



## Execution of Mediation in Matrimonial Disputes

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### 1. Introduction

Buddha said, “Mediation brings wisdom, lack of mediation leaves ignorance. Know well what leads you forward and what holds you back; choose that which leads to wisdom.”[1]

Mediation is a form of alternate dispute resolution mechanism, which aims to assist two (or more) disputants in reaching an agreement. It is an agreement, or a kind of compromise, which the parties themselves determine, rather than accepting something imposed by a third party. The unjustified delays in delivery of justice, as in the courts, hinder the credibility and efficiency of entire justice delivery system of the country.

In a developing country like India, with major economic reforms, Alternate Dispute Resolution mechanism could be one of the best strategies for quicker resolution of disputes to lessen the burden on the courts and to provide suitable mechanism for effective resolution of disputes.

This research paper talks about the status of mediation in matrimonial disputes in the states of Punjab and Haryana basically and the success rate of mediation under such cases. Moreover, the statistical data of the actual improvement in the justice delivery system outside the court rooms and the level

of crime rate have also been discussed hereafter.

### 2. Historical Perspective

As recorded in Mulla’s Hindu Law, ancient India began its search for laws since Vedic times approximately 4000 to 1000 years B.C. The early Aryans were very intellectual, who primarily resorted to the written law of divine wisdom, reason and prudence, which according to them governed heaven and Earth. This was one of the first originating philosophies of mediation.

The era of Dharma Shastras (code of conduct) followed the Vedic epoch, during which the jurists developed the philosophy of basic laws. They recognized existing usages and customs of different communities, which were used as a tool for resolving the disputes, as an indigenous method.

During the days of Yajnavalkya, there was an unprecedented growth and progress of trade, industry and commerce and the Indian merchants are said to have sailed the seven seas, sowing the seeds of International commerce. These associations were invested with the power to decide cases based on the principles of justice, equity and good conscience.

The Buddhist aphorism reflects acceptance of the principle that mediation focuses on the future instead of dwelling in the past. Ancient Indian jurist, Patanjali said, “Progress comes swiftly in mediation for those who try the hardest, instead of deciding, who was right and who was wrong.”



During the Mughal rule, Emperor Akbar depended upon his mediator minister, Birbal. The most famous case was when two women claimed motherhood of a child, the mediator suggested cutting the child into two and diving its body and giving one half to each woman. The real mother gave up her claim to save the child's life whereas the fake mother agreed to the division. The child was then given to the real mother. Though this is not a fully developed example of modern mediation, it is an example of interest-based negotiation where the neutral third party seeks to identify the underlying needs and concerns of the parties.[2]

As societies grew in size and complexity, informal decision-making processes became more structured and they gradually took the shape of a formal justice delivery system.

### 2.1 Mediation in India

In India, during the pre-British rule, the Mahajans were respected, impartial and prudent businessmen, who used to resolve the disputes between the merchants through mediation. The British system of justice gradually became the primary justice delivery system in India during the British regime of about 250 years. The British courts gradually came to be recognized for its integrity and gained people's confidence.

The concept of mediation received legislative recognition in India for the first time in the Industrial Disputes Act, 1947. Arbitration, as dispute resolution process, was recognized as early as 1879 and also found a place in the Civil Procedure Code of 1908.

The Supreme Court held the constitutional validity of newly inserted Section 89 in CPC in *Salem Advocate Bar Association, T.N. v. Union of India*.<sup>1</sup>

Section 89 of the Civil Procedure Code reads as follows,

“Settlement of disputes outside the Court”

Where it appears to the court that there exists elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the court may formulate the terms of a possible settlement and refer the same for-

- (a) Arbitration;
- (b) Conciliation;
- (c) Judicial settlement including settlement through Lok Adalat; or
- (d) Mediation

