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ROLE OF MEDIATION IN FAMILY DISPUTES: A COMPARATIVE STUDY OF PRE-LITIGATION AND POST- LITIGATION MEDIATION

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ABSTRACT
Family disputes, often found them into fights like marriage, custody battle, alimony, and property settlement. The very elements are so adversarial, time-consuming, and expensive; trying to litigate the matter will definitely not help reduce the conflict, but rather much aggravate it. Mediation has thus emerged as an appropriate mechanism for alternative dispute resolution with the search for cooperation and understanding. The function of mediation in family conflicts is explored in this study with comparative reference to pre-litigation mediation and post-litigation mediation. Pre-litigation mediation takes place before the parties go to court while post-litigation mediation is applicable after filing of the case, and sometimes appointed by the court. Research dictates that pre-litigation mediation is by far the best in preserving familial relationships and reducing conflict at its lowest level in time and legal expenses. It would allow the environment of coming to a less adversarial agreement without impairment to dignity and emotional wellness. Post-litigation mediation, however, occurs after legally adversarial positions have already been taken by the parties, resulting in increased hostility and hard-line positions. But post-litigation mediation continues to be relevant as it presents disputing parties with a chance to revise their stands and aids in minimizing the workload of courts by facilitating settlement of outstanding cases. Comparative research, this study finds that while both forms of mediation serve to significantly resolve family disputes, pre-litigation mediation is bound to yield greater satisfaction and settlement rates since it is more of an intervention at an earlier stage. However, post-litigation mediation is of critical importance when disputes cannot be avoided from proceeding to court. Based on the research, to enhance the effectiveness of mediation, greater awareness, specialized training of mediators, remedial counseling facilities, and policy initiatives promoting mandatory pre-litigation mediation in family cases are required. Together, both forms of mediation produce a more compassionate, efficient, and relation-based way of resolving family disputes
KEYWORDS: *Pre-litigation Mediation, Post-litigation Mediation, Alternative Dispute Resolution (ADR), Child Custody*

INTRODUCTION

Every family squabble has emotional aspects and so do family feuds. These disputes spring forth in relationships full of trust, love, and responsibility. From divorce to maintenance to domestic violence, child custody, or partitioning property: the aftermath associated with such family issues in their face-to-face impact cannot escape the kinetic effect on the people immediately involved and usually catapult the problem on children and extended family members. A traditional court settlement, however robust and formal it may be, is usually an adversarial situation extending emotional stress and increasing financial burden and sometimes worsening relationships. It is here that mediation shines as a distinct and humane method of settling family matters. Mediation is one form of alternative dispute resolution (ADR); where the mediator, a neutral third party, actually helps the parties to dispute arrive at an agreed solution. Mediation will rely primarily on cooperation, open communication, and understanding rather than confrontation for its effectiveness. Family matters tend to be highly emotionally sensitive and thus offer the parties an opportunity to get their messages across within the not-so-hostile environment, a rare opportunity in court. The mediator does not impose a solution; all decisions are made by the parties, leading them to come up with workable solutions that are mutually acceptable. There are two phases where mediation can happen: pre-litigation mediation and post-litigation mediation. Pre-litigation mediation is before the start of court litigation, limitations set on how long the mediation process can take, and addressing issues at their earliest stage to avoid growing out of hand and causing damage to family relationships. After the initiation of litigation, post-litigation mediation comes into play, generally as a result of a court referral. Although both processes aim to achieve concordant settlements, emotional tone, cooperation level, and bargaining positions for the parties differ vastly during the two stages. This study is purposed to assess the comparative role and effectiveness of pre-litigation and post-litigation mediation in family dispute cases. Further analysed through the modalities of both types of mediation, this study seeks to emphasize on presenting the pros and cons of and effects detention on family relationships, thus signifying the need for mediation to be understood as a relationship-based, humane, and effective approach to conflict resolution.

RESEARCH OBJECTIVES

- To examine the role and significance of mediation in resolving family disputes, especially in matters related to divorce, child custody, and maintenance.
- To analyse the process, approach, and functioning of pre-litigation mediation and post-litigation mediation in family conflict resolution.

