

Confidentiality An Important Essence in Mediation Proceedings in Matrimonial Disputes: An Indian Perspective

Shreya Chaubey

Research Scholar, Maharashtra National Law University Nagpur

ABSTRACT

In India, Marriage is always considered to be a sacred institution and holds immense cultural and social significance. It is a bond between two individuals which extends to emotional, spiritual, and social dimensions. Marriage is seen as a foundation of the family unit and is considered an essential aspect of Indian society's fabric. However, it is equally important for us to understand that in our country matrimonial disputes are often viewed as a stigma, implying that they indicate the failure of a marriage and may lead to disgrace and disrepute for both the families involved in such dispute. The societal shame associated with such disputes makes it more challenging for the parties to seek assistance and guidance to address their problems.

In India, whenever parties to matrimonial disputes are dragged into the courts, it makes the situation even worst. Parties have to go through the tiresome judicial process while putting their confidential and sensitive information at stake. Here the concept of "Alternative Dispute Resolution" plays a significant role wherein using tools like Mediation, parties can resolve their matrimonial disputes in an amicable manner without further deteriorating the situation. Also, this process ensures that the sensitive information of parties is kept confidential and tailored as per the needs of the parties.

In this research work, the author has tried to circumscribe the discussion within the realms of the aforesaid aspects. The author has tried to analyse the significance of the aspect of confidentiality in the process of Mediation of Matrimonial Disputes.

Keywords: Confidentiality, Mediation, Matrimonial Disputes, Marriage.

INTRODUCTION

Mediation as a tool of Alternative Dispute Resolution Process is generally considered to be a modern innovation, however, in reality its history dates back to ancient times where it was used for dispute resolution by the Village Panchayats or community groups. With the passage of time when the courts were getting overburdened due to extensive litigation in the 20th century, Mediation and other processes like Arbitration, Negotiation, etc., were recognised as alternatives to litigation. Today, it can be seen that mediation has gained immense popularity in India with adequate supportive legal frameworks. The success of mediation in resolving disputes like family matters, commercial disputes, employment disputes and many more has led to its increased use and recognition as an effective alternative to the traditional judicial system.

The aspect of Confidentiality is always considered to be of utmost importance whenever it comes to any sensitive matters like offences against women or be it matrimonial disputes. We still live in a society where disputes related to marriage are considered a stigma. Thus, it is very common that parties involved in such disputes may be reluctant to share their personal information, as the same could be the reason for public shame and humiliation. It is for this reason only maintaining Confidentiality of the information holds significance as it provides a safe and private space for parties to share their concerns and mediate a mutually acceptable solution.

Further, ensuring confidentiality would enable parties to be more open and honest in their communication, leading to a greater chance of resolving their issues in an efficient and amicable manner. When parties are submitting their dispute towards Mediation, it is important that they are provided with best solutions to their dispute while keeping the confidentiality of their information intact. It could be a concerning issue as the breach of confidentiality can cause irreversible damage to the reputation and future prospects of the parties and their families. Therefore, mediators are duty bound to take necessary steps to ensure the confidentiality of the parties involved.

STATEMENT OF PROBLEM

Whenever a matrimonial dispute comes before the court of law, the sensitive information of the parties always remains at stake of being publicly exposed. Despite the best efforts of the parties as well as the court, it is very difficult to keep the information confidential with respect to matrimonial disputes, once parties submit the same before the court. Thus, it is to be analysed whether the process of mediation could be used to secure the confidentiality of the parties to the matrimonial dispute.

Research Objectives

This study aims to undertake a critical analysis of the topic “Confidentiality an important essence in mediation proceedings in matrimonial disputes- An Indian Perspective” with the help of existing legal provisions and judicial interpretations.

The Objective of the study is:

1. To Understand the prevailing need of confidentiality in the mediation process.
2. To Analysis the significance of maintaining confidentiality regarding the information of parties to matrimonial disputes.
3. To understand the role of mediators in maintaining confidentiality while resolving matrimonial disputes.
4. To analysis the existing legal framework on confidentiality and important judicial pronouncements with respect to confidentiality in matrimonial disputes.
5. To evaluate the need of strengthening the aspect of confidentiality in the process of mediating matrimonial disputes.