The Supreme Court of India in *Afcons Infrastructure Limited and Another v. Cherian Varkey Construction Co.(P) Ltd.*<sup>2</sup>, interchanged the definitions of “mediation” and “judicial settlement” as given in Section 89, (Relevant Para : 11 to 13). It was also clarified that there is no requirement to formulate the terms of settlement as per mandate of Section 89. (Relevant Para : 14 to 19).[3]

### 3. Mediation in Matrimonial Disputes

Mediation is an informal, quasi-judicial, voluntary, ‘without prejudice’, unbiased, confidential process, which enables parties to express their concerns, exchange

<sup>1</sup>(2003)1 SCC 49

<sup>2</sup>(2010)8 SCC 24



necessary information and make a good faith attempt to understand each other, in the presence of a neutral third party, who catalyzes the process of resolution and enables parties/disputants to dispose of their solution at their will.

Mediation in context of the matrimonial disputes is very different from that of the commercial disputes, just because of the difference in its nature. The data that has been collected revealed out the approximate of 95% of disputes to be matrimonial, 3% to be family disputes as between father-son, mother-daughter, etc. or any other relative, and 2% to be the property or water disputes. Fig. 1.shows the distribution of general disputes that are referred to the mediation centre of Punjab and Haryana High Court.

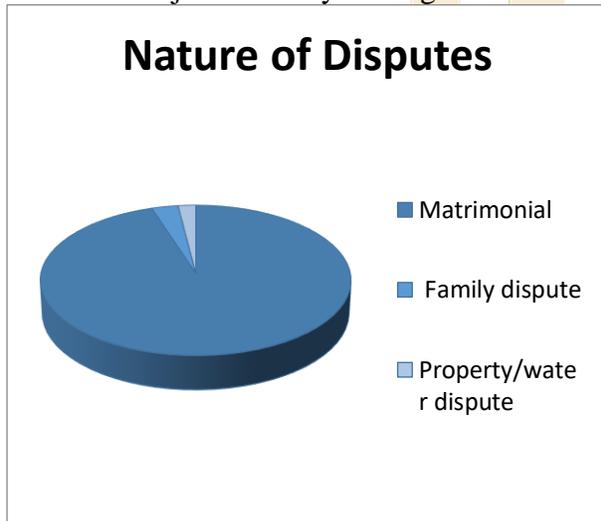


Fig. 1.The nature of general disputes referred to Mediation<sup>3</sup>

Further, the general expression also includes in itself, the kinds of disputes or problems that arise under the category of matrimonial disputes. The nature of cases

that are experienced under this category can be stated as follows,

**3.1 Section 438 CrPC- Anticipatory Bail**

The grant of bail to the person apprehending arrest is given under Section 438 CrPC. In Mediation, the disputes are settled and the fact is cleared with the help of the availability of witnesses, that whether the person concerned is apprehended falsely for the arrest or not. A settlement made under the mediation can be helpful in taking an anticipatory bail from the Court because now, the Court would not have to indulge into the legal proceedings for proving the apprehension. The cases that have been witnessed in the mediation centre include that of *Hani v. State of Haryana and Another*<sup>4</sup>(2016), where anticipatory bail has been granted by the Court, on account of the settlement by mediation; and in *Parneet Singh Swani and others v. State of Punjab and Another*<sup>5</sup> (2014), where the anticipatory bail was granted by the Court, after receiving the full-fledged report from the mediation centre stating the proof of false apprehension. Approximately, 40% of the total cases in mediation are of this kind. (Fig. 2.)

**3.2 Section 482 CrPC- Quash Petition**

In context of Section 482 CrPC, the quashing of an FIR is possible with the help of mediation report. The parties, if wish to settle the dispute economically and without much delay, take the assistance of mediation and get their petition quashed, as it has been the inherent power of the High Court,

<sup>3</sup>As per the data collected from mediation centre

<sup>4</sup>AIR 2016 SC 1

<sup>5</sup>AIR 2014 SC 785



granted under Section 482 CrPC. In the case of *Kulwinder Singh and Others v. State of Punjab and Another*<sup>6</sup> (2007), a petition has been filed, on the basis of mediation report to quash an FIR under Sections 379/466/471/120B IPC. The FIR was quashed, seeing the report of mediation to have validly settled the dispute.

