AN APPRAISAL OF MEDIATION AND CONCILIATION IN MATRIMONIAL DISPUTES: A COMPARATIVE ANALYSIS OF THE STATE OF PUNJAB AND HIMACHAL PRADESH

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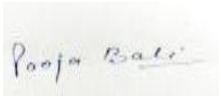
DECLARATION

1, Pooja Bali hereby declare that this thesis is my original work and has not been submitted anywhere for any other award. I fully take responsibility for everything enclosed therein.



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CERTIFICATE

I certify that Pooja Bali has prepared her thesis titled An Appraisal of Mediation and Conciliation in Matrimonial Disputes: A Comparative analysis of the State of Punjab and Himachal Pradesh for the award of Ph.D. degree of Lovely Professional University, under my guidance. She has carried out the work at the School of Law, Lovely Professional University, Punjab.

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ABSTRACT

Conflict or dispute in any matter, whether civil or matrimonial, has become very common and humdrum in recent years, and the only source to resolve them is our Indian judiciary. However, the irony is that it is itself burdened with imminent and forthcoming cases, which obstructs the concept of potent justice and fair play, as well as the principle of Natural Justice, which states that justice delayed is justice denied. As a common law country, India follows the Associate adversarial system of justice, and the function of the court has expanded and become more sophisticated in recent years. The judiciary's growing role has resulted in massive expenditures and unnecessary delays in delivering justice to those who seek it. Although the number of courts has increased in recent years, the problem persists due to the corresponding increase in the number of cases. Because of the large number of cases pending in Indian courts, alternative dispute resolution techniques are urgently needed. As of July 1, 2020, there are 60,444 cases outstanding before the Supreme Court, while more than 3.7 million cases before High Courts and lower Courts have remained pending for more than a decade. Mediation, for example, is the use of negotiation procedures by one or more neutral third parties with the goal of reaching a mutually acceptable agreement. The substantive and enabling provision of Section 89 of the Civil Procedure Code authorizes the Court to refer relevant civil matters to ADR methods.

The traditional courts are proving to be inadequate for marriage conflicts in India due to the ever-changing social structure as a result of literacy and economic independence among married couples, especially among women. Long-running conflicts, combined with the intimidating and uncaring nature of the courts, result in increased enmity between the disputants, no practical settlement, and mental trauma. In this case, the parties require a more fluid procedure and consensus decision-making. This is where the concept of mediation comes into play.

In these types of situations, an alternative conflict resolution mechanism, such as mediation, comes to the rescue, which aims to resolve the disagreement outside of court in less time and for less money. The relevance of Article 21, which stands for the right to life and includes the right to a speedy trial, is demonstrated by numerous dispute settlement methods such as mediation. The use of mediation in Asian

countries is documented in the Arbitration and Conciliation Act of 1996, as well as the Code of Civil Procedure of 1908. (CPC)

Mediation, in its simplest form, is a method of helping a neutral third party reaches a voluntary and negotiated solution to the problem under consideration by the parties to the dispute. The proponents facilitate communication between the parties to the dispute and enable the parties to the dispute to clearly understand the distinction and achieve a mutually acceptable reconciliation. However, you do not have the authority to impose choices on the parties. Mediation has emerged as the most widely used dispute resolution mechanism for resolving marriage dispute. Proponents of mediation are beneficial mechanisms because mediation protects family relationships and children from experiencing the severity of the traumatic process normally associated with typical divorce, while at the same time providing prompt justice. There are many blessings related to mediation of the marriage status, including confidentiality, price validity, informal procedures, administrative authority, complete freedom of the parties who refuse the end result, and reciprocity. And the most striking and essential feature is that it follows the principles of timely justice.

The social structure of India is ever-changing, and with increased literacy and economic independence among spouses, marriage disputes are on the rise. The adversarial procedure is failing to meet the demands of the injured parties as modern marriages become more prone to divorce. Unlike other contractual conflicts, these disagreements have a variety of emotional, social, and personal dimensions. The traditional legal process is frequently indifferent to such requirements. Due to binding decisions reached without mutual agreement, the unhappy party files appeal, review petitions, and other legal actions in the hopes of obtaining a positive outcome. This results in a time-consuming and emotionally taxing process with no tangible results. The majority of the time, the costs incurred by the parties is ineffective.

A family lays the establishment for a society and thus marriage, being one of the key connections in a marriage shapes the building block of a civilization.