RESEARCH HYPOTHESIS

1. Not only would ensuring confidentiality enable parties to the dispute to be more honest in their communication, but it would also enhance the chance of resolving their issues in a more truthful, amicable, and efficient manner.

RESEARCH QUESTIONS

Following are the research questions:

1. How important is to keep confidentiality of the information in matrimonial disputes in mediation proceedings?
2. What role does confidentiality plays in resolving matrimonial disputes?
3. How far confidentiality as an essential tool has proved to be successful in the mediation proceedings?
4. Which are the concerned legal provisions with respect to confidentiality in mediation proceedings vis-à-vis matrimonial disputes?
5. How far the aspect of confidentiality ensures the faith of parties to matrimonial disputes in the process of Mediation?

REVIEW OF LITERATURE

1. “Confidentiality in Mediation: An Indian Perspective by Shraddha Bhosale”¹

This article focuses on the significance of confidentiality in mediation, in Indian perspective. It covers the aspect of confidentiality and its relevance to the mediation process, as well as the legal framework governing it in India along with various judicial pronouncements. This article focuses as to how the Indian aspects of Mediation is in consonance with the ICC Rules on Mediation as well as UNCITRAL Model.

2. “Scope of Mediation in Matrimonial Disputes in India by Archi Agarwal”²

In order to focus specifically upon the significance of Mediation in Matrimonial Disputes, the author referred to this article wherein it has been discussed as to how Mediation as an ADR plays an important role in resolving some of the crucial disputes like Matrimonial Disputes, Commercial Disputes, etc. The article has further discussed the advantages and disadvantages of Mediation in great detail.

3. “Mediation in Matrimonial Disputes- Indian Perspective by Surbhi Soni and Ruchika Sharma”

This article primarily emphasises the value of mediation as an effective alternative to litigation and give details about Indian system of mediation. The article also discusses about the difficulties faced by the mediators and parties to matrimonial disputes, such as the stigma attached to these issues and the scarcity of mediators with the appropriate training. This article helped the author in order to provide insights regarding issues that might be faced by mediators and parties to a matrimonial dispute.

4. “Mediation in Matrimonial Disputes: A Judicial Perspective by GS Mahantesh, R. Mamatha and Sunil Kumar”³

In order to get a perspective of legal scholars on the topic of mediation in matrimonial disputes, the author has extensively referred this article wherein a detailed overview of the judicial outlook of this issue has been provided. Further, the article has discussed various types of models of mediation and procedure involved in the mediation. Apart from this, in order to get the existing transnational perspective on the mediation in foreign countries for matrimonial disputes the author has extensively referred this article.

¹ Shraddha Bhosale, “CONFIDENTIALITY IN MEDIATION: AN INDIAN PERSPECTIVE” <https://mediationblog.kluwerarbitration.com/2016/01/18/confidentiality-in-mediation-an-indian-perspective/>, (Visited on May 2, 2023).

² Archi Agarwal, SCOPE OF MEDIATION IN MATRIMONIAL DISPUTES IN INDIA, <https://dejurenex.com/scope-of-mediation-in-matrimonial-disputes-in-india/>, (Visited on May 2, 2023).

³ GS Mahantesh, MEDIATION IN MATRIMONIAL DISPUTES: A JUDICIAL PERSPECTIVE, [https://www.webology.org/data-cms/articles/20220502113953amwebology%2019%20\(2\)%20-%20648%20pdf.pdf](https://www.webology.org/data-cms/articles/20220502113953amwebology%2019%20(2)%20-%20648%20pdf.pdf), (Visited on May 2, 2023).

Interestingly, this article also explores the application of mediation in the cases related to Domestic Violence in India.

5. “Mediating Matrimonial Disputes in India: Trends from the Bangalore Mediation Centre by Kritika Vohra”⁴

This paper examines the trends and challenges in using mediation to resolve matrimonial disputes in India. The paper discusses the history of alternative dispute resolution in India, with a particular focus on the incorporation of mediation into the legal framework. The paper draws on data from the Bangalore Mediation Centre to identify key issues in the mediation process, like inadequate training of mediators, etc. This paper emphasizes the need to address these issues in order to make mediation an effective mechanism for resolving matrimonial disputes in India.