Another case of *Gian Singh v. State of Punjab and Others*<sup>7</sup> (2012), had its FIR quashed on the basis of the mutual settlement under mediation. An Approximate of 35% of such kind of cases are witnessed. (Fig. 2.)

### 3.3 Section 125 CrPC- Maintenance

The cases of maintenance that are filed in the Courts can be brought to the mediation centre, and to save time and money, the help of mediators can be taken in resolving the matter. In courts, the amount of maintenance shall be presumed to be as per the relevant substantive laws, while in mediation, the amount/quantum of maintenance can be mutually decided by the parties. It is informal and more satisfactory than the Courts.

In *Rahul Labroo v. Priya* (2015), the dispute of maintenance was settled in the mediation and subsequently, the case was finally withdrawn from the competent Court of Law. This was an instance of justified economic balance for the parties.

Another case of *Rekha v. State of Haryana and others* (2014), states the use of mediation in dealing with the settlement of

the dispute under Section 125 CrPC, where both the parties had a settlement by agreeing to the amount of satisfying maintenance that was very genuine and was within the scope and reach of the husband. It was seen and felt that there was no force used, unlike in law, to pay the maintenance, but it was resolved in a very peaceful way. Approximately, 75% of the cases are seen under Section 125 CrPC in the mediation Centre of Punjab and Haryana High Court, Chandigarh. (Fig. 2.)

### 3.4 Domestic Violence Disputes

There are several kinds of disputes violating the domestic rights of the spouses, while in co-habitation. The cases of such disputes are also settled peacefully by mediation. Some of the cases, as that of *Ashok Kumar v. Anupama Sharma* (2015), had a settlement of their dispute by mediation. The nature of dispute is the emotional torture to the wife at every step of daily routine, the unjustified beatings after being drunk, abusing the children, social imbalance, and various other factors lead to such violences, as a result of which, most of the times, the wife and the children become the victims.

In some cases, the In-Laws Interference proves to be the dominating factor that leads to domestic violence, as was seen in *Amarjit Kaur and others v. Neeraj Bala* (2009), where the Mother-in-law used to unnecessarily torture her daughter-in-law, to have not brought a good amount of dowry. Most of the times, she used to beat the innocent girl. This case was referred to mediation and was successfully settled then and there. Approximately, 80% of the cases are such of a nature that are being witnessed in the recent times in mediation. (Fig. 2.)

<sup>6</sup>2007 (4) CTC 769

<sup>7</sup>(2012)10 SCC 303



**3.5 Guardians and Wards Act, 1980**

Just because of the dispute that arises between the husband and wife, sometimes the custody of the children becomes a point of paramount concern. Such cases have been witnessed for mediation where mainly Section 12 of the Guardians and Wards Act, 1980 attracts notice into the matters. The mechanism and the opportunity of mediation has successfully been able to deal with such disputes and has given out fruitful settlement reports to the High Court.

In the case of *Parminder Singh v. Bhupinder Singh and others* (2017), the custody of a minor girl was concerned, and was settled peacefully under mediation. Same was the case of *Shalu v. Mr. RajinderGoel* (2016). An approximate of 70% of the cases today in mediation is of such nature. (Fig. 2.)