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- To compare the effectiveness of pre-litigation and post-litigation mediation in terms of time, cost, emotional impact, and preservation of family relationships.

RESEARCH QUESTIONS

- What is the role of mediation in resolving family disputes, particularly in cases involving divorce, child custody, and maintenance?
- How does pre-litigation mediation differ from post-litigation mediation in terms of process, approach, and outcomes?
- What are the major challenges faced in both pre-litigation and post-litigation mediation processes?

LITERATURE REVIEW

- Family conflicts are all too often the most excruciatingly sensitive disputes because they include legal and emotional layers, according to **Folberg and Taylor (1984)**. In comparison with the formal acknowledgement that litigation takes, traditional methods tend to be adverse, long and costly, and psychologically draining. As a result, the mediationists or legal scholars and practitioners have tended to advocate mediation increasingly as an ADR that stands for co-operative, confidential, and relationship-preserving methods of dispute resolution.
- This is because **Kelly (2004)** observes that mediation in family matters leads parties towards amicable settlement much. Again, it reduces post-dispute hostility and promotes ongoing cooperation, as in the case of children.
- **Moore (2014)** states that mediation is a voluntary process that takes place when an independent third party helps warring parties to come to a mutually agreeable solution through consultation.
- **Menkel-Meadow (2011)** captures the idea of pre-litigation mediation when one states that it is held early enough before a dispute goes to court. This mediation is largely of a voluntary nature and basically preventive from escalation.
- **Sourdin (2010)** actually states that an early intervention through pre-litigation mediation could offer quite significant benefits, in that it reduces a lot of stress, emotional trauma, and the costs related to litigation that tends to extend to a long time. The nature of the cooperative process of pre-litigation mediation encourages both communication and understanding, thus allowing for creative solutions to meet parties' needs. Early-stage mediation has higher satisfaction rates and better relationship outcomes, especially divorce and child custody cases **(Kelly and Emery, 2003).**
- **Shavell (2004)** reveals that post-litigation mediation, which tends to occur after something has happened in court (sometimes due to court referral) actually helps to lessen the congestion in court; it has structure for potential settlement, as it creates an opportunity for settlement.
- **Winslade and Monk (2000)** argued that whereas the legal context rigidifies through pre-existing adversarial positions, post-litigation mediation is still able to confer benefits, such as less court time, limited litigation costs, and complete or partial settlement. However, it should be noted that post-litigation mediation will not serve family relationships very well, for it will probably have much more hostility and emotional tension when disputes reach this stage, as noted by **Emery (2012).**
- **Riskin (2002)** also remarks that the success of both pre-litigation and post-litigation mediation depends on factors such as hearer qualification, legal framework support, voluntary participation, and the willingness of parties to compromise. In India, for example, Section 89 of the Code of Civil Procedure, 1908, and the Family Courts Act, 1984, recognizes the significance of mediation in family disputes and, hence, encourages courts to refer cases for mediation rather than adjudication; that is, institutional acceptance of these benefits.

LEGAL FRAMEWORK OF MEDIATION IN FAMILY DISPUTES

❖ Section 89 of Code of Civil Procedure, 1908

Section 89 of the Civil Process Code in force in l908 is introduced by the Civil Procedure Amendment Act, 1999, and it provides the statutory foundation in India for courts to explore Alternative Dispute Resolution (ADR) mechanisms for amicable settlement of disputes. This provision empowers the courts to direct the parties to attempt resolution by way of mediation, conciliation, arbitration, or judicial settlement conferences at any stage of litigation if they find that there is reasonable possibility of settlement. The core idea of Section 89 is to reduce the burden on too many courts, lessen the number of protracted litigations, and make amicable voluntary dispute resolution possible. Courts now have a choice under this section to direct disputes to mediation before a case is brought to court, as well as after instigating litigation. This is most significant in cases of family disputes: it recognizes the ability of parties to resolve emotionally charged issues such as divorce, custody of children, alimony, and property disputes outside the courtroom's adversarial fire. A mediation process must be conducted by a qualified mediator or by a duly qualified mediation institution if the mediation process has been referred by a court under Section 89 and the parties are free to confidentially negotiate amongst themselves voluntarily. Once the agreement is reached, it should be recorded in the form of consent decree by the court, which would then 'legalize', enforce and bind it. I appreciated your offer to assist me in preparing prison letters, but I did not need your help for that because I know what is required. Mediation under Section 89 has to happen before a qualified mediator or by a properly established institution for mediation. The parties are encouraged to engage in free and confidential negotiations. Upon coming into agreement, it shall be formalized in the consent order of the court that enforces it within the laws. That ensures that such mediated agreements have just as much force as a court judgment, thereby giving certainty and safekeeping to the parties concerned. The Supreme Court of India commented upon the applicability of Section 89 in supporting court-annexed mediation, particularly in family law disputes, thereby maintaining relationships and rendering less adversarial the temperament of the disputes. Legal services authorities and family courts have further been identified as the facilitators of mediation under this section, thus making