Within the primitive times, the concept of marriage started as a holy observance. Marriage, as a holy observance fundamentally inferred a sacrosanct, eternal and insoluble union. Among Hindus, marriage could be a fundamental samskara; each Hindu must wed. It was considered to be exceptionally critical extraordinarily for the purposes of multiplication of off-springs. In this manner, on the off chance that there's

a breakdown of a marriage, it leads to grave repercussions on a family which advance requires an alteration of relations, basically disturbing the peace and concordance of the family. From this time forward, our individual laws and the Courts energize the parties included in matrimonial disputes to go for compromise and settlement by a friendly assertion rather than a strenuous case battle. Presently, intervention could be a settlement handle in which a go between is named by either a individual or the courts who makes a difference both the parties to reach an agreeable assertion that's responsive to their needs and concurred upon by both sides. Concurring to Section16 of the of the Civil Procedure Alternative Dispute Resolution and Mediation Rules, 2006, the part of mediator is to encourage intentional debate determination of parties and pass view of one party to the other, offer assistance them in recognizing issues, lessening errors, clarifying needs and investigating zones of compromise.

There are several provisions in a plethora of legislation which expressly provide for conciliation and settlement before litigation.

Section 89 of the Code of Civil Procedure empowers the civil courts to refer matters to Alternate Dispute Resolution (ADR). However, as per the provisions of this section, consent of both the parties is a pre-requisite in order to refer the case for ADR and this is a crucial issue as it can be observed in most matrimonial disputes that one of the parties is a non-consenting party.

As per the provisions of sections 23(2) and 23(3) of Hindu Marriage Act, 1950 and sections 34(3) and 34(4) of Special Marriage Act, 1954, the Courts are directed to make an endeavour to bring reconciliation between the parties seeking a divorce according to the facts and circumstances of a case.

Section 9 of the Family Courts Act, 1984 expressly lays down the duty of Family Courts to persuade the parties to come at a settlement.

Civil Procedure-Mediation Rules, 2003 have introduced mandatory mediation which empowers the Courts to send matters for mediation even when both parties have not consented to it, when there is a scope for reconciliation and the relationship between the parties is such that it needs to be preserved like matrimonial disputes.

It is very difficult to understand the human minds especially when it comes to matrimonial disputes, it is very laborious to understand the problems, find solution or seek an alternative way of resolving marital problems. When these disputes come out

from private sphere and enter public domain through courts to find solution, the courts these issues very delicately.

Family Courts established under Family Courts Act, 1984 emphasizes on resolving these disputes amicably through mediation. Instead of Family courts, Section 89 of the Code of Civil Procedure provides reference of cases pending in the courts to Alternative Dispute Resolution which also includes mediation. Court –Annexed mediation and conciliation centers are now established at several courts in India and courts have started referring cases to such mediation and conciliation centers.

Mediation has significant potential for bringing about qualitative change in the focus of the legal system from adjudication to amicable settlement of the disputes. As a field of mediation and conciliation continue to evolve and develop all over India, evaluating the functioning / implementation of mediation process is essential and becomes an important indicator of its acceptability by the society. It helps to identify the problems and needs from the perspective of the parties attending the mediation.

A divorce has a magnanimous impact on the lives of the parents and their children. The role of the mediator is to emphasize the mental agony and trauma that a child would have to face on account of the breakdown of marriage of his/her parents and advise the parents to analyze all the consequences of their decision. After the mediator has communicated all the possible repercussions to the parties, the mediator should ask them to take the final call.

From the aforesaid statutes, it can be observed that motive of Indian law is the preservation of marriage and therefore, courts are obliged to refer matters for reconciliation and settlement whenever there's scope for settlement.

No doubt, mediation is a dynamic process and understanding its different dimensions to make the system more responsive to the needs of the parties. This study plans to make an appraisal of mediation and conciliation in matrimonial disputes and make a comparative analysis of State of Punjab and Himachal Pradesh.

