
MEDIATION AS AN ALTERNATIVE DISPUTE RESOLUTION MECHANISM IN MATRIMONIAL MATTERS

Ishika Singh, LL.M., School of Law Justice & Governance, Gautam Buddha University,
Greater Noida, U.P.

Dr. Rama Sharma, Assistant Professor, School of Law Justice & Governance, Gautam
Buddha University, Greater Noida, U.P.

ABSTRACT

This study aims to assess how effective mediation is in resolving matrimonial disputes. It examines the core characteristics of mediation and explores the extent to which it is accepted as a method for settling such disputes. This research paper focuses on legal framework governing mediation and measuring the success rate of settlement of matrimonial dispute through mediation. This research paper Evaluate the features of matrimonial dispute and social and cultural factors interplaying such dispute. The researcher through this research aims to study the underlying problems in applicability of mediation as method for resolving matrimonial dispute, particularly in matrimonial matters where preserving relationships and ensuring amicable settlements are of paramount importance. It evaluates the extent to which mediation is accepted and practiced as a viable method of dispute resolution, while also identifying challenges that affect its effectiveness. The researcher through this work found out that legislative Enactment and judicial pronouncement Encourages mediation and conciliation for settlement of matrimonial dispute. Furthermore, study undertakes a critical evaluation of how effective mediation is in practice by considering aspects such as the satisfaction of the parties involved, the enforceability of agreements reached, efficiency in terms of time and cost, and its capacity to maintain relationships. At the same time, it addresses significant concerns, including unequal bargaining power between spouses, limited awareness about mediation, insufficient training of mediators, and the possibility of pressured or unfair settlements, particularly in sensitive situations like cases involving domestic violence. Thus, study concludes by suggesting reforms aimed at strengthening mediation in matrimonial mediation by identifying certain issues and proving possible solution by keeping in mind legal framework governing it.

1. INTRODUCTION

In India, matrimonial litigation make up a great number of the cases undertaken in the family courts and consist of the intricate and delicate matters relating to divorce, maintenance, child custody, restitution of conjugal rights and domestic violence. These controversies are not cases of pure legal debates but rather involves facets of emotions, interpersonal, and economic aspects. The old method of litigation practice, where litigation is marked by drawn-out procedures and legalism and hostility, serves to escalate disputes, instead of solving them. It may increase enmity among parties, extend emotional sufferings, and cause huge financial and psychological challenges, further diminishing the role of cooperation in the future, particularly in situations with children.¹

Mediation has been instituted as a leading alternative dispute resolution (ADR) tool in relation to these challenges in the Indian legal system. The courts have promoted the adoption of the mediation process, especially in the area of family disputes, since it is more flexible, informal, and participatory, as compared to litigation or an adversarial approach because, in contrast to adversarial litigation, mediation focuses on dialogue, cooperation, and mutual understanding as parties are able to devise solutions that fit their unique situations. It is also seen as a means to reduce judicial backlog and promote speedy disposal of cases.²

Mediation effectiveness, especially in matrimonial conflicts, cannot be evaluated based on quantitative measures, including settlement rates. To make a more valuable assessment it is necessary to consider the qualitative aspects, i.e. the fairness of settlements, the voluntariness of consent and long-term validity of settlements. Matrimonial disputes are always accompanied by inequitable bargaining power of dispute participants, which is determined by such factors as financial dependability, emotional vulnerability, and socialization. Such aspects can greatly influence the skills of parties, particularly women, to be effective and claim their rights in the course of mediation.³

Moreover, the informal and confidential character of mediation, on the one hand, and facilitating open communication, on the other, can also result in the absence of transparency and accountability. Contrary to formal judicial process, mediation is not bound by procedural

¹ Paras Diwan, *Modern Hindu Law* 320–330 (Allahabad Law Agency 2016).

² *Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. (P) Ltd.*, (2010) 8 SCC 24, 40–42.

³ Avtar Singh, *Law of Arbitration and Conciliation* 45–55 (Eastern Book Co. 2013).

protections or other aspects of evidence, casting doubt on whether settlements are indeed voluntary and informed. These pressures could undermine the integrity of consent and cause outcomes which are not always just and fair.