RESEARCH METHODOLOGY

This research work has been done while keeping the use of logical reasoning in mind. The key components of the study have been discussed on the theoretical basis and has been used for discussion in the majority of this research paper. This doctrinal study, which has been utilised to write this research paper, is analytical and descriptive in nature. The author has researched a variety of primary sources, including “statutes, committee and commission reports, books, articles, journals, newspapers, and e- resources.” The opinions of academics, researchers, and other experts who have written on this subject have been used as a reliable source of inspiration for the study. E-resources have made a significant contribution to research by allowing the author to access the most up-to- date and relevant material on the web, allowing them to study the subject from multiple perspectives.

Confidentiality in Matrimonial Matters

• Meaning of Confidentiality-

Disclosure of "private or secret matters to another" or "the relation of intimacy or trust between persons so confiding" are both examples of what the Oxford English Dictionary calls "confidentiality." So, the mediator-party privilege and the special trust connection between the mediator and the parties to a dispute are both important aspects of mediation secrecy. This distinction indicates a significant difference in approach, yet mediators seldom make it. In the mediation process, not all considerations are equal. Lovenheim, for one, believes that the mediator-client relationship is so special that it must be safeguarded at all costs, arguing that "the absolute requirement of confidentiality places on the mediator the same pressures that a priest has regarding confession and a lawyer has with a client." Some people see the partnership primarily as a tool for conflict resolution. According to one study, "an 'expedient' mediator may be less respectful of the relationship and more willing to break confidentiality in order to advance the settlement."⁵

• Need of Confidentiality in Mediation Proceedings-

Confidentiality is one of the key aspects of mediation that sets it apart from other forms of dispute resolution. Given the sensitive nature of matrimonial relations, the element of confidentiality becomes of utmost importance as troubles in matrimony does not only attract the legal sanctions but also societal stigma and prejudice to both the partners and more specifically to the wife. By keeping the proceedings

⁴ Kritika Vohra, “Mediating matrimonial disputes in India: Trends from the Bangalore Mediation Centre”, Economic and Political Weekly, Vol. 52 No. 45 2017, p. 57.

⁵ Kevin Gibson, “Confidentiality in Mediation: A Moral Reassessment”, Journal of Dispute Resolution, Vol.1992 No.1 1992, p. 3-4.

confidential, the parties involved can feel safe in sharing sensitive information without fear of it being used against them in court. It also promotes open and honest communication between the parties, which can ultimately lead to a faster and more amicable resolution. The process of mediation involves both parties in a cooperative and collaborative effort to reach a settlement that satisfies both parties' interests. In "*Potter v. Potter*," the psychologist's report concerning the information between the married parties was not permitted to be proved due to confidentiality principle.⁶ In the case of "*Rama Aggarwal v. PIO, Delhi State Legal Service Authority*," CIC went into the extent of saying that no information relating to a mediation proceeding shall be acquired through the Right to Information Act, 2005 as it falls under the protected blanket of confidentiality.⁷

Delhi High Court, in the case of "*Smriti Madan Kansagra v. Perry Kansagra*," while deciding upon the issue whether the parties may refer to the counsellor's report as furnished in the process of mediation of mediator's report in cases where the process fails altogether, answered the question negative. Herein, the case was related to a matrimonial dispute involving custody of the child born out of the wedlock of the parties. The court held, that "*confidentiality is the essence of mediation proceedings*" hence a "permanent dark area" is created by the mediation proceedings which cannot be reached and is off limits. The mediator shall not and cannot file mediation reports in court trials in cases where the process fails altogether.⁸ But the judgment was reversed when the review petition was filed, and Supreme Court allowed the submission of counsellor's report.⁹

Moreover, India follows the principle of "without prejudice" confidentiality meaning that the proceeding remain confidential irrespective of the outcome rendering the very purpose of mediation is to balance public interest of the parties involved especially that of a child. Dominant considerations shall be to maintain the confidentiality due to the sensitive nature of the issues with strings attached.