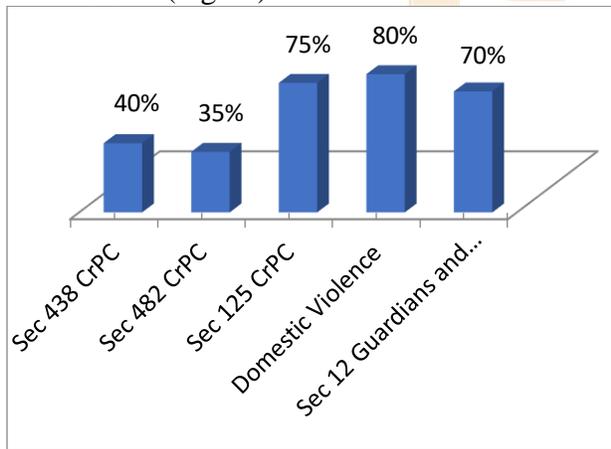


Fig. 2. Nature of matrimonial disputes under mediation<sup>8</sup>

**4. Impasse-Deadlock: A challenge to break**

Impasse-Deadlock: A word, which every mediator is scared of. There is hardly any

mediation in which the mediator does not come across an impasse. It brings a great level of frustration in the mind of mediator for the reason that he has put hours of his precious time, but parties stick to their ego. The reason for the impasse is that the parties want to have a win-win situation. Impasse can be due to the following reasons,

- (i) Parties wanting to be winner always;
- (ii) Parties feel that to establish justice, they have to fight till the end, no matter how long it would take or what could be the possible result in the end;
- (iii) Parties feel that the other party, who caused them grief/pain, should suffer serious consequences and emotional torture;

- (iv) Parties do not want to accept the finality of the decision and feel that a neutral person could determine and give the option which could be acceptable but the same, if given by the other party will be rejected out rightly.

**4.1 Practical tools to handle impasse**

- (i) Mediator has to primarily build trust in the process and in the mediator himself. The more trust a mediator builds in others, the more they will affirm his faith. It's a climate that lays foundation for transforming conflict into satisfying outcome.
- (ii) Mediator has to be patient, persistent and determined and let the parties to take a final call.
- (iii) Mediator has to appreciate the parties' credibility, trustworthiness and good faith participation to ensure workability of any agreement.
- (iv) Mediator must assist in exploring the hidden facts, concerns and fear to

<sup>8</sup>As per the data collected from mediation centre



understand the true nature of the situation.

- (v) Mediator must pack up the conflicting situation in a manner in which the parties take a balcony view and get a different approach towards possible remedies.

### 5. Children: Victim of Ego in Marital Disputes

Nowadays, the Indian society is facing a sad reality of increasing divorce rates. Marital disputes have become a social issue. The young generation is the real victim. With the many other complexities that a divorce has on the individual, family and society at large, children of divorced couples are the one who bear the main force of blow of the entire happening. Due to the tender age of such kids, they are unable to understand the actual cause of separation of their parents. Most of the time, they are being used as a bargaining weapon. In most of the cases, the parent (mother or father) in whose custody the child or children are, badly turn their kid against the other parent.

*“The birth of a child is one of the biggest miracles of God and then comes separation called “Divorce” and the child custody becomes the biggest problem”.*

In family disputes including custody of child, parties come with a number of false allegations against each other. Here, they forget about the future and emotional feelings of the children. It has been experienced by one of the mediator that a minor girl appealed with her folded hands and tearful eyes to reunite her parents, but the parents stuck to their ego.

Another serious issue out of family disputes is regarding the post-separation custody of children where again the children suffer. Depriving love and affection of both the parents, more particularly due to alienation of the child by the custodial parent and denial of proper access to the non-custodial parent by the courts causes serious harm to the mental equilibrium of the child.

*“There can be a divorce between husband and wife but there can't be a divorce between father and mother”.*

Thus, the child's lifelong emotional health and stability is of paramount value and for that they must grow up with the feeling of love and respect towards both parents rather than just becoming a bargaining tool in the hands of either parent.

### 6. “Rajesh Sharma & Ors. V. State of Uttar Pradesh & Anr.” (Judgment by Adarsh Kumar Goel, J.)

The recent case of 2017 is a very good evidence of the present scenario of cases that are referred for mediation. This case basically supports the point that it must be borne in mind that the object behind the enactment of Section 498A IPC and the Dowry Prohibition Act is to check and curtail the threat of dowry and at the same time, to save the matrimonial homes from destruction.

