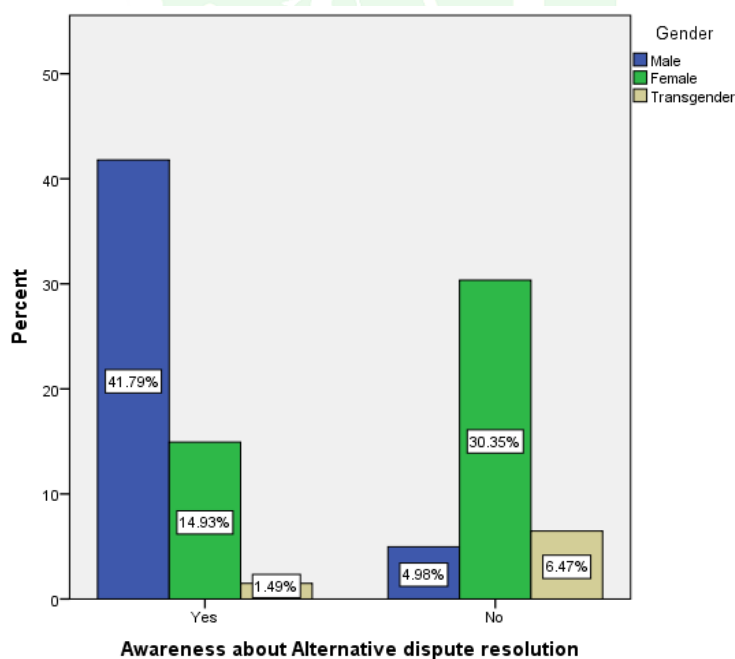
ANALYSIS:

Figure 1



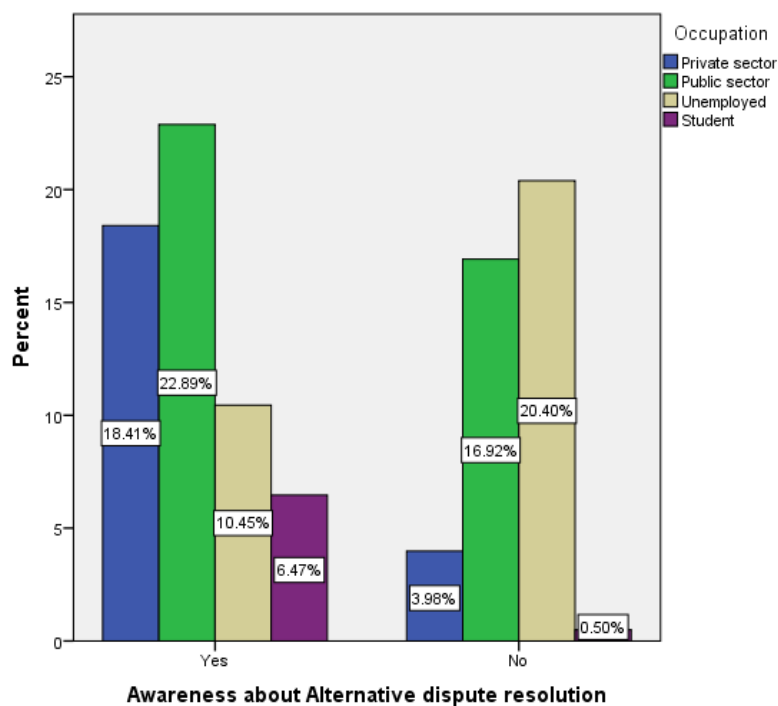
Legend : The above graphs show the legend between age and awareness about ADR.