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mediation accessible while profusely helping the disputing parties with professional advice.

❖ **Family Courts Act, 1984 (duty to promote settlement)**

The Indian Parliament enacted the Family Courts Act, 1984, in order to confer special legal status on an issue so as to resolve disputes pertaining to marriage and family affairs in a much faster and amicable manner. The Act expresses that family disputes involve emotional, social, and financial complexities and therefore necessitate a more sensitive and conciliatory approach rather than a strictly adversarial one. The Family Courts are put under an obligation by section 7 of the Act to make efforts at settlement and conciliation. Under this provision, the Family Court has a duty to encourage these parties towards a mutually acceptable settlement before it decides to contend with the dispute. The court is advised to adopt flexible, informal, and non-adversarial procedures, taking into account the welfare of the parties, and particularly, of any children involved.

Features of the Family Courts' duty to promote settlement include:

1. Foster Conciliation: The court encourages the parties to negotiate by delineating areas of common interest and clarifying real points of dispute for voluntary settlement.

2. Mediation and Counseling Referral: The court might references parties either to mediation by professional mediators or family counselors and legal aid institutions for the furtherance of negotiations and reconciliation.

3. Informal Proceedings: The Act gives the court an allowance to follow informal processes as opposed to civil court practices; imbued within the spirit of cooperation conducive to settlement.

4. The Interests of the Parties and of the Children: Any settlement or order should take into account the social and emotional well-being of family members, and especially that of minor children, so as to ensure that the settlement is fair while protecting the most vulnerable parties.

Consequently, mediation and conciliation have been integrated in the 1984 Family Courts Act as instruments for the resolution of family disputes. Accordingly, the law combines authority and duty to see settlement, and thus the spirit of settlement is encouraged to deter unnecessary litigation and preserve family ties. More practically, this law complements Section 89 of the CPC, 1908, as an area of specialized forum where mediation referred by court can be applied with great efficacy.

❖ **Mediation Rules and guidelines under Legal Services Authorities Act, 1987**

The Legal Services Authorities Act, 1987 has been meant, among other objectives, for providing free and competent legal services to those at the margins of legal and social norms so that access, affordability, and speed apply to justice. The Act has, however, gone beyond legal aid in recognizing ADR mechanisms, including mediation and conciliation as providing options for the amicable resolution of disputes. Under the sections, the National and State Legal Services Authorities are empowered to conduct programs and establish centers for mediation, counseling, and dispute resolution. They have been entrusted with the function of framing rules and guidelines about mediation, especially on disputes that parties would not have easily taken to formal courts or in need of reconciliation.

Features of Mediation under the Act:

1) **Able Mediators:**
   - Thus, mediation in line with the Act is going to be given by personnel who are qualified enough to mediate; legal practitioners and retired judges, social workers, and trained people from LSAs join them.
   - It is also a guarantee that discussions will be ethical, balanced, and confidential.
2) **Neutralizability and Confidentiality:**
   - All meetings of mediation of the LSAs are confidential.
   - Participation therefore always was voluntary thus no party is forced to agree or perform any act contrary to his will.
3) **Dimensions of Solutions Adopted:**
   - First, mediation purposes especially where it is family disputes sensitive to compromise instead of wrecking an otherwise good relationship.
   - These agreements are drawn up in writing and if referred from court are presented as consent decrees.
4) **The Courts Connect:**
   - Compliance with section 89 of the CPC, 1908, for professional mediation services under what is termed as referred by the court.
   - All mediation and conciliation cells established by LSA in each district aim to widen the scope of alternative dispute resolution, especially in family dispute types of cases, matrimonial cases, and domestic issues.