The Madras High Court has experienced that apart from the husband, all family members are suspected and dragged to the police stations. Though the arrest of those persons is not at all necessary, in a number of cases, such harassment is made simply to satisfy the ego and anger of the complainant. By



appropriately dealing with such matters, the injury to the innocents could be avoided to a considerable extent by the magistrate, but, if the magistrates themselves accede to the bare requests of the police without examining the actual state of affairs, it would create negative effects thereby, the very purpose of the legislation would be defeated and the doors of conciliation would be closed forever. The husband and his family members may have difference of opinion in the dispute, for which, arrest and judicial remand are not the answers. The ultimate object of every legal system is to punish the guilty and protect the innocents. Blackstone’s true words support this conception, as he says, “It is better that ten guilty persons escape than that one innocent suffer”.

According to the Reports of the National Crime Record Bureau in 2005, for a total 58,319 cases reported under Section 498A IPC, a total of 1,27,560 people were arrested, and 6,141 cases were declared false on account of mistake of fact or law. (Table 1.)

While in 2009 for a total 89,546 cases reported, a total of 1,74,395 people were arrested and 8,352 cases were declared false on account of mistake of fact or law. (Table 1.)

According to the Report of Crime in India, 2012 Statistics, National Crime Records Bureau, Ministry of Home Affairs showed that for the year of 2012, a total of 1,97,762 people all across India were arrested under Section 498A IPC. The Report further shows that approximately a quarter of those arrested were women that is 47,951 of the total were perhaps mother or sisters of the

husband. However, most surprisingly, the rate of charge-sheet filing for the year 2012, under Section 498A IPC was at an exponential height of 93.6% while the conviction rate was at a staggering low at 14.4% only. The Report stated that as many as 3,72,706 cases were pending trial, of which 3,17,000 were projected to be acquitted. (Table 1.)

In 2013, the Bureau further pointed out that of 4,66,079 cases that were pending in the start of 2013, only 7,258 were convicted while 38,165 were acquitted and 8,218 were withdrawn. The conviction rate of cases registered under Section 498A IPC was also a staggering low at 15.6%. (Table 1.)

In the last 10 years between 2005 and 2015, the number of cases being filed under section 498A IPC is on the rise and there is roughly a 10% rise in the number of pending cases each year. The number of pending cases at the end of 2015 is more than twice the number of pending cases at the end of 2005. At the end of 2005, 2.06 lakh cases were pending and this number increased to 4.77 lakh by the end of 2015, an increase of more than 130% in 10 years.

Table 1. Report of the National Crime Records Bureau<sup>9</sup>

Year	Cases Reported	People Arrested	Acquitted	Convicted
2005	58,319	1,27,560	6,141	52,178
2009	89,546	1,74,395	8,352	81,194

<sup>9</sup>Rajesh Sharma &Ors. V. State of Uttar Pradesh &Anr.



2012	3,72,706	1,97,762	3,17,000	55,706
2013	4,12,438	2,19,454	38,165	7,258
2014	4,43,885	2,01,127	40,428	6,425
2015	4,77,986	1,29,994	39,658	6,559

This report merely showed the acquittal and the conviction rate under certain serious issues, which are not justified in the very first go. At the same time, violation of human rights of the innocent cannot be brushed aside. Certain safeguards against uncalled for arrest or insensitive investigation have been addressed by the Supreme Court. Still, the problem continues to a great extent.

To remedy the situation, the Supreme Court has laid down certain guidelines that are to be followed while dealing with such type of cases, and the guidelines are as follows,

- (i) The involvement of civil society in the aid of administration of justice, apart from the investigating officers and the concerned trial courts being sensitized;
- (ii) To facilitate closure of proceedings where a genuine settlement has been reached instead of parties being required to move High Court only for that purpose;
- (iii) In every district, one or more Family Welfare Committees be constituted by the District Legal Services Authorities;
- (iv) The committees may be constituted out of para legal volunteers, social workers, retired persons, wives of

- working officers or other citizens who may be found suitable and willing;
- (v) Every complaint under Section 498A IPC received by police or the magistrate be referred to and looked into by such committee. Such committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication;
- (vi) Till report of the committee is received, no arrest should normally be affected.