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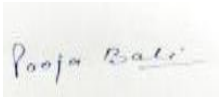

Pooja Bali

ABBREVIATIONS

ADR: Alternative Dispute Resolution

AIR: All India Reports

AAA: American Arbitration Association

AIM: All Issues Mediation

BATNA: Best Alternative to a Negotiated Agreement

CPC: Civil Procedure Code

CIETAC: China International Economic and Trade Arbitration Commission

CIArb: Chartered Institute of arbitration

CEDR: The Centre for Effective Dispute Resolution

CFDR: Coordinated Family Dispute Resolution

DR: Dispute Resolution

E U: European Union

FMS: Family Mediation Scotland

HKIAC: Hong Kong International Arbitration Centre

HKMAAL: Hong Kong Mediation Accreditation Association Limited

ISDLS: Institute for the Study and Development of Legal System

IBID: Latin, short for ibidem, meaning "the same place"

ICJ: International Court of Justice

IPC: Indian Penal code

LCIA: London Court of International Arbitration

LEADR: Lawyers Engaged in Alternative Dispute Resolution

MCPC: Mediation and Conciliation Project Committee

MLATNA: Most Likely to a Negotiated Agreement

M&C: Mediation and Conciliation Rules

NCLT: National Company Law Tribunal

NCLAT: National Company Law Appellant Tribunal

NALSA: National Legal Service Authority Act

NFM: National Family Mediation

PCIJ: Permanent Court of Justice

SMC: Singapore Mediation Center

SCC: Supreme Court cases

UN: United Nations

USA: United States of America

UNCITRAL: United Nations Commission on International Trade Law

Vol: Volume

WIPO: World Intellectual Property Organization

WATNA: Worst Alternative to a Negotiated Agreement

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CHAPTER 1

INTRODUCTION

India has inherited its prevalent judicial system from the British government. It has its advantages such as certainty of laws, consistency in procedure and independence etc. It has its disadvantages too, such as high cost, complicated laws, lengthy procedure, inordinate delays, etc. Thus, it is observed that the prevailing system of administration of justice is not suitable to the socioeconomic conditions of India and formalism in law alienates the illiterates, destitute and deprives from the judicial process. Our justice delivery system is terribly expensive, dilatory and cumulatively disastrous. Counsels' fees, court fees, other fringe expenses and the maze and mystique of the legal procedure have set justice beyond the reach of the poor. In fact, amicable resolution of disputes is a sine quo non for the social peace and harmony. Access to inexpensive and expeditious justice is a basic human right.[1]

The constantly increasing number of cases leads to delay in disposal and thereby denying the person's access to justice. During the last two or three decades ago, a stage was reached when everyone started apprehending that our judicial system would collapse because of the arrears and unduly long time taken for disposal of any matter. It is rightly held by Hon'ble Apex Court that any procedure which do not provide for speedy disposal of the matter in controversy abridges the fundamental right of personal liberty. [2] Further, the Apex Court held that the speedy trial is the fundamental right of every person. It is pertinent to note here that justice delayed is justice denied. In view of the above discussion, it is evident that the concept of speedy justice has been upheld to be the fundamental right by the Higher Judiciary in number of cases.

Justice Khanna correctly observed that judicial system is primarily intended to serve the needs of the community for providing justice with accountability, without which the people would move to the extra judicial method to settle the issues. If the people lose faith in the Bench and the Bar, they will easily resort to remedies in the street. This will inevitably lead to the downfall of the democracy and the impotency of the court. The sense of injustice leads to frustration which may in term compels the

1 Lawyers as Professionals – By Soli J. Sorabjee, Attorney General of India, AIR 2002
2 Hussaina khatoon v/s State of Bihar A.I.R 1980(1) SCC 98

oppressed to rise against the system corroding the foundation of democracy and rule of law.

In recent times, the community all over the global world has become more and more aware about the human and legal rights. It seeks a redress through litigation in courts in case of infringement. The sources of the judicial system are inadequate to meet the growing number of litigations. This results in backlog of cases and delay in the administration of justice. About three crore cases are pending in various courts across the country and India is facing unprecedented explosion of litigations. It is, further, reported that around 10 crore Indians are awaiting justice with an average of three litigants in a case. [3] Commerce, business, development work, administration etc. all suffer because of this explosion. It has become necessary to resort to rapid and effective methods of disputes settlement between litigants to get out of this maze other than traditional judicial methods.