❖ **Supreme Court Directions**

1. **Mediation As Said by the Apex Court:**

- Incidentally, in Sundaram Finance Ltd. v. NEPC India Ltd. (1999), the Supreme Court laid stress upon referring the dispute to various alternative mechanisms for dispute resolution including mediation.
- The intent is that mediation should be encouraged and should thereby serve to bring down the ever-increasing backlog of cases pending before the courts in India-a point emphasized by the Court in Salem Advocate Bar Association v. Union of India (2005).

2. **Family Law Context:**

- In matrimonial disputes, particularly divorce, maintenance, and child custody issues, the Supreme Court has repeatedly insisted upon mediation.
- The Court, in M.C. Mehta v. Union of India (2002), stated that although broadly ADR is not related to family matters, yet in cases where reconciliation is possible, it certainly acquires an importance.

❖ **High Court Guidelines:**

1. **Court-Annexed Mediation:**

- A court-annexed mediation center has also been set by High Courts like Delhi, Bombay, Madras, and Karnataka in their family courts to ensure amicable resolution.

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- In divorce and child custody cases, High Courts mandate judges to refer parties in family disputes to mediation before going for full trial.

2. **Training and Accreditation of Mediators:**

- High Courts require that mediators be trained professionals, usually lawyers or retired judges, to facilitate these very emotionally sensitive matters in a professional manner.

3. **Mandate Mediation Efforts:**

- Such directives and circulars have been passed by a few High Courts to compel those contesting matrimonial disputes to undergo mediation prior to any final hearing of a matter.
- This also includes family counseling and laid-down process of structured negotiation.

❖ **Role of Lok Adalats and Counselling Centers/Family Counseling cells**

By setting up Lok Adalats and Counselling Centers/Family Counseling Cells, India has ensured that family disputes can be settled out of formal court proceedings. These institutions function as adjuncts to statutory provisions 89 CPC, Family Courts Act, 1984, and Legal Services Authorities Act, 1987, to present accessible, cost-effective, and amicable outlets for dispute resolution.

1. Lok Adalats:

- **Definition and Purpose:** Lok Adalats, meaning "People's Courts," are informal judicial forums organized under the Legal Services Authorities Act, 1987, to resolve disputes through compromise and settlement.
- **Role in Family Disputes:** They handle **divorce, maintenance, alimony, child custody, and property disputes**, emphasizing reconciliation over litigation.
- **Features:**
  - Proceedings are **informal, speedy, and cost-effective.**
  - Participation is **voluntary**, and settlements reached are legally binding as **decrees of the court.**
  - They reduce the **case burden on family courts** while promoting amicable solutions.
- **Effectiveness:** Lok Adalats have been particularly successful in resolving disputes in rural and semi-urban areas, where access to formal courts may be limited.

2. Counselling Centers / Family Counseling Cells:

- **Definition and Purpose:** These are institutional setups, often attached to family courts, designed to provide **professional counseling and mediation services** to families in conflict.
- **Role in Mediation:**
  - They assist parties in **expressing emotions, identifying core issues, and exploring mutually acceptable solutions.**
  - Counselors or mediators guide parties through **pre-litigation and post-litigation mediation**, helping reduce hostility and improve communication.
- **Services Offered:**
  - Marriage and divorce counseling
  - Child custody and parenting guidance
  - Maintenance negotiation
  - Emotional and psychological support for parties involved
- **Legal Integration:** Settlements facilitated by these centers can be **recorded as consent decrees** in courts if disputes are already filed, ensuring enforceability.