The research project aims to go beyond the superficial conception of the effectiveness of mediation, and to consider its effects with regard to equitability and voluntariness and long-term response. The paper will seek to offer a holistic assessment of mediation in the practice of matrimonial disputes by focusing on the institutional practices.⁴

2. REVIEW OF LITERATURE

The scholarly publication about mediation in matrimonial conflicts indicates an increased awareness of the possibility of mediation being a powerful alternative to litigation. There is a general consensus among scholars that mediation has a number of benefits such as lower cost, expediency, discretion, and a decreased adversarial approach. Mediation is based on communication, cooperation, and problem-solving in contrast to court proceedings, which have legal rights and formal procedures that are the central focus. This makes it especially appropriate to matrimonial disputes, where more cooperative approach is needed in ongoing relationships (in the latter scenario, in particular, when there are children).⁵

Mediation has always been a critical issue raised in Indian legal scholarship in the attempt to overcome the inefficiency of the judicial system. Arguably, this shift of autonomy to parties to develop outcomes that are flexible with interests that suit their unique needs can be regarded as one of the fundamental strengths of mediation. By addressing underlying interests, instead of holding legal positions, mediation can yield more satisfactory and enduring results.⁶

This idealistic perspective however, has its share in criticisms. Even a significant literature doubts the belief that mediation necessarily produces fairly and equitably results. Researchers have noted that the success rates of mediation can be evaluated using settlement, which does not necessarily reflect the quality or fairness of the agreement. A common move to focus on the settlement rate can blind us to the realities of whether the agreement was reached voluntarily, both parties had equal bargaining power, or that the result is sufficiently satisfying to meet

⁴ Law Commission of India, Report No. 222: Need for Justice-Dispensation Through ADR, Etc. 20–24 (2009).

⁵ Avtar Singh, *Law of Arbitration and Conciliation* 45–60 (Eastern Book Co. 2013).

⁶ N.R. Madhava Menon, *Clinical Legal Education* 120–140 (Eastern Book Co. 1998).

legal rights.⁷

Critical scholarship also indicates that mediation can in some situations reproduce the existing social and economic inequalities. In cases of matrimonial conflicts, the parties are seldom negotiating on a level basis. Such considerations as financial dependence, emotional defensiveness and poor legal literacy can greatly influence the capacity of people to effectively engage in the process of mediation, especially women, whose agreements made under mediation might be based on neediness instead of agreement.⁸

The feminist legal theorists have significantly added values to this concern by studying the interplay of gender and dispute resolution. Similar arguments are made by Flavia Agnes as she states that legal procedures within a patriarchal social framework tend to lack substantive equality, especially when it comes to family law cases (when women can be structurally disadvantaged).⁹ Similarly, Martha Albertson Fineman points out that family institutions are characterized by power relations, which in turn are bound to affect the results of processes of the dispute resolution such as mediation.¹⁰

The (doctrinal) literature on Hindu family law also provides support to the view that the conflicts in a matrimonial relationship cannot be explained outside of other social conventions and cultural expectations. In this regard, scholars observe that marriage, divorce, and maintenance matters are ingrained in the social values and these may shape the manner in which the parties deal with the dispute resolution process.

A majority of extant research takes a generalized approach to mediation in India, and does not consider the institutional practice and outcomes at individual mediation centers. Consequently, the concept of the mediation in practice in Court is poorly understood, how mediation works in practice, how mediators work, how the process feels to the parties and the sustainability of its results.

This gap is the focus of the current study, as it combines the doctrinal analysis with a critical analysis of the mediation practices at Court. It intends to give a detailed, multi-layered

⁷ Owen M. Fiss, *Against Settlement*, 93 *Yale L.J.* 1073, 1076–78 (1984).

⁸ Upendra Baxi, *The Crisis of the Indian Legal System* 75–95 (Vikas Publ'g 1982).

⁹ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 198–210 (Oxford Univ. Press 1999).

¹⁰ Martha Albertson Fineman, *The Neutered Mother, The Sexual Family and Other Twentieth Century Tragedies* 161–167 (Routledge 1995).

evaluation of mediation efficiency in matrimonial conflicts by relying on theoretical concepts, doctrinal knowledge, and reality in the institution.

3. STUDY OBJECTIVES.

- To explore the use of mediation to resolve marriage disputes.
- To evaluate the voluntarily and fairly of settlements.
- To learn which issues parties encounter in the mediation process. • To propose changes to make the mediation practices better

4. RESEARCH QUESTIONS

- What is the effectiveness of mediation in solving matrimonial disputes?
- Are there voluntary and fair settlements under mediation?
- Which issues become problematic to parties in mediation?
- Do the results of mediation shape-up on a long-term basis?
- What improvements are needed in the mediation process?

