



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

MEDIATION IN FAMILY LAW: EXAMINING THE EFFICACY OF MEDIATION IN DIVORCE AND CUSTODY DISPUTES

AUTHORED BY - DR. DEEPIKA SAINI

Abstract:

Mediation has emerged as a prominent approach in resolving family law disputes, particularly in cases of divorce and child custody. This research aims to critically examine the efficacy of mediation as a method of dispute resolution within the context of family law.

This paper will begin by providing an overview of the principles and processes of mediation in family law, highlighting its emphasis on empowering parties to reach mutually acceptable agreements while preserving relationships and promoting the best interests of children. Drawing upon empirical studies, case analyses, and legal literature, the research will evaluate the effectiveness of mediation in addressing the unique dynamics and complexities inherent in divorce and custody disputes.

Furthermore, this study will explore various factors that may influence the outcomes of mediation in family law cases, including the role of mediators, the voluntariness of participation, power imbalances between parties, and the presence of legal representation. It will also assess the impact of cultural, socioeconomic, and psychological factors on the mediation process and its outcomes.

Through a comparative analysis of mediation outcomes against traditional litigation, this paper aims to provide insights into the advantages and limitations of mediation in family law settings. Additionally, it will examine the potential role of mediation in reducing conflict, promoting co-parenting cooperation, and enhancing the overall well-being of family members involved in divorce and custody disputes.

Ultimately, this research seeks to contribute to the ongoing dialogue surrounding the use of mediation in family law and inform policymakers, legal practitioners, and stakeholders about its potential benefits and challenges in fostering amicable resolutions and preserving familial relationships in the face of contentious legal proceedings.

Introduction

Mediation is a notion that is firmly ingrained in our Indian tradition of dispute settlement. The origins of mediation may be traced back to ancient legal systems of India; for example, the notion of "Shantidoot" before any conflict or combat was quite common in ancient India. "Gram Panchayats" and "Nyaya Panchayats" were two prominent and frequently used systems in ancient rural India in the past. Through the use of skilful communication and bargaining techniques, a neutral third party helps disputing parties resolve their disagreement in a dynamic, voluntary conflict resolution process called mediation.

Mediation has evolved as a popular method for settling family law conflicts, notably in situations of divorce and child custody. In recent years, legal academics, practitioners, and policymakers have paid greater attention to its effectiveness as a means of conflict settlement in the context of family law. The purpose of this study is to objectively assess mediation's efficacy in dealing with the specific dynamics and complexities that arise in divorce and custody issues.

This paper will begin by presenting an introduction of mediation principles and processes in family law, emphasizing the importance of empowering parties to reach mutually acceptable agreements while protecting relationships and advancing children's best interests. Using empirical investigations, case analysis, and legal literature, the study will compare the efficacy of mediation to traditional litigation.

In addition, this study will investigate several aspects that may impact the results of mediation in family law disputes, such as mediators' roles, voluntariness of involvement, disparities in power between parties, and the existence of legal counsel. It will also investigate the influence of cultural, economic, and psychological aspects on the mediation procedure and outcomes.

This research attempts to give insights into the benefits and drawbacks of mediation in family law situations by comparing its outcomes to those of traditional litigation. It will also look at how mediation may help reduce conflict, promote co-parenting collaboration, and improve the overall state of health of family members affected by divorce and custody issues.

Finally, this study aims to contribute to the ongoing debate about the use of mediation in family law by informing policy makers, legal professionals, and stakeholders about the potential benefits and challenges of encouraging peaceful settlements and safeguarding relationships between families amid the backdrop of contentious legal proceedings.

Origin of Mediation

Mediation originated in Ancient Greece, with village elders resolving local conflicts. Mediation was initially used and developed in Ancient Greece, with non-marital mediators known as proxenetas.

In Roman Civilization, mediators were referred to by many titles such as internuncial, middle man, intercessor, philanthropes, interpolator, conciliator, interlocutor, and mediator. Following the battle against Rome, the tribe of Kushites sent negotiators to Augustus in Samos, and an agreement for peace was signed in 21/20 BC.

Pros and Cons of Mediation

According to latest report of the National Legal Services Authority¹ from April 2023- December 2023, 73147 cases has been already settled during this tenure.

The researcher has tried to explain a few pros and cons of the mediation. As everything has two faces i.e., good or bad and here researcher has tried to mention both the sides of the mediation, which are as follows: -

Pros of Mediation

In family law, mediation is seen as a successful alternative dispute resolution (ADR) strategy, particularly in divorce and custody situations. Here are some crucial considerations about its efficacy:

- Mediation may be both less expensive and more cooperative than litigation. It offers a more calm and informal setting than a courtroom, which can aid in maintaining a healthy connection with the other parent.
- Mediation allows for speedier justice than traditional court methods. It promotes a nicer environment and flexibility.
- The mediation process is fully optional. Compared to traditional litigation, a less formalized and adversarial method aims to settle disputes more swiftly and cheaply.
- Preserving Relationships in mediation may be especially useful in family issues since it allows parties to keep their relationships while avoiding the animosity that may result from litigation.