PRE-LITIGATION MEDIATION

Concept and meaning

Prioritizing quick intervention, these institutions lessen emotional trauma and prevent an adversarial setting occasioned by litigation. Working between formal procedures and informal options for dispute resolution, these institutions ensure that settlements evolve into practical, acceptable, and sustainable resolutions. Through the institutionalization of mediation and counseling, the Lok Adalats while Family Counseling Cells give strength to judicial thinking about reconciliation in cases related to children and sensitivity involving family relationships.

Meaning of Pre-Litigation Mediation

- Voluntary and consensual mechanism in which parties consider mediation before commencing litigation.
- The mediator is a facilitator of neutrality assisting the parties in identifying issues, exploring options, and negotiating a settlement.
- The mediator does not impose a binding decision like arbitration or litigation and therefore leaves the resolution solely within the exclusive determination of the parties.
- This embodies the general principle of amicable settlement pronounced by legal systems, including Section 89 of the Code of Civil Procedure, 1908, which promotes court-referred settlement through ADR mechanisms.
- In cases where consideration for relationships necessitates it, pre-litigation mediation is especially used in commercial matters, family matters, employment disputes, and contractual disputes.

Process Followed Before Filing a case

Pre-litigation mediation is a structured approach to resolving disputes **before they escalate to formal litigation**. The process generally follows these stages:

1. Initiation of Mediation

Mediation is initiated by any party willing to participate in it with the consent of the other party to the dispute. Such a request may sometimes be indirect. The primary aim at this stage is to ascertain whether there could be a resolution of the dispute through mutual agreement before getting involved in the court system.

2. Selection of a Neutral Mediator

The mutual consent of all parties involved or a very credible mediation institution shall appoint a competent mediator. The mediator shall conduct mediation impartially by providing an equal opportunity for all parties to advance to a satisfactory settlement.

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3. Preliminary Meeting or Joint Session

An initial session is held to:

• Explain to all parties the mediation process and relevant ground rules (including confidentiality);

• Identify the very key issues in dispute;

• Provide a frame of reference in which to discuss the issues cooperatively.

4. Private Sessions (Caucuses)

- Mediators sometimes meet with each party separately to:
- Understand their interests and concerns in depth;
- Clear any misconceptions on their side and identify potential areas for compromise.

5. Negotiation and Discussion

- Through direct talks, or with the help of communication facilitated by the mediator, the disputing parties proceed to:
- Explore possible solutions and ways of settlement;
- Analyze possible outcomes favorable to them instead of concentrating on containing adversarial losses;
- Resolve issues collectively and with the help of the mediator.

6. Drafting of Settlement Agreement

- If an agreement is reached, the mediator will assist with the drafting of the written settlement agreement, which:
- Is signed by all parties thus making it a binding contract in most cases.
- Was intended to eliminate the need of instituting a lawsuit, thus saving costs and time.

7. Termination of Mediation

- If no agreement has been reached, the mediator formally brings the session to an end and the parties have the liberty to pursue litigation.
- The mediation process can help clarify various issues and may ease the infrastructure of a following court case

Role of mediators and counsellors in pre-litigation mediation

The mediator function and counseling prior to litigation constitute important institutions for dispute resolution between two parties. They are impartial facilitators of communication between the parties, assisting them to see the other's point of view and sometimes to reach a resolution. They can be classified broadly into the following roles:

1. Neutral Facilitator

- Mediators and the counseling attorney act neutral to both parties.
- Their job is to make sure that both sides are aided in voicing their grievances and interests at the time of the process.
- Their neutrality can sustain the parties' openness during these communications.

2. Promoter of Communication

- Through the communication facilitation function, the parties accordingly access and demonstrate their interests, concerns, and priorities otherwise clouded by miscommunications, mistrust, and emotional tensions.
- Constructive communication rather than combative communication is the focus.

3. Problem-Solver and Negotiation Facilitator

- They will assist any of the parties search for alternative means for resolving the issue.
- In this regard, the parties will be guided to brainstorm possible options that can meet the interest of all concerned parties.
- However, the mediators will guide the negotiations but will never take control of the solution; that will remain exclusively for the parties to decide.

4. Educator and Legal Guide

- The mediator and counseling attorneys explain to the parties the stages, steps, and possible outcomes of mediation.
- They may touch on certain applicable legal principles, but this should not be taken as legal advice for that party or this.
- Rights and obligations will become clarified, enabling informed, responsible decisions.