Figure 2



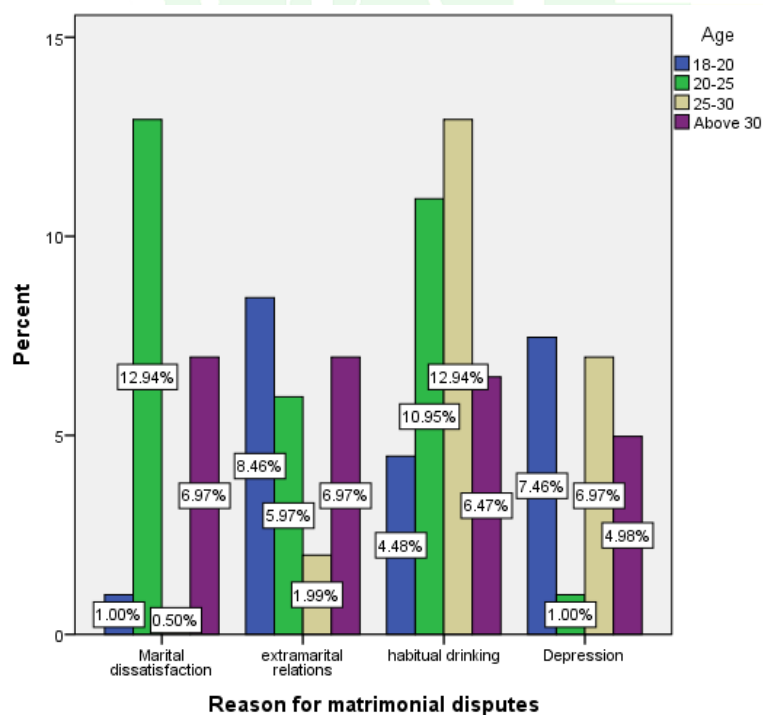
Legend : The above graphs show the relation between gender and awareness about ADR

Figure 3



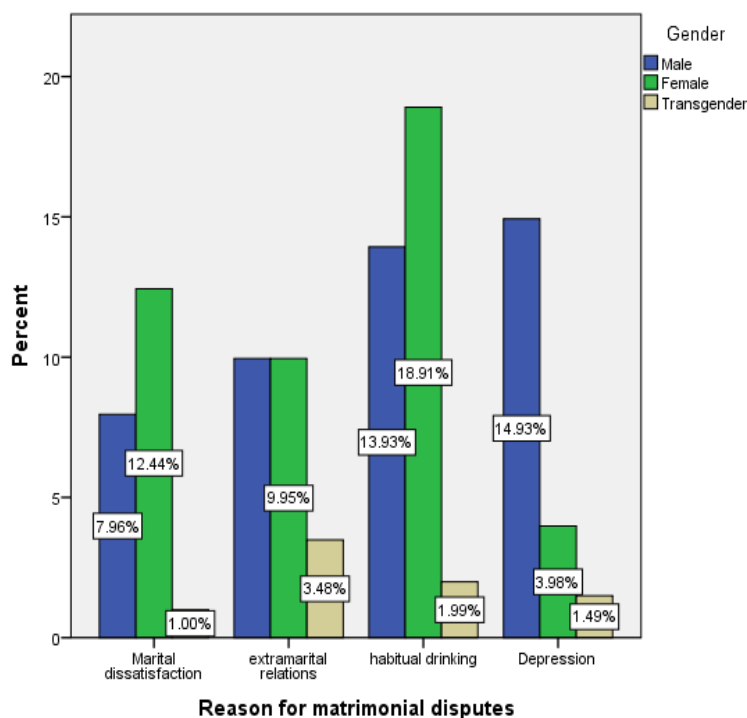
Legend : The above graphs show the relation between Occupation and awareness about ADR