¹ [Settlement through Mediation Report April 2023 to December 2023 - National Legal Services Authority! \(nalsa.gov.in\)](https://nalsa.gov.in)

- Customized Resolutions in Mediation enable parties to reach an agreement that is tailored to their requirements and interests.

The judiciary, already overworked by the increasing quantity of cases, lacks the capacity to handle these issues. Alternative dispute resolution has been shown to be the optimum replacement when confronted with the of such a burden. Mediation involves the use of a mediator to help parties in resolving disputes. Compared to regular legal procedures, it provides speedier justice.

Family-related mediation, particularly in divorce and custody cases, has proven to be an effective and successful method of resolving disputes. It helps to maintain positive connections after the disagreement has been settled, in addition to making the dispute resolution process more enjoyable and then less stressful for both parties involved. However, depending on the details of each case, mediation's effectiveness varies.

In *K Srinivas Rao v. D.A. Deepa*², according to the Supreme Court, bringing parties to mediation can stop issues from getting worse. In cases where there are settlement components, Section 498A offenses may be resolved through mediation. Judges must, however, make sure that guilty spouses do not rig the mediation in order to get out of trouble with the law.

Cons of Mediation

However, there may be downsides to mediation. It might be a useless process if the parties have become staunch in their positions and unwilling to compromise. Furthermore, any significant social or legal issues will be overlooked in a quiet settlement. Since it might take several mediations for the parties to reach a consensus, mediations can be expensive. Ultimately, the effectiveness of mediation depends on the commitment of both sides to resolving their differences. Also, if one side is firmly in a particular stance, mediation might not be the ideal option. Mediation is effective if one side pays and the other is ready to accept considerably less than the amount they may receive at trial. However, if a party feels it is not accountable and shouldn't be paying any money, mediation will not fix the problem. Similarly, if one party is convinced that the other party is culpable, and that settlements is unlikely to appropriately compensate them, mediation may not be the best option. Finally, if the issue turns out to be about the principle than the money, mediation will not result in the intended outcome.

Pre-Litigation Mediation

The idea of pre-litigation mediation has also developed quickly, and one of the most significant

² AIR 2013 SC 2176

aspects of the Mediation Act is that parties must engage in pre-litigation mediation before bringing legal action in an Indian court. Whether or not the parties have already reached a mediation agreement does not affect this necessary need. Pre-litigation mediation is required under the Act to reduce the number of pointless lawsuits, relieve court overcrowding, and promote amicable settlements.

According to the data of the National Data Grid, 2024 the burden of litigation has been constantly increasing. Here are a few cases in which the pre-litigation mediation has been advised by the Hon'ble Supreme Court.

In *K. Srinivas Rao v. D.A. Deepa*³, the Supreme Court considered pre-litigation mediation in respect of family law issues. Because his wife had filed a bogus criminal complaint against him and his family, the spouse moved for divorce on the grounds of mental cruelty. The Court emphasized the benefits of pre-litigation mediation as a method of dispute resolution and granted the husband divorce. The Court acknowledged that disagreements arise for trivial causes and can be addressed by bringing a lawsuit. It was also determined that data from Delhi district courts indicates that both parties who seek mediation as soon as feasible have a higher chance of obtaining a satisfactory agreement. The Supreme Court ordered all family courts to develop and publicize pre-litigation clinics at every mediation centre.

The strategy of the study

The researcher has done an analysis of mediation concerning family law, notably divorce and custody conflicts, which requires a multifaceted approach. Here are a few major strategies:

1. Considering the Development of Conflict Settlement Strategies and Historical Perspective: The paper examines the evolution of conflict settlement strategies in family law, contrasting historical traditional approaches with present practices. Mediation has been around for decades in India, where it is commonly employed to resolve family disputes.
2. Analysing the reasons for family disputes: A sociolegal inquiry into the reasons for conflict within families is carried out. Possible explanations include economic concerns, professional challenges, and psychological abnormalities.
3. The significance of mediation: The purpose of the study is to highlight mediation as one of the best methods for resolving family disputes. In instances involving marriage, it looks for the underlying causes of issues and evaluates workable solutions using a variety of

³ AIR 2013 SC 2176

conflict resolution techniques. Evaluating the efficacy of mediation: The efficacy of mediation in resolving family problems is evaluated by highlighting the similarities and differences between different strategies.