5. Emotional Support and Counselling

- Often, this counselor works on emotional and psychological situations that involve family disputes, work, or even personal matters.
- Such counselling guides patients on getting past the stress, anger, and anxiety towards constructive negotiation if successful.
- His role is to help keep calm, constructive, and solution-oriented mediation.

6. Drafting and Formalization of Agreements

- Help in drafting settlement agreements that capture the totality of what both sides articulate and accept.
- This should then form part of a formal agreement to prevent any further conflicts on the same issue in the future

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Benefits

Pre-litigation mediation offers significant advantages to disputing parties and the judicial system. These benefits can be grouped as follows:

1. Time and Cost Efficiency

- Mediation, resolving disputes fast, saves crucial time compared to traditional litigation.
- Court fees, attorney expenses, and litigation-related costs are reduced, making adjudication the much affordable option for the disputants

2.Preservation of Relationships

- Unlike court processes, this fosters collaboration and understanding rather than hostility.
- This helps preserve relationships-personal, family or professional-which could have serious repercussions in future contacts with

3. Confidentiality

- Mediation proceedings are private and confidential during negotiation between parties.
- Safeguards certain information being included in the public records of a court.

4. Voluntary and Flexible Process

- Parties willingly participate and retain control over the outcome and the process itself.

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- The procedure is flexible and adaptable to cater to the particular needs of the dispute.

5. Empowerment and Control

- The parties actively participate in the decision process, therefore leading to a more gratifying outcome.
- Assures better compliance with the agreements since the resolution has mutual acceptance.

6. Reduced Court Burden

- Dispute resolution prior to filing reduces backlogs in court and thus furthers the cause of judicial efficiency.
- It also enables the courts to concentrate on cases where formal adjudication is necessary.

7. Creative and Tailored Solutions

- Therefore very often the Parties are enabled to design arbitrary innovative solutions aimed towards their-specific interests.
- These could include provisions for future cooperation, a phased payment scheme, or even some behavioral commitments that would never otherwise have been obtainable in a court judgment.

8. Stress Reduction

- Less formal and adversarial, mediation alleviates anxiety and emotional stress on the parties.
- Particularly in the case of familial, employment, or property disputes, these would be most useful.

Challenges

Despite its advantages, pre-litigation mediation faces several challenges that can limit its effectiveness:

1. Voluntary Nature and Non-Binding Outcome

- Participation of parties depends on the presence of their willingness; parties may not always be available.
- The mediation process does not have any binding outcome unless it is formalized in a settlement agreement; thus parties may refuse compliance or even withdraw consent later

2. Power Imbalances

- In disputes with stark imbalance in bargaining power such as employer-employee, creditor-debtor, dominant parties may gain unfair influence over the outcomes.
- Such factors are likely to jeopardize the perceived fairness and effectiveness of the mediation process.

3. Limited Awareness and Accessibility

- The concept of mediation before going to court is unfamiliar to a large number of people and organizations.
- Low levels of uptake mean that overall, mediation's effect on dispute resolution has been compromised.

4. Quality and Training of Mediators

- The characteristics of the mediator - being competent, neutral, and experienced - are generally the determining factors as to whether the mediation will proceed successfully or fail.
- Such mediators will be considered incompetent and biased which in turn will affect trust, communication, and fairness.

5. Confidentiality Concerns

- While mediation promises confidentiality, a concern weighing heavily on many parties is that anything they disclose in mediation will be used against them in a court case down the line
- One also sees that for several reasons full disclosure and open negotiation cannot be attained.

6. Suitability of Disputes

- It is important to understand, however, that some disputes such as criminal ones or those presenting time-pressure legal issues are poor candidates for mediation.
- The same applies, in general, to those very complex or highly technical disputes among the parties that would more appropriately require formal rather than informal judicial intervention.

7. Enforcement Challenges

- Settlements rest on voluntary compliance or judicial enforcement.
- In fact, generally, with non-compliance, the efficiency and cost-saving nature of pre-litigation mediation would be drastically eroded.