Figure 4



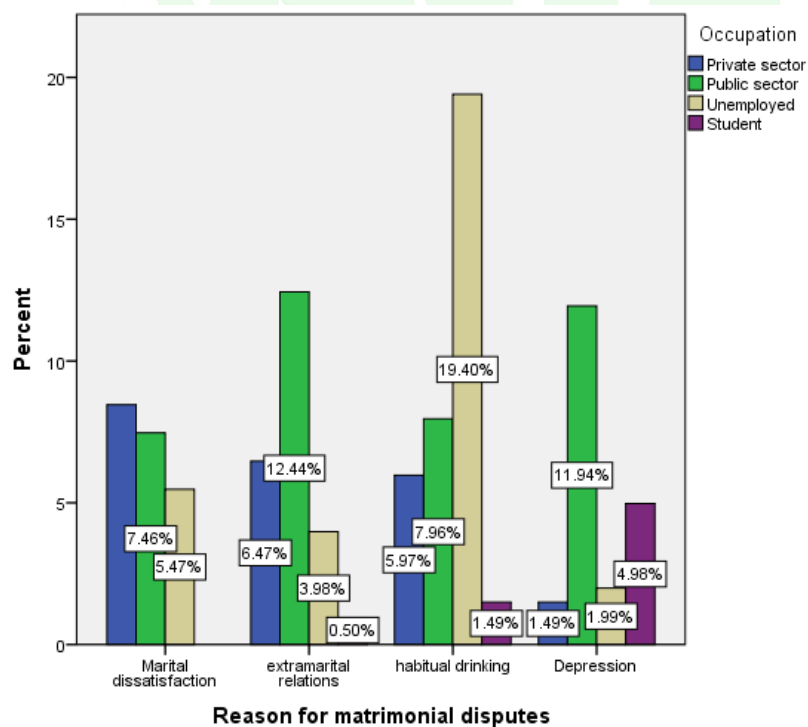
Legend : The above graphs show the relation between Age and reason for marital dispute

Figure 5



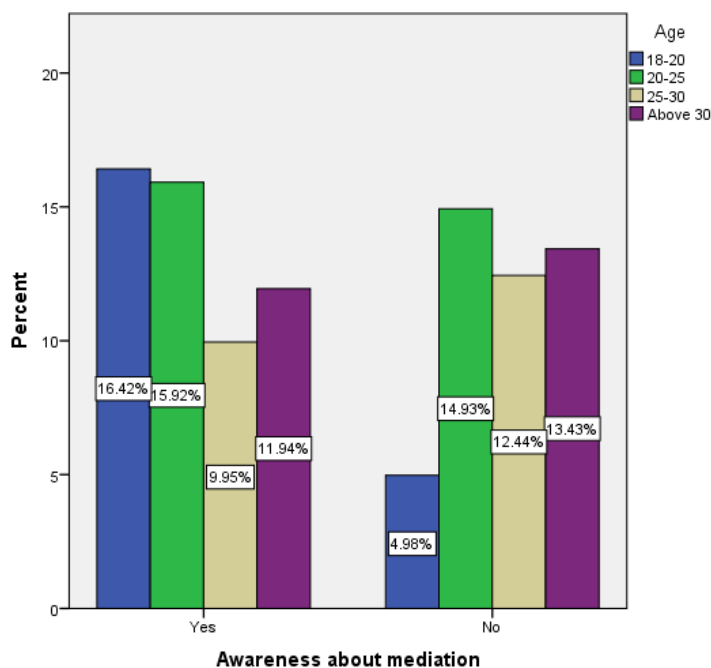
Legend : The above graphs show the relation between gender and reason for marital dispute

Figure 6



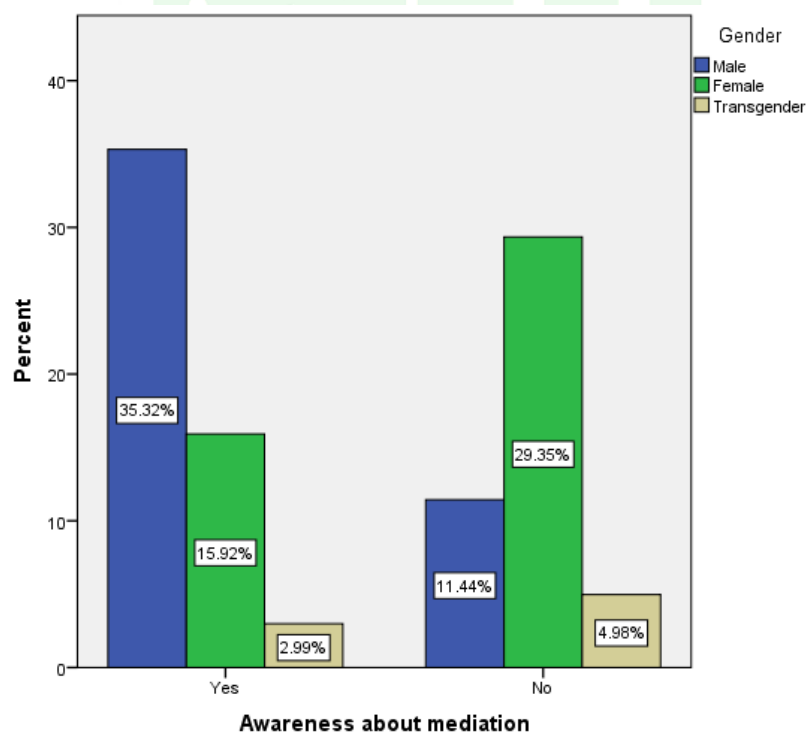
Legend : The above graphs show the relation between occupation and reason for marital dispute