5. RESEARCH METHODOLOGY

In this paper, the research methodology to be followed is a mixture of a doctrinal and socio-legal research approach to critically analyze the effectiveness of mediation in the resolution of matrimonial disputes. The combination of the two methods allows a thorough examination that transcends the legal framework to the realities on the ground and the social situation in which the mediation is conducted.

This research is based on the doctrinal approach, which dwells on the argumentative study of legal principles, statutory provisions, and judicial decisions that led to the mediation and matrimonial disputes in India. This includes the analysis of applicable laws concerning family disputes and alternative dispute resolution and the analyzing of the important judicial pronouncements that have influenced development and implementation of mediation. By

conducting this analysis, the research aims to comprehend the legal framework in which mediation operates and to assess the level to which it tackles issues like fairness, voluntariness, and protection of the rights of parties.

Next to the doctrinal analysis, the approach of the study is the socio-legal analysis to explain how mediation is functional in practice with reference to the institutional framework of Court. Law is not a solitary activity as it is shaped by social, cultural, and economic elements. This would help the research to observe the dynamics in mediation in the real world and what role the mediators play, what the parties go through as well as the impact of social pressures in decision making. It also takes into account the influence of other issues like emotional stress, economic dependency and power imbalances on the participation and success in matrimonial mediation.

The research basically uses secondary sources such as books, academic publications, institutional reports and policy documents to have a theoretical and analytical picture of the topic. Such sources are useful in getting insight into both the legal aspect and practical aspect of mediation, the strengths and weaknesses of the dispute resolution system.

Moreover, there is a narrow empirical approach by way of institutional practices and information available concerning mediation in Court. Although, the study does not require a large amount of fieldwork, it attempts to learn how the mediation center operates, based on the reported information, the structure of the processes and noticed trends in resolving the disputes.

This is also viewed in a comparative perspective in order to determine the best practices of mediation in other jurisdictions. Investigating the manner in which mediation has been organized and governed across various legal frameworks, the research also tries to determine whether the same type of protection and enhancement can be used in the Indian context to gain efficacy.

Altogether, this methodological framework gives an opportunity to discuss the question of the balanced analysis and the possibility to unite the legal doctrine and the practical facts and critically assess the answer to the question whether mediation at Court is an effective and fair institution, which could solve the problem of matrimonial disputes.

6. DISCUSSION / ANALYSIS

6.1 Evolution and Growth of Mediation in India

Mediation in India has become more formal and institutionalized in the legal system especially in the context of a community-based dispute resolution system that has evolved through the informal system of dispute resolution. Historically, conflicts, especially marriage and family disputes, were solved in the local courts, including the panchayats and community elders, and primary factors included reconciliation and social harmony. Nonetheless, these systems were frequently devoid of procedural mechanisms and were responsive to social hierarchies. The necessity to have a tighter, more just and law-based mechanism brought about gradual absorption of mediation system into the Indian justice system.¹¹

The codification of mediation in India has a close connection with legislative and judicial efforts towards alternative dispute resolution (ADR). Another important development is the introduction of Section 89 of the Code of civil procedure, 1908, which gave courts the benefit of referring cases to ADR processes, such as to a mediation.¹²

The judiciary has been on the forefront of enhancing mediation. In the case of Salem Advocate Bar Ass v. Union of India, the Supreme Court highlighted the role of ADR and asked the courts to be anxious in using mediation as a method of resolving a falling out. This ruling was an initial move towards the institutionalisation of mediation in India.¹³

Additional explanation was as in Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. (P) Ltd., the Court distinguished types of disputes that should be resolved using ADR and emphasized that issues of personal relationships can and should be addressed using a more diplomatic and adaptable method, which mediation is well positioned to offer.¹⁴

The skill of mediating emotion and relationship issues as well as the legal matters has added special significance to mediation in marriage conflicts. Cases, where courts deal with divorce, maintenance, and custody, have been regularly referred to the mediation process to enable the reconciliation or peaceful settlement. The institutionalization of mediation, characterized by

¹¹ Upendra Baxi, *The Crisis of the Indian Legal System* 75–90 (Vikas Publ'g 1982).

¹² Code of Civil Procedure, 1908, § 89 (India).

¹³ Salem Advocate Bar Ass'n v. Union of India, (2005) 6 SCC 344, 363–65.