POST-LITIGATION MEDIATION

❖ **Meaning and concept**

Post-litigation mediation is an aspect of alternative dispute resolution (ADR) that occurs after a legal case is filed with the court but before final judgment is delivered. Unlike that of mediation before litigation, the primary focus of post-litigation mediation is to settle issues in the course of litigation so that it saves time, reduces costs, and cushions the judiciary.

Meaning

- This type of mediation occurs after the commencement of litigation and is voluntary or court-referred.
- In this way, the parties negotiate settlements with a mediator while the case is still on.
- An outcome, usually voluntary and mutually agreed upon, can be enforceable in law if converted into a settlement agreement.
- This principle embraces the concept of amicable resolution of disputes even within the formal judicial framework and strives to achieve a meeting point between the efficiency of ADR and the oversight of a court.

Concept

- The main principle behind post-litigation mediation is to encourage early settlement of issues during litigation so that no dragging court battle ensues for long.
- The concept promotes teamwork, exchange of ideas, and compromise while court proceedings have begun.
- Courts may encourage or even compel parties for post-litigation mediation by the provision of Section 89 of the Code of Civil Procedure, 1908, which empowered courts to refer disputants to ADR.
- Post-litigation mediation is most effective where there are family disputes, in addition to commercial litigation, and contractual disagreements, where issues

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can be resolved through negotiation and thus save costs and preserve relationships.0

- This process tries to balance judicial intervention with autonomy of the parties so that the disputants may settle their differences amicably, albeit under the guidance of the law.

❖ **Role of Family Courts and Judges**

Family Court and judges exercise significant power to facilitate post-litigation mediation, especially in family matters, domestic relationships, and civil disputes. Their role in mediation serves to enhance its credibility, equality, and legal security and to facilitate amicable settlement.

1. Referral to Mediation

- Judges screen the cases for mediation suitability and refer those cases to family counseling centers or trained mediators.
- They can also encourage or even mandate mediation as an ADR tool under the provisions of Section 89 of the Code of Civil Procedure, 1908.
- That helps to clear the clogged court system and sends cases worth settling to an amicable path.

2. Encouraging Voluntary Participation

It has indeed been shown that the greater participation in voluntary terms for oneself also means greater possibilities for the success of judicial negotiation.

3. Oversight and Supervision

- There will be control by courts as to the rule-compliance and ethical requirements in mediation by supervising interpreting processes in a manner which is neutral, fair, and transparent.
- Judicial oversight thus enhances the trust and credibility of the mediation process.

4. Formalization of Settlement Agreements

- A judge may review mediation agreements for legality and fairness.
- All parties concerned may apply to have a court order for an approved agreement for legal effect comparable to a court order.

5. Preservation of Family Relationships

- The courts strive for conciliation and reconciliation, instead of adversarial disputes, in cases involving families.
- Court-monitored mediation protects children and promotes family harmony over a long period.

6. Reducing Court Burden

- The family courts divert suitable disputes for mediation purposes and relieve the backlog of family cases in courts, directing their attention to much-needed adjudication of cases.
- This results in a more efficient and effective judiciary.

Benefits

Family Courts and judges adjudicate family and civil disputes and provide a specialized and speedy approach to justice. The benefits are enumerated hereunder:

1. Specialized Expertise

- Family Court judges are professionals dealing with family law and allied civil matters.
- They thus know how to interpret legal matters accurately and adjudicate them fairly.

2. Protection of Vulnerable Parties

- The courts are protected rights of women, children, and dependents of the family.
- Settlement of pronouncements and issues focuses mainly on welfare, safety, and justice beyond legal entitlements.

3. Promotion of Amicable Resolution

- The judges make every effort so that the parties may come to mediation and conciliation thus taking away the parties from litigation.
- So as not to break their relations and reduce the risks of further conflicts, particularly on sensitive family matters.

4. Efficiency and Reduction of Court Backlog

- Family Courts speed up the management of cases and give priority to disputes related to families.
- In addition, these courts support other mechanisms for alternative dispute resolution (ADR) in minimizing the time and cost burden of both parties and of the justice system itself.