Figure 7



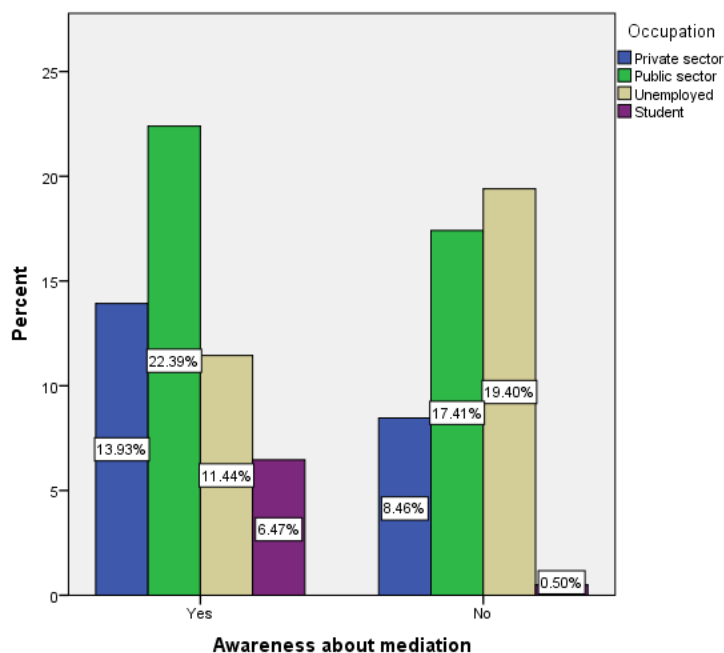
Legend : The above graphs show the relation between Age and awareness about mediation

Figure 8



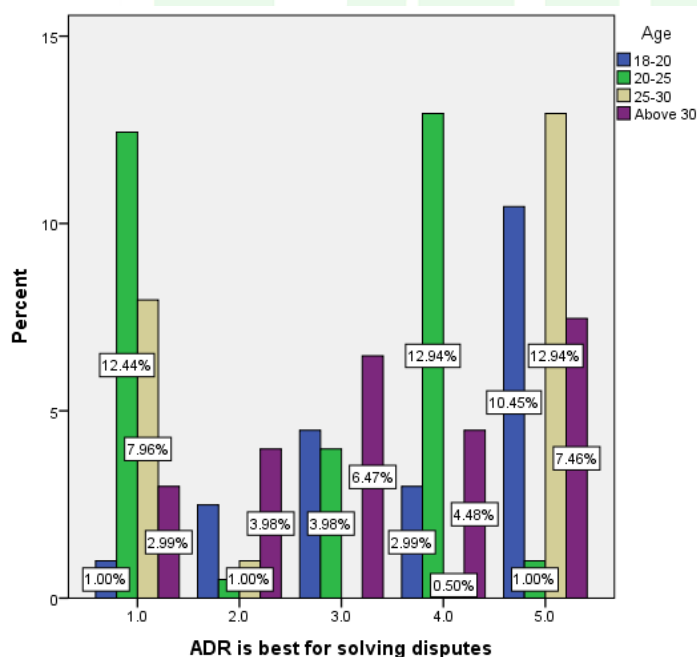
Legend : The above graphs show the relation between gender and awareness about mediation