¹⁴ Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. (P) Ltd., (2010) 8 SCC 24, 40–42.

the introduction of the court annexed mediation center throughout the nation, signifies the increasing involvement with mediation.¹⁵

Policy moves and institutional structures played a role, as well, in the growth of mediation, through fortification of ADR mechanisms. Its growing acceptability is also due to training programs, mediation rules and specialized infrastructure. According to scholars, mediation is a transition toward an interest-based and participatory type of dispute resolution as opposed to adversarial litigation.

This development notwithstanding, the growth of mediation has elicited some issues. Although the number of cases that have been referred to mediation and the rate of settlements made have been increasing quite drastically, there are still doubts over the aspects of quality in these results. Critics believe that such a sole emphasis on settlement rates can ignore other concerns like fairness, voluntariness, and sustainability of settlements.¹⁶

However, the change in the way mediation was in India is a significant shift in the system of justice delivery. It marks a shift to more cooperative and less confrontational approaches of dispute resolution. Simultaneously, it also suggests the necessity of constant assessment in order to make sure that, besides effective mediation to resolve conflicts, it also maintains the standards of fairness and justice.

6.2 Functioning of Court Annexed Mediation

The operation of court-annexed mediation forms a major advance in institutionalization of alternative dispute resolution in the Indian judicial system. The Mediation Centre handles a large number of matrimonial cases such as divorce, maintenance, child custody, restitution of conjugal rights and domestic conflict cases. It has pre-eminence in the Delhi dispute resolution system and as a result will be of interest in understanding the functionality of mediation in practice and its effectiveness in dealing with the issues inherent in matrimonial disputes.¹⁷

The procedure of the mediation process is initiated by a family court referral. The identification and referral of the cases to mediation is done by judges who are aware of the possibility to settle the case amicably. This is a process of referral, which signifies a larger policy in judicial

¹⁵ Avtar Singh, *Law of Arbitration and Conciliation* 45–60 (Eastern Book Co. 2013).

¹⁶ N.R. Madhava Menon, *Clinical Legal Education* 120–135 (Eastern Book Co. 1998).

¹⁷ Delhi Dispute Resolution Society, *Annual Report on Mediation Centres* 15–20 (2019).

work; that a settlement and reconciliation should be the primary aim of the case, especially those that involve family relations. After referral, the case is imbued to a trained mediator, who facilitates a conversation amongst parties. The mediator is not imposing a solution but he manages to lead the parties to reach a mutually agreeable solution by negotiating and talking between them.¹⁸

One of the most crucial aspects of the Mediation Centre is its institutionalized structure. The centre is run in accordance with the well laid down procedural guidelines and the professional environment in which it operates encourages free communication. The facilitation of the process is also assisted by designated mediation rooms and timetabled sessions together with administrative support structures, which usually are mediation professionals, such as legal professionals and dispute resolution professionals, that have obtained specialized training on mediation techniques, negotiation tactics and conflict management.

The mediation sessions are also held in a relaxed and confidential environment as opposed to the courtroom proceedings, which makes them unique. This informality enables parties to be more open and have an open conversation on their issues. Such an atmosphere can be especially positive in the context of a matrimonial conflict, in which emotions and personal relations have a leading role. It will give parties a chance to discuss the underlying problems, clarify misconceptions, and find solutions that they might not have access to in the restrictive nature of the litigation process.

Mediation Centre has documented very high settlement rates which is usually taken as an evidence of the effectiveness of it. Mediation also allows faster solve of disputes, saves litigation expenses, and eliminates court congestions. In numerous situations, it also assists in saving relationships or more amicable separation, which is particularly crucial in the issues concerning children.¹⁹

Nevertheless, on a more serious examination of how the mediation process works at Saket Court, a number of complexities which transcend statistical success emerge. The high efficiency of a structured structure and trained mediators can be used against procedural fairness and efficiency because the need to get settlements often prevails over the quality of

¹⁸ N.R. Madhava Menon, *Clinical Legal Education* 120–135 (Eastern Book Co. 1998).

¹⁹ Avtar Singh, *Law of Arbitration and Conciliation* 50–60 (Eastern Book Co. 2013).

the settlement and its true sign of agreement between the parties.

Mediator plays a crucial role here in particular. Mediators should be impartial but their style cannot necessarily be neutral to process and results of mediation. Practically, mediators can assume a facilitative or an evaluative role and that in matrimonial conflicts, there is the likelihood of tendencies to persuade or cajole parties to reach an agreement especially when one party is in a weaker position.

