
ROLE OF MEDIATION IN FAMILY & MATRIMONIAL DISPUTE

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INTRODUCTION

Marriage is a stable, long-term partnership between two individuals who have mutually supported each other. It serves as the basis for the family and the organization, and it is defined by six social functions:

- ☐ sexual behaviour regulation
- ☐ succession
- ☐ child care and protection
- ☐ socialization
- ☐ growth and consumption
- ☐ the transmission of assigned statuses like race.

The most critical of these ideals is inheritance, which underpins marriage and family life.

- 1) Marriage is a social event as well as a legal obligation.
- 2) Tolerance, adjustment, and mutual respect are the foundations of a healthy marriage. There are many variations between and among individuals, classes, and nations in life. There are cultural variations, personal factors, point of view variations, and contextual variation. Disagreements arise as a result of unresolved discrepancies. Disagreements are a source of problems. Unresolved disagreements become a conflict. Unresolved disagreements

transform into conflicts.

- 3) A matrimonial dispute occurs when a couple has a **disagreement** about the institution of marriage. A disagreement may turn into a conflict. The family, as the smallest unit of society, is often targeted for dissolution, separation, and other types of conflict.
- 4) The constantly changing social and family climate has posed new challenges, particularly to the younger population, such as growing insecurity, shifting roles of husband and wife, and the pressures of fast living. All of this has led to a breakdown in marital peace. Divorce rates are that alarmingly and in a geometrical pattern around the world.
- 5) Marriages on their knees need help and treatment. They act with a limp and require medical care.
- 6) Family or marital concerns are considered too sensitive an area for the pity or the unfavourable jurisprudence of the present legal system.

MATRIMONIAL DISPUTES IN INDIA

The social structure of India is constantly evolving, and with increased literacy and economic freedom among couples, matrimonial conflicts are on the rise. When modern partnerships become open to divorce, the opposition mechanism does not comply with the requests of the parties concerned. These disputes, unlike other contractual disputes, are accompanied by various emotional, social and personal dimensions. The standard process of litigation is often incompatible with these requirements. The unsatisfied side turns to appeals, reviews petitions and so on in the hope of reaching a favourable judgment due to court orders that do not have mutual consent of the parties. This results in a **time-consuming and emotionally exhausting process** with no meaningful results much of the time, the costs borne by the parties are rendered ineffective as compared to the expense of the subject of the suit property.

There are a number of factors which can cause conflict and subsequently dispute a couple due to their families or children. Thus, most spousal conflicts occur early in the marriage, and when a couple is recently married, they are not very forgiving, whereas a couple is generally more familiar

and tolerant of the other in long term relationships. Another reason for a dispute is that both husband and wife participate in two different areas of career, have little time for the other, and have various aspirations for life.

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

ROLE OF MEDIATOR

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

During mediation, the parties may choose to either part ways on mutually agreeable terms or patch up and remain together. In this case, the suit must be dismissed in order for the settlement to go forward. In that case, they will go to the High Court to get the lawsuit dismissed. They will, however, pursue the case if they refuse to settle. There is no one who loses in this exercise. If a settlement is reached, the parties will be spared the trials and tribulations of a criminal case, and

the pressure on the courts will be reduced, which is in the public interest. Obviously, the High Court can dismiss the case only if it considers a number of factors. The High Court will obviously only quash the case if it deems the arrangement to be fair and real after consideration of all circumstances. Such a course is useful to those who sincerely wish to give their marriage disputes some peace of mind. The courts also consider 'mediation' as an appropriate alternative means of settling matrimonial conflicts and that's why the courts want the parties to examine the possible resolution of marriage disputes by mediation.

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

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

WAYS OF MEDIATION IN MATRIMONIAL DISPUTES

In the area of conflict resolution, one can say that there are three levels of relationship in which people can operate to do **matrimonial dispute settlement**:

- ☐ “You or me,”
- ☐ “You and me,”

□ as well as “We.”

In the “**you or me**” approach, each of the parties is looking for what is best for them, without regard to what the other wants or needs; namely, a win/lose circumstance.

Each of the participants is into going their separate ways, in the “**you and me**” way of approach. But both of them also support each other in winning.

In the “**we**” domain, the parties would be going in the same direction with a unified effort. Mediation can occur where the couple learns how to resolve issues in a “you and me” or “we” approach in mind.

ADVANTAGES OF MEDIATION

The process is informal and flexible; lawyers are not necessary. There are no formal rules of evidence and no witnesses. Mediation is a confidential procedure. The mediators will not reveal any information disclosed during the mediation. No one transcribes them, as the sessions are not recorded through tape. At the conclusion of the mediation, mediators let go of any notes they took during the mediation session. When they want to get on with their business and their lives, mediation is an alternative to consider. Mediation usually takes less time to get over, permitting for an earlier solution than is possible through investigation.

Moreover, mediation usually produces or promotes a Greater Degree of Party Control. Parties who **negotiate their own matrimonial dispute settlement** have more control over the outcome of their dispute. Parties have an equal weightage in the procedure. There is no determination of fault, but instead, the parties meet a mutually agreeable resolution to their conflict.

CHALLENGES OF MEDIATION IN MATRIMONIAL SETTLEMENT

The legal system can tackle the legal problems that the couple faces when divorcing. Still, it does not address. It is not equipped to tackle the social and emotional issues that face the parties. If emotional or social issues are handled properly, legal issues get simpler to handle. Taking it a step further, what most parties really are arguing about is not legal or financial issues. But instead,

arguments fuelled by their desire to get some form of revenge for a perceived wrong by the other spouse. Once lawyers help each of the participants and supported them to resolve the emotional and social issues. However, they are in a much better position to deal effectively with legal and financial issues. However, **the role of mediation in family and matrimonial disputes is inevitable**. It has its own challenges and remedies and hence needs to be dealt with, accordingly.