Figure 9



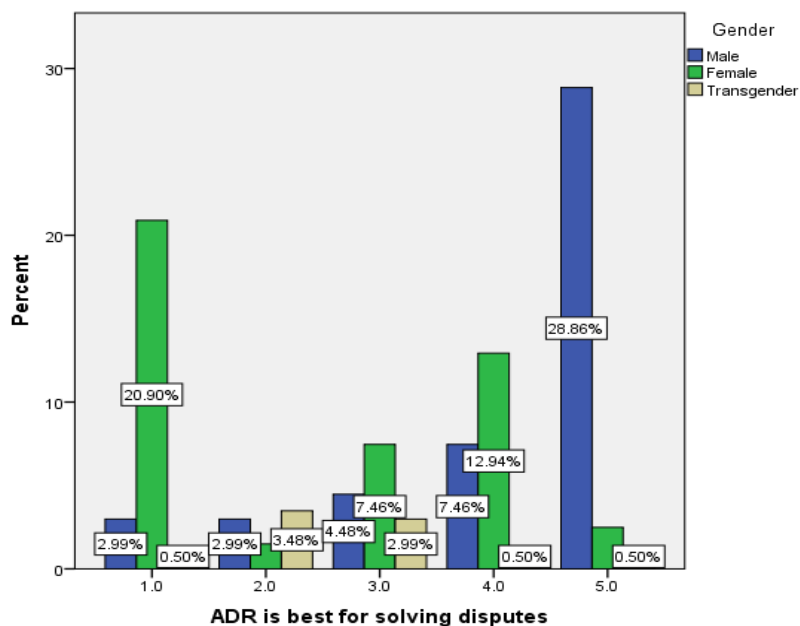
Legend : The above graphs show the relation between occupation and awareness about mediation

Figure 10



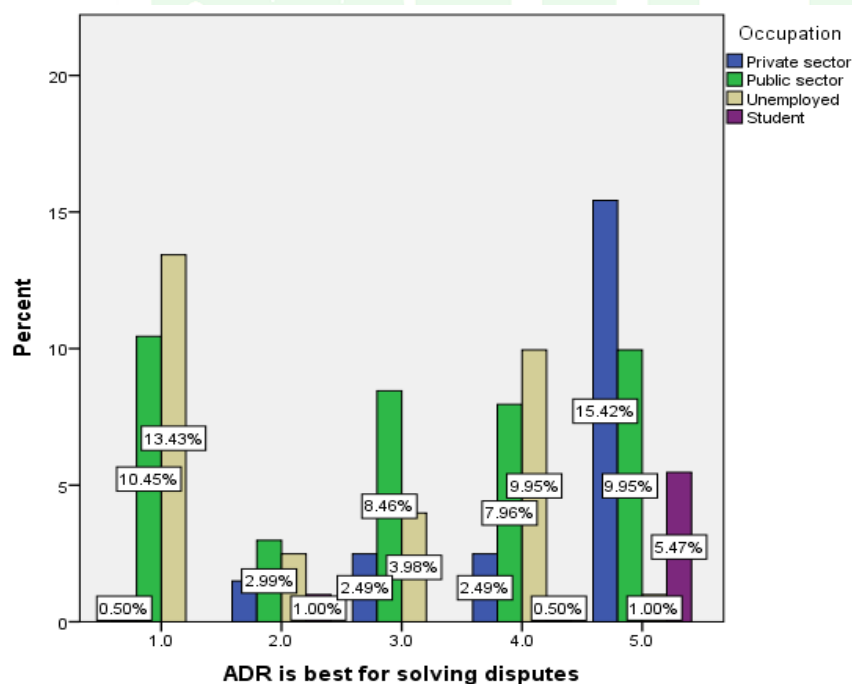
Legend : The above graphs show the relation between Age and rating for ADR being best for solving disputes.