The mediation process at Court annexed mediation should also be perceived in the general social and cultural set-ups. Emotional stress, financial issues, and expectations of society on marriage, family are some of the factors that parties in mediation usually experience before the process and can greatly affect their involvement in the process and the acceptance of some results. Sometimes, arbitrators might enforce a settlement faster, socially accepted, or parties may not need to assert their legal rights, making the question whether such settlements are voluntary.²⁰

The limited surveillance of the outcomes of post-settlement is another significant factor. Although the mediation yields may be formalized through the court, there is comparatively little follow up to understand whether such agreements are being actualized or they are simply giving a short term result of temporary agreements.

The Mediation Centre is such an important experience of the practice of mediation in India despite all these difficulties. Its organized operations, mediator training, and high rate at which cases are disposed are an indication of the potentiality of mediation as an effective dispute resolution process. Simultaneously, it operates in a manner that draws attention to the necessity of a more sophisticated manner in the way effectiveness is assessed; one that is focused not on just the number of people who have gained but on other aspects of effectiveness that are qualitative in nature, including fairness, agreement, and longer-term effects.²¹

Contextually, the Mediation Centre highlights the weaknesses and strengths of courtannexed mediation in India. It reiterates the obligations of balancing efficiency with justice and the need to constantly amend so that mediation is achieved as a just as well as effective mode of marital

²⁰ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 205–212 (1999).

²¹ Upendra Baxi, *The Crisis of the Indian Legal System* 75–95 (Vikas Publ'g 1982).

conflict resolution.

6.3 Measuring Effectiveness

Mediation in matrimonial disputes cannot be measured using quantitative data measures like the number of cases settled or disposed of. An objective evaluation of effectiveness must be multidimensional and the fairness, voluntariness, satisfaction, and sustainability of mediated agreements must also be taken into consideration.²²

One of the key metrics of effectiveness is fairness of agreements. In marriage conflicts, justice goes beyond the legal provisions to fairness of sharing rights and duties which include maintenance, custody and financial security. Contracts need to be considered against the socio-economic realities of the parties. Where there are differences in bargaining power occurring in particular because of financial dependency, or lack of legal understanding, settlements can be disproportionately in favour of a particular party, thus fairness should be evaluated not in the formal but in the substantive sense, so that results reflect, in effect, equity and justice.

Closely associated with the fairness is the voluntariness of consent that is the normative basis of mediation. The mediation has to be legitimate based on the premise that the parties get into the agreements in a free and non-coercive manner. Yet in real-life situations, this can be frequently refuted by the emotional pressurings, the social expectation, and the lack of money, instead of the actual intentions. In marriages however, a person may not turn to court cases because they consider it as socially unacceptable or even because they are emotionally distressed, and not because they are willing to do so. This presents critical issues regarding consent authenticity and contextual mediation ethic.²³

The other important aspect is that the parties are satisfied with the process and result. Mediation is developed to offer a consultative and inclusive ambiance within which parties have the liberty to present their issues and engage in decision-making. Not only does procedural fairness show satisfaction, but it is also predictors of adhering to the terms of settlement since parties who feel that the process is biased and the result unwarranted are unrelated to effective mediation.

²² Aytar Singh, *Law of Arbitration and Conciliation* 50–65 (Eastern Book Co. 2013).

²³ Paras Diwan, *Modern Hindu Law* 320–350 (Allahabad Law Agency 2016).

The sustainability of agreements over a long period is also pertinent in effectiveness measure. Matrimonial conflicts mostly entail long term relationships especially when there are children. Thus, mediated settlements should be able to outlast the conflict resolution in the short run. As an agreement reached in distance or under tensions may be subject to future disagreements, breach of the contract, re-litigation, sustainable results would require adjustment of the agreements to be realistic, balanced and in the long-term interest of both.²⁴

These are only the key requirements, but effectiveness should also be considered regarding the qualities of process integrity and transparency. Although confidentiality is one trait of the mediation process, it does not lead to unaccountability. To uphold the integrity of the process, it is necessary to ensure that there is consistency in the standards to be followed by the mediators and that the parties are aware of their own rights as such a process might lose credibility as a dispute resolution tool.

Therefore, effectiveness measurement would necessitate a move towards a more holistic approach that considers the qualitative aspects instead of the efficiency-based approach. It is only when one takes into consideration fairness, voluntariness, satisfaction and sustainability that one can effectively evaluate mediation as an effective system of solving matrimonial disputes.