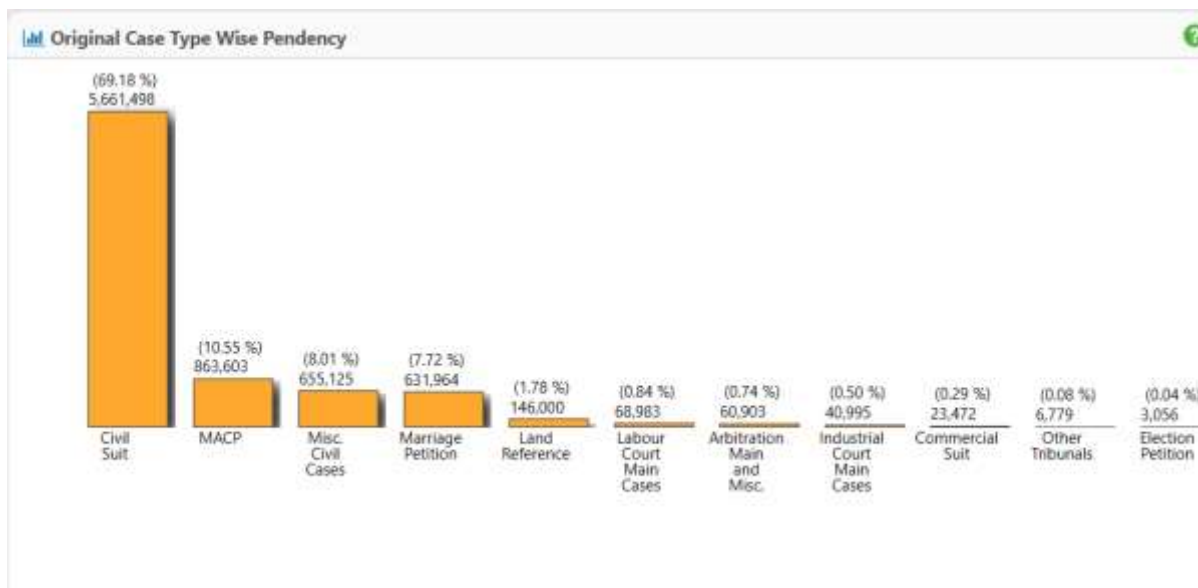
4. Mediation as a Dispute Resolution Tool: To resolve these issues, mediation is considered to be the best tool for the dispute-resolution system, as these processes provide a variety of advantages such as reliability, attentiveness to specific complications, impartiality, and independence.
5. Cases and real-world examples: Case laws and real-world examples may also be included in the research to show how useful and effective mediation is in resolving family disputes.

The Arbitration and Conciliation Act of 1996 as well as the Code of Civil Procedure of 1908 govern the use of mediation in India. According to Section 30 of the Arbitration and Conciliation Act, an "Arbitral Tribunal may use mediation to encourage settlement of disputes." According to Section 89 CPC, "courts can direct both parties to mediation whenever it shows up that there exists a possibility of settlement." As the title suggests, this code exclusively deals with "civil" concerns. As a result, mediation cannot be used to resolve criminal problems. So, how does domestic violence fit into mediation?

Section 498-A of the Penal Code of 1860 (IPC) addresses domestic abuse. This is a non-compoundable offense under Section 320 of the Code of Criminal Procedure (CrPC), which prohibits any compromise. This sort of offense is so heinous that courts are unable to compound it. However, in India, courts have often sent parties to mediation to resolve marriage problems, regardless of the severity of the violation. In 2013, the Supreme Court mandated mediation in all criminal courts, with a focus on Section 498 cases.

In *Mohd. Mushtaq Ahmad v. State*⁴, the wife filed a divorce petition and a FIR against the husband under Section 498A IPC due to arguments and conflicts between the pair after the birth of a daughter. The Karnataka High Court mandated that the parties take part in mediation under Section 89 CPC. soon after a calm mediation process to resolve the conflict, the wife decided to have the FIR annulled.

⁴ 2015) 3 AIR Kant R 363



National Data Grid 2024⁵

In the case of *Gaurav Nagpal v. Sumedha Nagpal*⁶, the Supreme Court expressed concern over the high number of divorce and judicial separation proceedings in the courts. The Supreme Court also noted that the Hindu Marriage Act specifies the situations under which a divorce decision may be obtained. The availability of such a course should not be used as a reason to seek divorce unless the marriage is permanently broken down. Instead of damaging the marriage, work on saving it. The court should be the last option for severely shattered marriages.

Objectives

- To identify the efficacy of meditation related to the matter of family dispute.
- To analyze the feasibility of mediation in custody-related disputes.