1.1 Alternative Dispute Resolution

In the olden days Alternative dispute Resolution is in existence in some form or other. It is not new to India. The practice of settling disputes through community elders existed in India even before the British Raj. It is now universal acceptance and statutory recognition for such procedures to facilitate the early settlements on agreed terms. ADR though is primarily understood as Alternative Dispute Resolution; however, ADR is not an alternative in the sense that it may be a complete substitute for the entire judicial system nor it can be replacing altogether the traditional mechanism of resolving disputes by means of litigation in the courts. The Alternative Dispute Resolution movement therefore does not advocate abandoning or replacing the judicial dispute resolution system; it simply means understanding the alternatives to litigation. Alternative dispute resolution is a product of the legal institution to offer the best possible service to its clients. It is a private way of resolving dispute and it works within the broad framework in which it operates. For example, in United States, many professional responsibility codes require lawyers advise their clients to opt ADR. [4] The different forms of Alternative dispute resolutions are: Arbitration, Conciliation, Mediation, Negotiation, Judicial settlement Lok Adalat.

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[3] Hindustan times, 24th June 2008.

[4] NOLAN-HALEY, Alternative Dispute Resolution in a Nutshell, 3

Alternative dispute redressal techniques can be employed in several categories of disputes, especially civil, commercial, industrial and family dispute.[5]

The aim of Alternative dispute resolution is enshrined in the Indian Constitution's preamble itself, which enjoins the State: to secure to all the citizens of India, justice social, economic, and political liberty, equality, and fraternity. [6]

1.2 Need for Alternative Dispute Resolution

The alternative dispute resolution mechanism emerged not only because the adversarial disputes resolution mechanism fail to provide justice to a large number of masses but also because the adversarial system is not a proper mechanism for certain classes of cases to which the ADR prove to be the best mode. Alternative Dispute resolution is now the most accepted method of dispute resolution. It is a mechanism to moderate the existing deficiencies in the judicial system. It provides an opportunity to resolve the difference, conflicts or disputes creatively, efficiently, effectively and amicably.

The Supreme Court has observed that in certain countries of the world over 90% of the cases have been settled out of the court.[7] It is observed that since Second World War, the evolution and mechanism of the alternative dispute resolution was the greatest revolution in the law and legal system. The main methods of alternative dispute resolution are Arbitration, Conciliation, Mediation, Negotiation and many more. In the United States, less than 5% of the cases actually go to trial and 95% of the cases are resolved through alternative dispute resolution. In India, by virtue of Section 89 of the Code of Civil Procedure, the focus is mainly on alternative dispute resolution mode i.e. Mediation and Conciliation.

Mediation and Conciliation is especially helpful in matrimonial disputes because of the special nature of family law. Matrimonial matters not only include law and facts but also include emotions and feelings. Due to the tremendous increase in divorce cases, child custody issues, and matter regarding maintenance has caused States to seek methods other than litigation to solve matrimonial disputes and Mediation and Conciliation is one such method.

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5 Hindu Marriage Act 1955, Industrial Disputes Act 1947, The Code Of Civil Procedure, The Family Courts Act 1984

6 The Preamble of Indian Constitution

7 Salem Advocate Bar Association, T. N. v. Union of India (2003) 1 SCC 499

The researcher throws light that the old-fashioned litigation is a mistake and that must be corrected by adopting the new approach that is Mediation and Conciliation Here researcher has interest to find out that at what extend mediation and conciliation is successful in solving the matters of marital disputes in state of Punjab and State of Himachal Pradesh and how effectively it has been used.

The main aim is to study Impact of Mediation and Conciliation in matrimonial disputes in State of Punjab and State of Himachal and find out which state is functioning with an efficient team of mediators

1.3 Meaning of Conciliation

Appeasement is a practice through which dialogue involving parties are reserved obtainable through the contribution of a go-between. Pacification is a well-accepted method of Alternative Dispute Resolution. It is a method by which the parties to a dispute use the services or take the aid of a unbiased and impartial third person or institution, called a conciliator as a means of serving them to reduce the extent of their differences and to arrive at an cordial settlement or agreed solution according to a negotiation somewhat than by rule.

Section 62 of the Arbitration & Conciliation Act, 1996, requires that the party initiate conciliation should send to the other party a written invitation to that effect and conciliation procedures will start after the other party accept request in writing . However, there will be no conciliation proceedings if the additional party rejects the request or does not respond within thirty days from the date of receiving invitation.[8] The disputed parties seek to reach an amicable solution with the help of conciliator. This process is flexible, time saving, interest based as the conciliator will not only take into the account the legal position of the parties but also consider the financial and personal interest. The important ingredient in the conciliation process is the identification of the causes of the dispute and the creation of options to resolve the conflict. In this technique, the parties are encouraged to visualize options which provide solutions keeping in view the interests and priorities of the parties in question.