6.4 Challenges in Mediation

Although it is becoming an accepted and institutionally supported practice, in matrimonial disputes, mediation has a number of several structural and practical drawbacks which do restrict its effectiveness. These issues are sharp in high-volume mediation centers, like the Saket District Court Mediation Centre, where efficiency pressures and social dynamics collide.²⁵

The imbalance of power is one of the major challenges. Matrimonial conflicts usually carry with them uneven allocation of resources, knowledge and power. Such differences may be financially better off, have access to legal counsel or be socially influenced, which can lead to mediation not leveling the playing field, which instead of eliminating the disparities will only

²⁴ Nadja Alexander, *Global Trends in Mediation* 45–70 (Kluwer Law Int'l 2010).

²⁵ Upendra Baxi, *The Crisis of the Indian Legal System* 75–100 (Vikas Publ'g 1982).

serve to introduce them in the agreements.

The other pressing matter is the psychological stress and susceptibility that come along with matrimonial disagreements. Contrary to business disputes, marriage conflicts are highly intimate and in most cases, matrimonial disputes are characterized by betrayal, anger and insecurity. Such emotional aspects can lead to compromised reasoning and diminishing the ability of parties to make deals, when the results are not efficient and are associated with the wish to stop suffering emotionally.²⁶

Social and family pressures are very strong especially within the Indian setting. The views of marriage, family respect, and societal esteem can be very pressurizing on sides to settle a dispute fast or to maintain the relationship, most of the time, parties may be requested by family members or society to compromise, even to the detriment of their legal rights. These pressures may compromise the voluntariness of consent and result in a situation that puts the social order above justice.

The mediation process is also complicated by the lack of legal knowledge between parties. Some of the people in mediation have not been well versed with their rights in the law and especially in matters that fall in the areas of caring about maintenance, custody and the right to be spared out of abuse; they can therefore enter into legal settlements that are legally insufficient or unfavorable to them. This information asymmetry undermines the theory of informed consent and the chances of unfavorable results.

The other significant challenge is that there is scarcity in the monitoring and evaluation of mediation outcomes. After a settlement has been achieved, follow up is usually minimal to evaluate how well it is being implemented or whether it is working well in the long term. This lack of other settlement review to review comes with the problem of being unable to ascertain whether mediation has resulted in permanent resolution or it has only offered a mode of temporary solutions. It also restricts the possibility of institutions to identify patterns, responding deficiencies and make later-improvement of practices.²⁷

So too are the institutional causes of the difficulties of mediation. Competition to reach

²⁶ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India 198–220* (Oxford Univ. Press 1999).

²⁷ Martha Albertson Fineman, *The Neutered Mother, The Sexual Family and Other Twentieth Century Tragedies* 161–175 (Routledge 1995).

settlement in court-annexed mediation focal areas can affect how mediators conduct themselves. The pressure on mediators to cope with high caseloads and performance expectations can also encourage them to focus on speed of recovery at the expense of taking due consideration of the interests of the parties involved, with the consequence being a poor quality output.

Lastly, there are no uniform practices and protection measures among mediation centers, which results in discrepancy in the implementation. The quality of mediation is often influenced by the differences in the training of the mediator, experience and approach, which is why without consistent guidelines and accountability systems, making sure that the mediation process subsists on the principles of fairness, voluntariness, and justice can be challenging.

These challenges highlight the need for a more structured and safeguards-oriented approach to mediation. The problem of power disparity, insufficient awareness, and poor monitoring will also have to be addressed to make the mediation process more efficient and to make sure that it could be a truly fair tool of settling the matrimonial conflicts.

7. CASE LAWS / CASE ANALYSIS

The court rulings have actively been instrumental in determining the evolution, breadth and usage of mediation in India, specifically matrimonial cases. The courts were always keen to promote mediation as a means of diminishing adversarial conflict and facilitating amicable settlement. Meanwhile, a more in-depth examination of the case law shows that as much as the idea of mediation is highly supported, issues of fairness, volition, and suitability in some situations are covered incompletely.