5. Confidentiality and Privacy

- The Family Court and mediation sessions are normally confidential to protect sensitive personal information.
- This opens up the space for coming and dignifying the parties concerned.

6. Legal Guidance and Support

- Judges do so by advising on rights, duties, and legal remedies-the most important factors in making informed decisions.
- In addition, the courts can link the disputing parties with counselling and support services, which can improve the outcomes of the dispute resolution process.

7. Enforceable Settlements

- Mediated agreements can be formalized under court orders so that they can be legally binding and enforceable.
- This implies compliance and less probability of future dispute on the same issue.

Challenges

Family Courts are courts that were set up for purposes of settling family and civil disputes, and judges of these courts also take part in such matters; however, even with all this, several problems inhibit them from being effective and efficient

1. Case Backlog and Delay

- Most Family Courts have very large volumes of cases, hence delays in hearing and judgments.
- Prolonged disputes have emotional stress on parties at the same time making it less effective for resolution.

2. Limited Resources

- Many Family Courts also do not have a sufficient number of trained staffed and infrastructure besides those pertaining to counseling.
- The constraints of the different resources affect prompt hearing, quality mediation, and access to supporting services.

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3. Voluntary Nature of Mediation

- The willingness to engage parties on mediation may not always be there.
- Resistance or non-cooperation impedes the success of any amicable settlement attempt.

4. Power Imbalances Between Parties

- These differences can be in terms of economic, social, or legal knowledge that can limit negotiation.
- Judging will therefore keep in mind to adjust such differences for fair outcomes.

5. Complexity of 5.Family Disputes

- Family-related disputes have emotional, psychological, and relational dynamics that complicate resolution.
- The judges should balance law and human factors and be sensitive to such factors when dealing with cases. This task will be very difficult.

6. Enforcement Challenges

- Parties may not comply with mediation and court-approved settlements.
- Delay in enforcement may tarnish the credibility of the court system and seem to turn ineffective

7. Confidentiality and Privacy Concerns

- Assurance of confidentiality and trust is important but may not be as easy in some cases.
- The parties may be afraid to disclose sensitive information because of the possible misuse or leakage by others.

CONCLUSION

- Mediation is an important process that happens within family disputes where parties get to find amicable, fair, and sustainable solutions outside or complementary to formal litigation. The study of mediation prior to and even after any litigation highlights how both mechanisms complement each other within the dispute resolution process.
- Pre-litigation mediation would typically be understood as a preventive measure that preempts conflict for the, at least, early avoidance of the emotional and financial costs associated with litigation, retaining personal and family ties.
- Whereas post-litigation mediation involves parties seeking settlement even after filing a case, it nevertheless yields minimal court involvement through judicial guidance.
- Family Courts and judges work merely as facilitators and supervisors for ensuring fair, confidential and efficacious mediation process, resulting in legally enforceable settlements. However, there are many hurdles such as voluntary participation, power imbalances, enforcement issues and resource constraints. Development of awareness-programs, mediator training, resource facility building and legal support could all reduce the aforementioned challenges and so improve efficiency and reliability of mediation.

REFERENCES

1. Folberg, J., & Taylor, A. (1984). *Mediation: A Comprehensive Guide to Resolving Conflicts Without Litigation*.
2. Moore, C. W. (2014). *The Mediation Process: Practical Strategies for Resolving Conflict*. Wiley.
3. Kelly, J. B. (2004). *Family Mediation Research*
4. Menkel-Meadow, C. (2011). *Pre-Litigation Compulsory Mediation: A Concept Worth Considering*.
5. Sourdin, T. (2011). *Is the Tail Wagging the Dog? Finding a Place for ADR in Pre-Action Processes: Practice and Perception*.
6. Kelly, J. B., & Emery, R. E. (2003). *Children's Adjustment Following Divorce: Risk and Resilience Perspectives*.
7. Shavell, S. (2004). *Alternative Dispute Resolution: An Economic Analysis*
8. Winslade, J., & Monk, G. (2000). *Narrative Mediation: A New Approach to Conflict Resolution*.
9. Riskin, L. L. (2002). *Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed*.
10. Indian Ministry of Law and Justice. (1984). *Family Courts Act, 1984*.