Research Questions

- Has this sudden boost in mediation made it more efficient in family-related matters?
- To what extent is mediation feasible in custody disputes?

Literature review

- **Mediation Act, 2023**

The Mediation Act 2023 is an important breakthrough in India's legal environment, aimed at

⁵ https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard

⁶ (2009) 1 SCC 42

streamlining and improving the mediation procedure for conflict resolution. Mediation, as a proactive and non-adversarial process, allows parties to establish mutually acceptable settlements meanwhile saving time and costs over traditional litigation. This law is in reaction to the rising acknowledgment of mediation's success, particularly in business situations where it is quick, efficient, and cost-effective.

The Act includes significant elements to encourage and enable the process of mediation, such as establishing a mediator registration organization, fostering community mediation, and increasing acceptance of online mediation. It is consistent with current legal frameworks, such as Section 89 of the Code of Civil Procedure, that permits courts to refer parties to a variety of conflict resolution options, including mediation.

While the Act has numerous beneficial characteristics, such as increasing access to services like mediation and protecting key mediation principles such as confidentiality including self-determination, it also has several drawbacks and problems. These include concerns such as mediator definition and registration, restrictions on contesting mediated settlement agreements, the exclusion of certain conflicts from mediation, and a requirement for clarification regarding the Act's applicability to global mediation and protection of consumer matters.

The Mediation Act 2023's success depends on its successful execution, the availability of competent mediators, and continued attempts to educate the general public about the benefits of mediation. It emphasizes the rising relevance of alternative dispute resolution approaches in obtaining equitable and just results for all parties involved in law disputes. As the legal landscape changes, the Act establishes a precedent for accepting mediation as a preferable method of conflict settlement, signaling a favorable shift in India's legal system.

Research Methodology

In this research report, the researcher used the Doctrinal methodology as the primary strategy for answering their research question. This methodological option requires a careful assessment of current legal theories, concepts, and frameworks pertinent to its subject matter. Their research relies on two main types of information: primary and secondary data. Primary data sources include governmental legislation, reports, and plans, which provide basic insights into the legal landscape relevant to the study. These sources offer a direct view of legislative texts, official government reports, and strategic plans developed by governing organizations. In addition to these primary sources, the researchers used secondary data sources such as books, research papers, and articles. These secondary materials provide additional background, analyses, and

viewpoints on the legal problems at hand, expanding academic discourse and allowing for a thorough examination of the study topic.

Conclusion

Mediation, which has its roots in India's dispute settlement tradition, has grown in popularity as a technique of settling family law disputes, notably those involving divorce and child custody. Mediation, which originated in ancient Indian legal systems and customs such as "Shantidoot" and "Gram Panchayats," has evolved into a dynamic and voluntary conflict settlement procedure. This research critically evaluates the usefulness of mediation in family law, with the goal of shedding light on its benefits, limits, and potential for promoting peaceful agreements in the middle of acrimonious legal procedures.

This research begins with an overview of family law mediation principles and procedures and then emphasizes how important it is to provide parties the power to reach mutually agreeable solutions while preserving relationships and placing a strong emphasis on the best interests of the children. The study uses case studies, legal literature, and empirical research to evaluate the efficacy of mediation with traditional litigation. It investigates different elements that affect mediation outcomes, such as mediator roles, voluntariness of participation, power imbalances, and cultural influences.

The study cites various benefits of mediation, including its cost-effectiveness, rapidity of settlement, voluntary nature, relationship maintenance, and customization of solutions to meet the interests of the parties. However, it recognizes the drawbacks, such as potential ineffectiveness in circumstances of strong viewpoints, supervision of key legal or societal concerns, and the need for all sides to agree to the process.

The enactment of the Mediation Act of 2023, which attempts to enhance and strengthen the mediation process, is a significant advancement in India's legal system. Even while the Act offers benefits including expanded access to mediation services and the preservation of crucial mediation principles, it also deals with problems related to mediator registration and the contestation of mediated agreements.

This study contributes to the continuing conversations over mediation's place in family law by shedding light on both its advantages and disadvantages. The study promotes the ongoing advancement and adoption of mediation as a primary method of dispute resolution in India's legal framework by educating policymakers, legal practitioners, and stakeholders about mediation's efficacy in fostering amicable resolutions and preserving familial ties. The research seeks to promote a culture of collaboration and mutual understanding in the resolution of family conflicts by facilitating the growth of mediation techniques via its thorough investigation.

Suggestions

The researcher has suggested a few suggestions after doing detailed research on this topic are stated below

1. Standardized training and certification for mediators covering conflict resolution, family dynamics, and legal considerations, plus ongoing professional development.
2. Integrate counseling, financial planning, and co-parenting education into mediation to address complexities, reduce power imbalances, and promote cooperation and well-being.