One of the case laws in this regard is that of Salem Advocate Bar Ass in the case against Union of India. The Supreme Court in this case looked at how Section 89 of the Code of Civil Procedure was being implemented and the role of alternative dispute resolutions systems, such as mediation, and court mandated the creation of mediation centers and the active referral of appropriate cases to ADR systems by courts. This ruling institutionalized the cause of court-annexed mediation in India.²⁸

In *Afcons infrastructure ltd. v. Cherian Varkey Constr*, the application and scope of mediation

²⁸ Salem Advocate Bar Ass'n v. Union of India, (2005) 6 SCC 344.

was further elaborated. Co. (P) Ltd.. The Supreme Court has divided the cases that can be solved by means of ADR and specified matrimonial and family disputes among others as the cases that can be effectively solved with the use of mediation since such matters are sensitive and mutual ways to resolve them are always desirable.²⁹

In *K. Srinivas Rao v. D.A. Deepa*, the Court once again wheeled out the value of mediation in matrimonial differences as well as the preference of reconciliation before a case could be adjudicated.³⁰

In *Rajnesh v. Neha*, a more rights-based approach appeared to the questions connected with maintenance and disclosure of funds, the Supreme Court established the rules necessary to maintain fairness and openness of financial deals, which directly impact mediated settlements in family cases.³¹

The other case is *Samar Ghosh v. Jaya Ghosh*, which the Court expounded the idea of cruelty within the context of the matrimonial law, thus signalling the boundaries of mediation application.³²

Caution also emanates through judicial thought; domestic violence cases. Protection of women and prioritization of safety and rights are the focus of the framework of the Protection of Women from Domestic Violence Act, 2005 in such situations, mediation should be undertaken with caution so that it would not lead to the coercion or infringement of legal provisions.³³

These cases, in combination, indicate a robust judicial stance towards mediation in dispute resolution, but also show that precautions must be taken to maintain discretion and free will. These principles are especially applicable to practice in courts like the Saket District Court Mediation Centre where mediation is one of the most significant elements in solving matrimonial disputes.

8. FINDINGS

The research shows that mediation has become a powerful tool of minimizing litigation and

²⁹ *Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. (P) Ltd.*, (2010) 8 SCC 24.

³⁰ *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226.

³¹ *Rajnesh v. Neha*, (2021) 2 SCC 324.

³² *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511.

³³ Protection of Women from Domestic Violence Act, 2005.

ensuring faster solutions to marital disputes especially in institutionalized context. Though unusually informal, flexible, and discussion-oriented environment, mediation saves considerably on time, expense and adversarial qualities of conventional court processes. It also helps parties to make settlements without the need to spend long in court thus contributing to judicial efficiency and relieving the family courts.

Nonetheless, the results also suggest that high settlement rates would not necessarily be evidences of fair or equitable results. Although the media aspect of mediation has been assessed using quantitative metrics like the number of disputes settled, this does not reflect the quality of agreements. Settlement can often be reached within a short period of time, but they may not effectively guarantee the rights and interests of both parties. This draws attention to the weakness of the settlement rates that are used as the instruments of measuring the effectiveness.

One such critical note is that parties can be either explicitly or implicitly pressured to resolve a dispute. The pressure may come in various forms, such as through mediators, family members, or the institutional imperative on case resolution efficiency. In marriage conflicts, emotional and social aspects are intimately entangled, and the parties might have a motivation to make concessions to prevent a longer divorce, social disgrace, or additional stress. This surrounding can compromise the voluntary mediation process.

The absence of procedural safeguards is closely associated with the discovery that the voluntariness of consent is influenced by the absence of procedural safeguards. The agreement on mediation is based on free and informed consent, although in reality, there are few measures to make sure that the consent is truly voluntary. Asymmetry in the bargaining power, ignorance of the law and other external pressures could affect the decision making process resulting in the signing of agreements that are not so much reflective of what the parties truly intended.

The other important observation is that the results of mediation might not necessarily translate into sustainable results in the long-run. Although mediation in most cases leads to immediate settlement, the sustainability of such agreements is what is in doubt. Certainly, in other situations parties cannot stick to the terms of settlement, or revert to litigation as a result of undisposed underlying matters. It is an indication that the mediation facility might not be able to offer a permanent solution to the issue but a temporary solution.

All the findings are that although mediation is efficient in the effectiveness of efficiency and

minimization of litigation, its effectiveness should be measured not just based on settlement rates. Matters concerning fairness, voluntariness, and sustainability need to be tackled so as to make the mediation a really effective and fair mechanism towards solving matrimonial disputes.

9. RECOMMENDATIONS / SUGGESTIONS

Following the revelations, it is quite obvious that mediation is a powerful instrument in solving matrimonial feuds but its operation needs serious reinforcement to promote equity, voluntariness, and permanence. The discussion above recommends the following to enhance the quality and effectiveness of mediation and the same can be done in the institutional setup like in the Court Mediation Centre.