These guidelines were laid down by the Supreme Court in order to build up a certain level of change in the Report of the Bureau because the Report had shown a very drastic face of the implementation of the laws that are made so beautifully by the legislature. The Report revealed the actual status of the administration that is working for the execution of the laws, but is unfortunately unsuccessful due to certain discrepancies. Moreover, the Mediation and Negotiation concept that has really brought wonders in the field of administration of justice in the Indian land, requires a need to understand the mechanism and to know the actual benefits, that come out of the technique used in the same and the ultimate goal that it sets within itself to exclusively deliver a conduct of final peaceful settlement between the parties.

**7. Future Perspective of Mediation in Matrimonial Disputes**

ADR services, under the control, guidance and supervision of the court would have more authenticity and smooth



acceptance. It would ensure the feeling that mediation is complementary and not competitive with the court system. The system will get a positive and willing support from the judges who will accept mediators as an integral part of the system. If reference to mediation is made by the judges to the court annexed mediation services, the mediation process will become more expeditious and harmonized. It will also facilitate the movement of the case between the court and the mediator faster and purposeful.

Again, it will facilitate reference of some issues to mediation leaving others for trial in appropriate cases. Court annexed mediation will give a feeling that court's own interest in reducing its caseload to manageable level is furthered by mediation and therefore, reference to mediation will be a willing reference.

Court annexed mediation will thus provide an additional tool by the same system providing continuity to the process and above all, the court will remain a central institution for the system. This will also establish a public-private partnership between the court and the community. A popular feeling that the court works hand-in-hand with mediation facility will produce satisfactory and faster settlements.

**8. Success Rate of Mediation in Matrimonial Disputes**

Before proceeding towards the success rate of mediation in matrimonial disputes, it is of prime importance to study that what actually makes the process of mediation and negotiation so effective. Some of the

supporting points in this regard are as follows,

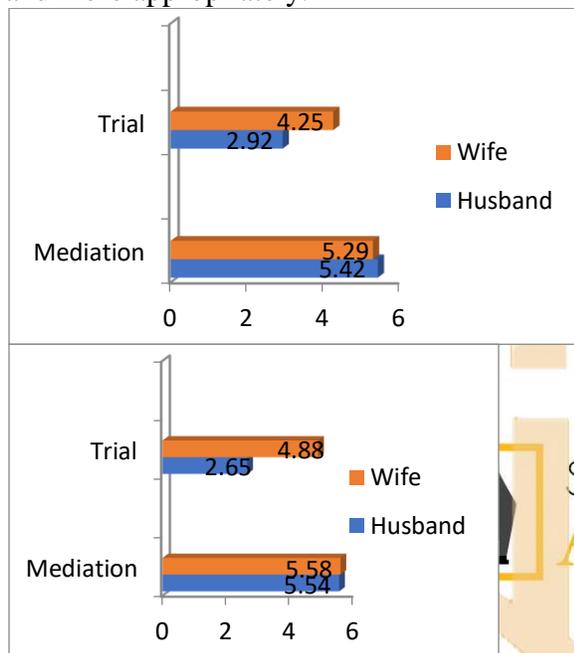
- (i) Mediation saves time, energy and money;
- (ii) It relieves the agony of the parties by giving them peace of mind;
- (iii) It re-establishes relationships;
- (iv) It is more practical, collaborative and future-oriented;
- (v) It brings innovative and flexible solutions from the parties itself;
- (vi) There is direct communication between the parties with no third party involvement;
- (vii) It starts and ends with what the parties care about and want;
- (viii) It takes seriously the issues that matter the most to the disputants-relationships, fairness, emotions, justice, respect, inclusions and fixing a problem;
- (ix) Parties can discuss whatever concerns them; they are not restricted to only resolving one issue but the entire dispute;
- (x) It is totally neutral, good faith participation process where confidentiality ensures trust and parties move into problem-solving mode;
- (xi) The exchange of information during the process enables a disputant to understand possibilities well and find an effective and workable solution;
- (xii) Parties realize that time and money is saved through mediation. Once agreement is reached, its execution is guaranteed.