• Role of Mediator in Maintaining the Confidentiality-

Mediation is a form of alternate dispute mechanism wherein the disputant parties are assisted by a third neutral party called the mediator who assists and facilitates the whole process of addressing issues and coming up with an amicable solution acceptable to both the parties. It has become the most referred alternate dispute redressal mechanism when it comes to matrimonial disputes whereby the parties are usually hostile and unassisted unhindered communication between them seems impossible.¹⁰

The mediator plays the most important role here as these strong feelings cannot be overlooked in matrimonial disputes and one cannot only focus on mundane aspects like financial while considering such disputes. The issues are more sensitive and disputants are fragile. Hence, the task of the mediator is immense to cast a bridge between the parties and helping them reach an amicable solution while doing the least possible damage to their relationship.¹¹ The key feature of mediation becomes the confidential relationship between the mediator and the disputing party.

The role of the mediator in maintaining confidentiality cannot be overstated. "*Rule 18 of Delhi High Court Mediation and Conciliation Rules 2005*," provides that the mediator is responsible for ensuring

⁶ *Potter v. Potter* 417 U.S. 40 (1983).

⁷ *Rama Aggarwal v. PIO, Delhi State Legal Service Authority* CIC/SA/A/2015/000305.

⁸ *Smriti Madan Kansagra v. Perry Kansagra* 2017 S.C.C. 12156.

⁹ *Smriti Madan Kansagra v. Perry Kansagra* 2019 S.C. 211.

¹⁰ Saba, CONFIDENTIALITY IS THE ESSENCE OF MEDIATION PROCEEDINGS, SCC Blog, <https://www.sconline.com/blog/post/2017/12/14/confidentiality-essence-mediation-proceedings/> (Visited on May 4, 2023).

¹¹ Kartik Arora, MEDIATION IN FAMILY AND MATRIMONIAL DISPUTES: A CRITICAL STUDY, https://www.sharda.ac.in/attachments/school_publication/10_Final_8.pdf (Visited on May 4, 2023).

that all parties involved understand the importance of confidentiality and agree to maintain it throughout the mediation process.¹² Additionally, the mediator ensures that all sensitive information disclosed during mediation is kept strictly confidential, and is not disclosed to anyone outside of the mediation process without the express consent of all parties involved.¹³ In this way, the mediator acts as a guardian of confidentiality, ensuring that all parties can participate in the mediation process with confidence and trust in the process.¹⁴ In order to accomplish this, mediators must create an environment of trust and open communication between the parties. By fostering this environment, the mediator can guide the parties towards a mutually acceptable outcome while still maintaining the confidentiality of the information discussed.

In the landmark verdict of “*Moti Ram v. Ashok Kumar*”¹⁵ the court ruled the role of mediator as guardian of confidentiality of mediation proceeding and observed that this confidentiality can’t be breached by the mediator even before the court of law. Court held that if the mediation was successful, the mediator shall deliver the settlement agreement signed by the parties to the Court without stating what occurred during the mediation procedures. When mediation fails, the mediator should simply say that mediation failed. The court concluded that only the concluding executed agreement if any shall be admitted, anything else said and done shall be protected by the confidentiality clause of mediation. Prior to this, there was no statutory authority which imposed such restrictions.