Figure 11



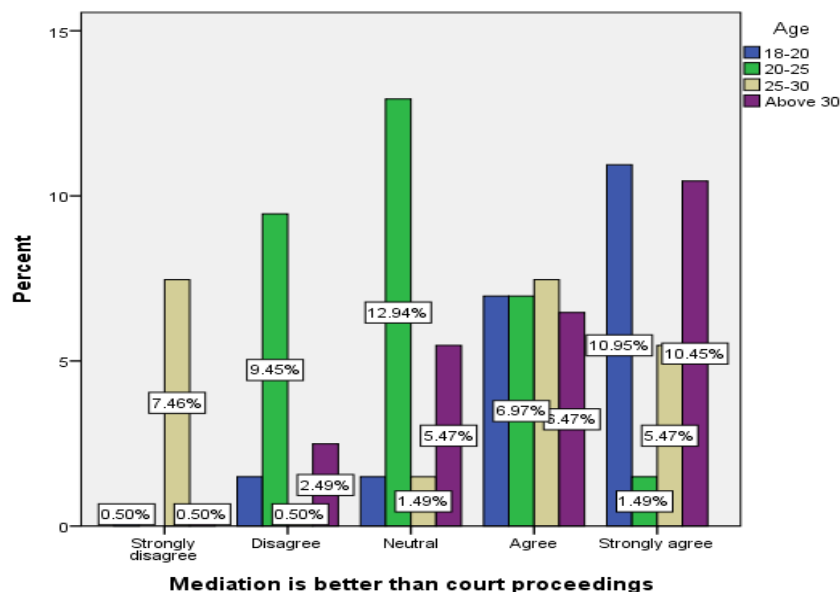
Legend : The above graphs show the relation between gender and rating for ADR being best for solving disputes.

Figure 12



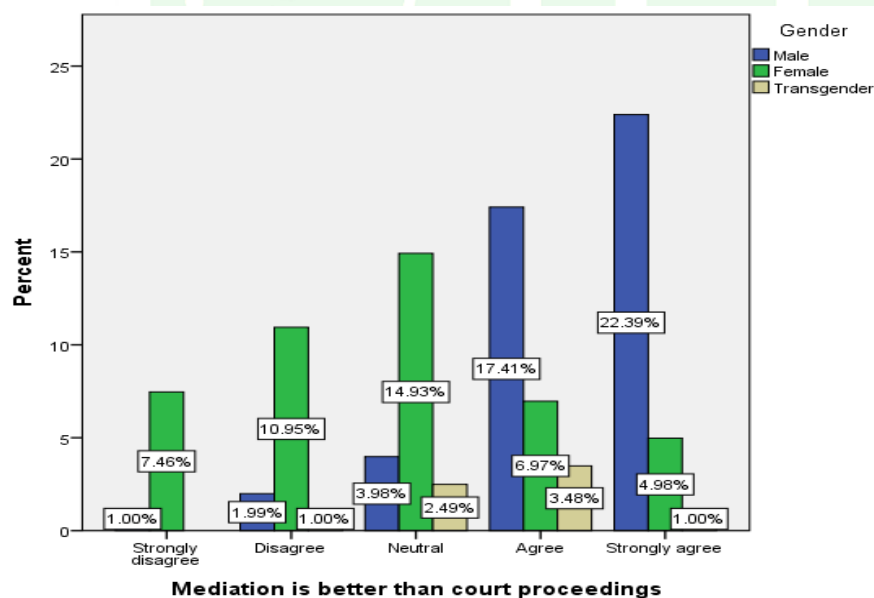
Legend : The above graphs show the relation between occupation and rating for ADR being best for solving disputes.