One of the major reform areas is the necessity to enhance the training of mediators and professionalism. Mediators ought to be taught thorough and unceasing training in not just techniques of negotiation but also in aspects like gender sensitivity, psychology, power, and domestic violence. An accreditation mechanism and professional standards should be established that guarantee consistency of the quality of mediation in cases. An individual who has received the proper training will be better backed to detect imbalances and effectively manage the conflict and make the process just and fair.

It is also crucial to make sure that there is independent legal counsel in mediation. Legal advice should be availed to parties to ensure that they fully know their rights, obligations, and the ramifications of any settlement. Increasing the level of fairness and legitimacy of outcomes, presence of legal advice may allow to decrease the informational asymmetry and allow parties to make informed decisions.

The other important suggestion is to add protection measures in place to guarantee voluntary and informed consent. Handled procedures ought to be adopted to ensure that no contracts are signed under duress. This can involve compulsory affirmation by a mediator, affirmations of voluntariness in writing, and legal investigation of settlements to determine their fairness. These would ensure the integrity of the mediation process.

Cases on the subject of domestic violence or coercive control also need to be screened able to be referred to mediation. Disputes are not always the ones that can be mediated and the cases

of abuse are to be approached very carefully to guarantee the safety and entitlement of vulnerable parties. In this case, reconciliation-oriented processes should be considered less important as compared to alternative legal remedies.

It is imperative to establish monitoring and evaluation systems to measure the efficacy of mediation in other aspects other than settlement rates. Follow-up procedures will have to be offered to determine whether the agreements are executed successfully and whether they result in solving the problems in the long-term. Organizational control may also assist in bringing out trends, compensating deficiencies, and enhancing the overall practices.

Another important aspect of reform is creating legal awareness among parties. Not every participant of mediation knows his or her rights and entitlements according to the law and this is critical in negotiating issues effectively. There should also be creation of awareness programs, legal resource facilities and information services to the extent that parties are engaged in mediation in a knowledgeable and confident position.

Lastly, a mediation infrastructure and standardization should be enhanced. Although facilities at centers such as Saket are quite well-equipped, other mediation centers vary in terms of facilities, procedures, and training of mediators. Gaining consistent rules, universal practices, and sufficient infrastructure will assist in making the mediation services more consistent and facilitate the improvement of the overall quality of the services.

Conclusively, these are recommendations which underline the necessity of going beyond a settlement-based approach and towards a rights-based, systematic and responsible mediation framework. Mediation with procedural as well as structural corrections will make it a more efficient and fairer tool in solving conflicts in the marriage.

10. CONCLUSION

Mediation has become an important and increasingly depended upon methodology of solving marital conflicts in the Indian judicial system especially in a large-volume judicial court like the Court Mediation Centre. It has been widely accepted because its capability to offer a less adversarial, time saving and less expensive alternative to the conventional litigation has helped in its successful acceptance. Through dialogue and collaboration, mediation can cool the hostility between parties and help parties to find more amicable resolutions that are particularly

useful in disputes that involve relationships that guard against hostility.

Nevertheless it is not possible to assess the efficacy of the mediation based on the rates of settlement or disposal alone. Further examination of the issue shows that such crucial points like fairness, voluntary character of consent and long-lasting economic viability of results are also equally or more important. The settlements obtained by coercion, lack of proper legal knowledge or presence of power imbalances could compromise the whole idea behind the mediation as well as cast doubts to the quality of the justice served.

As the research shows, despite the obvious benefits of mediation, it still functions under quite a complicated socio-legal framework in which such aspects as emotional vulnerability, social expectations and pressures of the institution play a role. The lack of proper protection, the lack of paying sufficient attention to the consequences of the post-settlement and the differences in mediator practices are other reasons to run reforms.

Thus, mediation should develop out of the settlement-focused approach toward a more structured, rights-oriented process that is characterized by fairness and accountability. Efforts to improve procedural protections, improve training of mediators, make legal counsel accessibility, and the implementation of monitoring mechanisms are critical steps in this direction.

To sum up, on the one hand, mediation as a method of solving matrimonial conflicts has a great potential, but it hinges on its ability to find a balance between the efficiency and justice, on the other hand. Mediation can only be considered an effective supplement to traditional adjudication in cases when it tackles its current shortcomings and ensues its socialization as a fair and trustworthy option of court adjudication.

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