- **Confidentiality and Privilege**

The confidentiality of mediation discussions is handled differently from one state to the next. Evidentiary rules specific to mediation, statutes conferring privileges or secrecy, agreement by the parties, court orders, and the application of precedent or persuasive legislation from other jurisdictions can all serve to protect conversations made during mediation. The standard protections consist of maintaining confidentiality and granting certain privileges. Communications made during mediation are privileged if its possessor may refuse to disclose them and can enjoin others from doing so in a subsequent action. The mediator and any non-party participants may be afforded a privilege in some jurisdictions that would bar any privileged communications from being used as evidence. The parties involved, the parties bound, the types of procedures in which mediation communications are protected from revelation, and the types of communications shielded from disclosure in mediation should all be detailed in the privilege’s agreement. Due to the various different situations in which the word "confidentiality" is used, there is currently a lack of clarity on how to best protect mediation conversations. When we say that your mediation chat will be kept confidential, we mean that it will not be used against you in court, outside of court, or anyplace else. Since the existing phrase alludes to both mediation privilege and secrecy, it may be more confusing if it were used to refer to protection for mediated communications in general, or in addition to the protection offered by privilege. In addition, the term "privilege" rather than "confidentiality" should be used when talking about the protection of privilege. Further complicating matters is the fact that unlike with attorneys, physicians, or ministers, the principles of secrecy and privilege in mediation only bind the professionals to whom the material was provided during the mediation process. However, due to the mediation's

¹² Delhi High Court Mediation and Conciliation Rules 2005.

¹³ Ibid.

¹⁴ Shatrajit Banerji, ETHICAL PRACTICES TO BE FOLLOWED BY A MEDIATION, Cyril Amarchand Blogs, https://corporate.cyrilamarchandblogs.com/2020/10/ethical-practices-to-be-followed-by-a-mediator/#_ftn6 (Visited on May 4, 2023).

¹⁵ *Moti Ram v. Ashok Kumar* 2010 SCR 809

confidentiality and privilege, nobody can talk about what happened. Two comments on a recent post used the term "confidential" to describe measures used to protect communication between all persons concerned, not just the professional(s). They further note that the presence of third or hostile parties does not invalidate the privileges afforded by attorney-client communication.¹⁶

Current Legal Framework With Respect To Confidentiality

Mediation, being not statutorily regulated poses issues and enforceability is altogether reduced. Mediation and specifically the confidentiality aspect is currently regulated by the "Arbitration and Conciliation Act of 1996", "UNCITRAL Model Law", "Mediation Rules" issued by various high courts and Mediation Training Manual as issued by the Supreme Court.

"Article 14 and 20 of the UNCITRAL Conciliation Rules" provides for the matter at hand. **Article 14** provides that the conciliator and the parties shall maintain confidentiality at all times which shall extend to the settlement agreement so reached upon. Further, **Article 21** states that any views expressed by the mediator or the parties in the course of the mediation, admissions, proposals and aversions or willingness to accept/deny any proposal so extended shall not be introduced and admitted as evidence in the court of law.

Section 75 of the Act says that the conciliators and the parties are obligated to keep all the matters related to the conciliation proceedings confidential which also extend to the settlement agreement.¹⁷

Rule 20 of the "Delhi High Court Mediation and Conciliation Rules 2005" states that the mediator needs to disclose the factual information related to the dispute as received from a party to the other party. Further, with respect to confidentiality, the Rule states as follows¹⁸:

- When information is deluged by either of the party contingent on the condition that such information shall be kept confidential, then the mediator is obligated to keep it confidential.
- Any receipt/perusal or preparation of any report, records shall be kept confidential by the mediator, and he shall not be subjected to any compulsion regarding its disclosure.
- Parties are required to main confidentiality throughout the proceeding with respect of events that has transpired and shall continue to maintain so after proceedings as well.

Further, **Rule 27** of the said Rules states talks about the ethical standards required to be adhered to by the mediator, sub-rule 8 of which states that the mediator shall remain faithful to the relationship of trust and confidentiality as imposed upon the office of mediator¹⁹. Furthermore, sub-rule 11 states that he shall maintain reasonable expectations from the parties w.r.t. confidentiality.²⁰ Similar rules are adopted by the Madhya Pradesh High Court²¹ and the Odisha High Court²² with a few changes.

With an intention to streamline the mediation process, the Parliament introduced **Mediation Bill 2021** but it lapsed. The same is expected to be reintroduced in the upcoming monsoon session of parliament. **Section 17(2)** of the said draft Bill stated that the mediator shall be guided by the principles of confidentiality all

¹⁶ Fran Tetunic and Gregory Firestone, "Confidentiality and Privilege for Family and Child Protection Mediation: A Roadmap for Navigating the Innovation, Inconsistency and Confusion", Family Court Review, Vol. 58 No. 1 2020, p. 46-67.