Figure 13



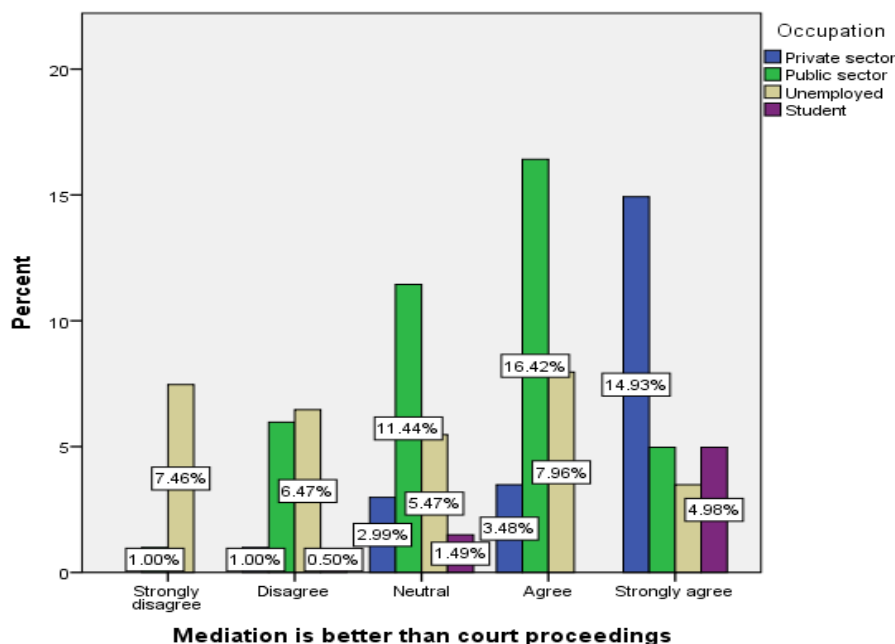
Legend : The above graphs show the relation between Age and rating for mediation is better than court proceedings

Figure 14



Legend : The above graphs show the relation between gender and rating for mediation is better than court proceedings

Figure 15



Legend: The above graphs show the relation between Age and rating for mediation is better than court proceedings

RESULT:

In **figure 1** 18–20 age people have given the most answers of YES. Almost all people have opted for yes. And the least answer given for No is again 18–20 aged group. In **figure 2** Male gender has given the highest answer of yes and with least answers collected from transgender they have given No. and female group have given highest answer of NO. In **figure 3** Public sector groups have given the highest answer of yes and the least answer is given by students that are no. In **figure 4** 20–25 group people have opted marital dissatisfaction. 25–30 group have opted habitual drinking and 18–20 have said extramarital affair and depression. In **figure 5** Most of the females think drinking is the main reason for problems in marriage while male think that depression or pressure is the reason for problems in marriage. The transgender have opted stating that extra martial affair is the main reason for disputes. In **figure 6** Unemployed people think that drinking is the main cause for the disputes while the public sector said that extramarital affair is the reason while the lowing response was given by students. In **figure 7** the 18–20 group answered

the most of yes while the least was given by the 25–30 years group. 20–25 groups have given heights of No while the 18–20 didn't much agree to no. In **figure 8** Male have accepted a lot of yes and whole lot of females gave no as their opinion. While transgender supported female groups. In **figure 9** Public sector is aware of mediation while the students of school are not aware of what mediation is And how it takes place. In **figure 10** For 20–25 age categories, I think that ADR are best for solving disputes. Again the lowest rating is equally given by the 20–25 category. In **figure 11** the Private sector has given the highest rating of 5. .while unemployed think they are not. As they gave the rating of 2. In **figure 12** Public sector is aware of mediation while the students of school are not aware of what mediation is. And how it takes place. In **figure 13** 20–25 group people stay neutral, saying that mediation is better than court proceedings. 18–20 group people strongly agree that mediation is better. And 25–30 people think they are not. In **figure 14** Most male have agreed that mediation is better than proceedings. And female groups are not agreeing the same. In **figure 15** Public sector groups have agreed that mediation is better