After reading all these points that talk about the increment in the efficiency of the Mediation and Negotiation process, it can further be said that in the matrimonial cases



specifically, there is more of emotional dispute than the external, superficial, materialistic dispute. To overcome this state of mind, the mediator plays a very important role of bringing the minds at peace of both the parties.

Moreover, in support of this inference, there is some statistical data which reveals the real status of mediation and its success rate in matrimonial disputes more accurately and more appropriately.



{Husband & Wife both Represented}  
{Husband & Wife both Unrepresented}

Fig. 3. A brief representation of the success rate of mediation in matrimonial disputes.

The Bar graph/scale shows the level of representation of both the husband and the wife, in matrimonial cases. It has been found that if both the husband and wife are represented in their case, so under judicial trials, the ratio is much less than that in mediation. Moreover, if it is compared with

that of unrepresented husband and wife, then the ratio is comparatively more in the latter case. This shows that even though the couples are not represented in their cases judicially, they have a brighter option of mediation left with them. (Fig. 3.)

Moreover, if the specific ratio between husband and wife is seen, it can be inferred that the ratio of women is again comparatively more than that of men, both on represented and unrepresented grounds. This shows that mediation, as an effective Dispute Resolution Mechanism, is preferred over judicial trials at a very higher rate. The cases are not to be concerned here; the nature of the grounds for settlement is of prime consideration to evaluate or prove the success rate of the mechanism used for resolution-whether judicial or quasi-judicial.

### 9. Conclusion

Mediation is a healing process. It can do wonders. What a party doesn't get in court can certainly get here in their own comfort zone. Mediation is the most effective Alternate Dispute Resolution mechanism and no other method can do as best as mediation. This inference has been supported, with the aid of recent data that reveals the present scenario of mediation and negotiation.

Basically, the following points can prove the nature and scope of the mechanism on practical grounds,

- (i) 95% of matrimonial cases that come for mediation in itself proves the trust rate of the people in the efficiency of the mechanism; (Fig. 1.)
- (ii) Under matrimonial disputes, the maximum number of cases, that of domestic violence and maintenance,



- prove the conscious level of people towards the mechanism;(Fig. 2.)
- (iii) After evaluating the statistical data, referred in the case of *Rajesh Sharma &Ors. V. State of UttarPradesh &Anr.*, the status of judicial trials and their subsequent results are derived out, which are far unsatisfied, due to which the mechanism of ADR has been preferred therein;(Table 1.)
- (iv) Moreover, the level of representation of husband and wife under mediation, which is in higher proportion to that of the judicial trials, infers the fact of the efficiency of the mechanism.(Fig. 3.)

- (e) **Paramount Attention towards Marital Disputes:-**Matrimonial disputes are the social disputes, which disturb the mental and emotional background of the society at large, sometimes. And, most of the cases under mediation are those of marital disputes. Thus, it shall be looked into by the courts that appropriate assistance is provided to the mediation centres, for the effective working of the process.

However, the success rate of mediation and negotiation has been extracted from the data collected, yet the preference can be leveled up for this mechanism in the near future, by generating the following volunteer steps,

- (a) **Lack of Awareness:-** People need to be made aware of the benefits of mediation and negotiation;
- (b) **Remuneration Set-up:-** The mediators are not paid up to mark, for some cases, because of which, it is but natural that the interest level and zeal of the mediator may fade, up to a certain extent, sometimes.
- (c) **Court's Co-operative Assistance:-** The courts need to work for developing increment in the processing of the mechanism, in order to increase its efficiency manifold;
- (d) **Concern for Effectiveness:-** Formulation of productive schemes for the progressive functioning of the

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