¹⁷ Arbitration and Conciliation Act 1996.

¹⁸ Delhi High Court Mediation and Conciliation Rules 2005.

¹⁹ Ibid.

²⁰ Ibid.

²¹ "Madhya Pradesh High

Court Mediation Rules, <http://www.bareactslive.com/MP/mp898.htm#21>, (Visited on May 7, 2023).

²² "Odisha High Court Mediation Rules, <https://www.orissahighcourt.nic.in/civil-procedure-mediation-rules-pdf-view/1/>, (Visited on May 5, 2023).

the times and shall adhere to such ethical standards.²³ **Rule 23** explicitly dealt with the aspect of confidentiality, it stated that the mediator and the parties shall keep the information strictly confidential during as well as after the proceedings.

Section 24(2) while imposing reasonable restrictions upon absolute confidentiality states that no privilege shall be granted to:

- Any threat or any statement showing intent of committing an offence or any information pertaining to child abuse and domestic violence.
- Or any statement which show intention of either of the party to harm public safety and health.²⁴

Section 70 stated that if any information is divulged on the condition that such shall not be disclosed, then the mediator is highly obligated to adhere to the same.²⁵

Significance Of Confidentiality In Mediation Of Matrimonial Dispute

In today's rapidly evolving society, the need for privacy and confidentiality has become more crucial than ever before. With the growing demand for dispute resolution, mediation has taken on a pivotal role in maintaining the confidentiality of sensitive information. In the cases of matrimonial disputes where the parties are well aware of each other secrets, the protection of such secrets becomes paramount. The key feature of mediation is its confidentiality. In any matrimonial dispute, whether it's about child support or custody arrangements, a huge amount of sensitive information is revealed. In these situations, confidentiality is an important concern for all parties involved. Without mediation, parties may go to court, which opens the case to the public. The public nature of court cases makes it difficult to keep the details of the case confidential, which can be incredibly detrimental in many circumstances. Mediation on the other hand provides a safe and confidential setting where parties can discuss their issues and come to an agreement, without the fear of details being made public.

Confidentiality in mediation not only protects the parties privacy but also allows them to come out of their shell and put their grievances more aggressively, which leads to a more successful mediation outcome. Furthermore, it ensures that sensitive information doesn't end up in the wrong hands, such as in a court or public record. This helps to create an environment of trust and facilitates more productive negotiations between the parties involved.

It should be noted that confidentiality in mediation is not absolute²⁶ but can be breached in cases like where exist any threat or any statement showing intent of committing an offence or any information pertaining to child abuse and domestic violence, Or any statement which show intention of either of the party to harm public safety and health.²⁷ Another exception of confidentiality is sought when it comes to the custody of child. The court while adjudicating review petition in case of "**Perry Kansagra v. Smriti Madan Kansagra**"²⁸ held that confidentiality is paramount when it comes to mediation in cases pertaining to the matrimonial disputes like divorce and settlement but when the question is of child custody or guardianship, all rules which might become obstacle in the best interest of child should take back seat. Bench observed that statement or argument made by the parent during mediation would be well protect under confidentiality clause but the responses by the child would taken into consideration for deciding

²³ Mediation Bill 2021.

²⁴ Mediation Bill 2021.

²⁵ Ibid.

²⁶ Dorcas Quek Anderson, "Piercing The Veil Of Confidentiality In Mediation To Ensure Good Faith Participation- An Untenable Position," 31 SINGAPORE ACADEMY OF LAW JOURNAL (2019), 709-726.

²⁷ Ibid.

²⁸ "**Perry Kansagra v. Smriti Madan Kansagra** 2019 SCC Online SC 211."

what's the best interest of child. The court held that confidentiality clause during mediation proceeding would not be applicable in matters of child custody.

Thus, by protecting confidential information, mediation also preserves the relationships between parties. In addition to confidentiality, mediation can also help to foster open communication.