than court proceedings. Private sector groups strongly agree

DISCUSSION

Figure 1 highlights a strong affirmative response from the 18-20 age group, with a majority choosing 'YES.' Conversely, this age group records the least number of 'NO' responses. These findings suggest a positive inclination among young individuals in the 18-20 age range. **Figure 2** illustrates gender-specific responses, showing males predominantly selecting 'YES,' transgender individuals leaning towards 'NO' in fewer numbers, and females expressing a higher preference for 'NO.' These distinctions in responses highlight diverse perspectives within different gender groups. **Figure 3** reveals varied responses based on employment sectors, with the public sector showing the highest 'YES' responses. In contrast, students provide the least affirmative responses, leaning towards 'NO.' This suggests differing attitudes towards the subject between public sector employees and students. **Figure 4** exposes distinct marital concerns among age groups. The 20-25 age range emphasises marital dissatisfaction, while 25-30 individuals cite habitual drinking. Meanwhile, the 18-20 group points to extramarital affairs and depression, highlighting varying issues influencing marital perceptions across different age cohorts. **Figure 5** showcases gender-specific perspectives on marital issues. Females predominantly attribute problems to drinking, contrasting with males who highlight depression or pressure. Transgender respondents point to extramarital affairs as the primary cause. These diverse viewpoints reflect the complex interplay of factors influencing perceptions of marital challenges among different gender identities. **Figure 6** exposes diverse perceptions among employment sectors: unemployed individuals attribute disputes to drinking, while the public sector points to extramarital affairs. Students offer a comparatively lower response. In **Figure 7**, age-related patterns emerge, with the 18-20 group providing the most 'YES' responses, the 25-30

group the least, and varying degrees of agreement with 'NO' among 20-25 and 18-20 age groups. In **Figure 8**, gender-based differences emerge, with males largely accepting 'YES,' contrasting with a notable number of females opting for 'NO.' Transgender respondents align more with the female perspective. **Figure 9** highlights awareness gaps, as the public sector is knowledgeable about mediation, while students lack awareness of its process and significance, indicating a need for education in this area. **Figure 10** reflects the preference for Alternative Dispute Resolution (ADR) among the 20-25 age group, suggesting a belief in its efficacy for dispute resolution. However, the lowest rating from the same age category indicates some skepticism or diverse opinions within this demographic. In **Figure 11**, the private sector assigns the highest rating of 5, endorsing the effectiveness of ADR. Conversely, the unemployed express less confidence, providing a lower rating of 2, implying a varying perception of ADR's utility. **Figure 12** reveals an awareness gap, with the public sector being knowledgeable about mediation, while students lack understanding. Bridging this knowledge divide could enhance the understanding and utilisation of mediation processes, particularly among students. **Figure 13** reveals varied opinions on mediation versus court proceedings. The 20-25 age group remains neutral, indicating mixed sentiments. The 18-20 age group strongly supports mediation, while the 25-30 age group leans towards disagreement, suggesting generational differences in perceived effectiveness. **Figure 14** underscores gender dynamics, with most males favoring mediation over proceedings, whereas females tend to disagree. In **Figure 15**, employment sectors exhibit distinct stances, as the public sector agrees with the efficacy of mediation, while the private sector strongly supports it. These findings emphasise the need for tailored approaches in promoting mediation awareness, considering age, gender, and occupational factors to foster a more nuanced

understanding and acceptance of alternative dispute resolution methods.

LIMITATION

First and foremost, it is very rare that the complete truth of an issue is revealed during mediation. On the other hand, in a court case, attorneys will have the ability to procure evidence and call witnesses, which is not available in mediation; there are no formal rules for the process. If you don't employ a skilled mediator, this lack of formal rules can often result in an impasse. Mediation also relies on the cooperation of both parties. If the parties involved in mediation aren't able to compromise, the process can end in failures. Mediation is that it can be very difficult to make sure that the settlement is fair to both parties. If one party has access to more resources or is savvier about the mediation process, they may be able to get the other party to agree to a settlement that isn't in their best interests.

SUGGESTION :

Mediators should be given periodic training so that they are able to identify the cases in which mediation is suitable. 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. 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. Legal education in this attire of conflict resolution must be offered to law students. Advocates, judges, law students, and volunteers must all actively participate in the growth of mediation. 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 segment of society.

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.

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