Analysis and Personal Opinions

Though the confidentiality in mediation is paramount, but the following legal framework utterly lacks the stringent application of the mediation principles and efficient enforceability mechanism. This is a high time to introduce a streamlined, uniformly governed mediation process providing for effective retribution mechanism in cases of breach or action in contrary to the essence of mediation which is confidentiality. The Mediation Bill so introduced covers the aspects of confidentiality to much extent and was indeed a progressive step towards uniformizing the whole mediation proceedings, but such bill has not been able to be transformed into act. Although, the said Bill too had lacuna and it is expected that whenever such Bill is reintroduced, the following matters shall be provided for:

- The present bill and the high court rules blatantly lack the retribution mechanism. There is no penalty whatsoever imposed upon the party/mediator not adhering to the said principles/rules.
- There is a need to impose a civil as well as criminal penalty upon the infringers so as to effectively implement the principles of confidentiality.

Thus, the present mechanism is not sufficient as the information so revealed is definitely not admissible in the court of law but mere disclosure of such information irrespective of its admissibility is against the essence of mediation and should be made an offence per se as matrimonial matters are distinct from other matters and are more sensitive in nature due to involvement of raging emotions and feelings and divulgence of sensitive information might prejudice either of the party socially as the institution of marriage still goes strong in a country like India. Hence, mere disclosure of such information shall be made an offence irrespective of its admissibility in the court of law.

Mediation is highly referred and suggested medium of alternate dispute resolution because of its confidentiality and other associated benefits. Any compromise on the very essence of the process negates the intention behind the whole process and goes against the very spirit of mediation. Hence, there is a need to impose more stringent regulations regarding maintenance of confidentiality and introducing uniform process is yet another need of the hour. What the monsoon session of parliament brings for mediation is something to look forward to.

CONCLUSION AND SUGGESTIONS

Mediation and courtroom litigation are both methods of resolving disputes, but their primary differences lie in the process and outcome. On one hand Mediation is a voluntary and a confidential process where parties work together to reach a mutually beneficial agreement, with the help of a mediator. Whereas courtroom litigation is an adversarial process where parties present their case through lawyers before a judge, who ultimately makes a decision that may not satisfy either party.

Thus, it can be said that in mediation, it is the parties who control the process and determine the outcome. However, in order to ensure that parties are resolving their disputes satisfactorily, it is important that they could put their concerns before each other while keeping the aspect of confidentiality into consideration. There is no shadow of a doubt that confidentiality is a crucial element of mediation proceedings in matrimonial disputes in India.

Confidentiality provides a safe space for parties to openly discuss and negotiate their issues without fear of judgment or repercussions. Confidentiality not only fosters trust between the parties and the mediator but also encourages them to share sensitive information that may be necessary to reach a mutually beneficial agreement. As the author in the research work discussed that in which of the cases falling under matrimonial disputes the aspect of mediation and confidentiality can be used.

It is to be understood that while there are certain limitations to confidentiality, it is still an important tool that can help reduce the stigma associated with seeking help for matrimonial disputes in India. Therefore, it is imperative that mediators and parties involved in matrimonial disputes prioritize and uphold the principle of confidentiality throughout the mediation process to ensure a fair and successful resolution.

Following are some of the suggestions that could be incorporated in order to make the mechanism pertaining to confidentiality in mediation process for resolving matrimonial disputes better in India. The author has tried to enlist only those which has not been properly covered in the available literature on this topic:

1. While the legislators and judiciary has stressed upon making a stringent mechanism to ensure confidentiality in the process of mediation, it should be ensured that specific guidelines with respect to matrimonial disputes are carved out.
2. Role of mediator in ensuring confidentiality of the information of the parties to matrimonial disputes should be well defined and codified.
3. Categorisation of suitable cases of matrimonial disputes which can be dealt with the aspect of confidentiality in the process mediation should be well defined and codified.
4. Adequate sensitisation of mediators should be ensured in order to make the environment of mediation party friendly.

The aforesaid suggestions are only indicative and the same could be made more better with further development in this field.

The author has tried to answer the problem indicated in this research work in an adequate manner. Further, all the research questions have been answered in an analytical manner. Along with the research work has been done in the light of research methodology and keeping the scope and limitation into consideration.

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