In conciliation process, the both disputed parties made discussions with conciliator with a view to explore adequate and reasonable resolution by creating options for a agreement which is suitable to all parties. The mediator helps the parties in result a

[8] Avtar Singh, Law of Arbitration and Conciliation,361 (Eastern book Company, 7th Edition)

variety of options to appear at a resolution. Therefore, this method is hazard free which compulsory conformity on the parties if they enter at settlement agreement and has same effect as of arbitration award.

Conciliation is better than other alternatives modes of dispute resolution

The Supreme Court of India in one of case said, Everlasting, time consuming, intricate and costly court procedures provoked jurists to explore for an unconventional medium, less formal more effective and immediate for resolution of disputes avoiding technical twaddle and this led to Arbitration Act, 1940. On the other hand, the means in which the measures underneath the Act are conducted and devoid of an exemption challenge in the courts have made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the Act have become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Informal forum chosen by the parties for expeditious disposal of their disputes has by the decisions of the court been clothed with legalese of unforeseeable complexity. [9]

Most probably, parties have three benefits in conciliation and that are-

a) Quickness-parties can save their time and energy

b) Economic-one can invest it for better purposes instead of spending on litigation.

c) Social- The parties feel relaxed and the inner enmity removed against each other permanently. It helps for societal peace.

History of Conciliation in India

Conciliation is not a new concept as far as India is anxious. Kautilya's Arthshastra also refers to the process of conciliation. [10] A variety of legislations in India have also renowned pacification as a statutorily acceptable mode of dispute resolution and conciliation was in fact being frequently resorted to as a mode of dispute resolution under these specific legislations.[11] On the other hand, separately since these

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9 Guru Nanak Foundation V. Rattan Singh & Sons, AIR 1981 SC 2075

10 V.A. Mohta and Anoop V. Mohta, Arbitration, Conciliation and Mediation 535 (Manupatra, Noida, 2nd Edition, 2008

11 Section 12 of the Industrial Disputes Act, 1947 contemplates settlement of disputes through conciliation effected through conciliation officers appointed under the Act; Section 23 of the Hindu Marriage Act, 1955 and Order XXXII A, Code of Civil Procedure, 1908 enable the judge to effect settlement between the parties by recourseto conciliation

constitutional requirements commerce with particular category of cases, conciliation in universal as a means of Alternative Dispute Resolution lack appropriate lawmaking structure and constitutional support. [12]

Within 1984 faces with the dilemma of surmounts debts the Himachal Pradesh High Court evolve an inimitable scheme for discarding of cases awaiting in courts by appeasement. This was also been suggested by the Law Commission of India in its 77th and 131st reports and the conference of the Chief Justices and Chief Ministers in December 1993. [13] The Malimath Committee had also inter alia recommended the establishment of conciliation courts in India. [14]

In the meantime, the UNCITRAL had adopted the UNCITRAL Conciliation Rules, 1980[15] and the General Assembly of the United Nations had recommended the use of these rules, therefore, the Parliament of India found it expedient to make a law respecting conciliation, and the Arbitration and Conciliation Act, 1996 was enacted. [16]

Appeasement was afforded a detailed codified constitutional acknowledgment in India by the enactment of the Arbitration and Conciliation Act, 1996 and Part III of the Act comprehensively deals with conciliation process in general.

Conciliation Procedure[17]

Moreover, party to the argument is able to originate the pacification procedure. As soon as single party invites the other party for decision of their disagreement in the course of conciliation, the conciliation procedures are alleged to have been initiated. Once the other party accepts the request, the appeasement procedures start. If the

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12 Anirudh Wadhwa and Anirudh Krishnan (Eds.), R.S. Bachawat's Law of Arbitration and Conciliation (Lexis Nexis Butterworth's Wadhwa, Nagpur, 5th Edition, 2010)

13 Sarvesh Chandra, ADR: Is Conciliation the Best Choice in P.C. Rao and William Sheffield (Eds.), Alternative Dispute Resolution 82 (Universal Law Publishing Company Pvt. Ltd., Delhi, 1997); See also O.P. Motiwal, Development of Law of Conciliation in India , XLIX ICA Arbitration Quarterly 2 (January - March 2011)

14 H.R. Bhardwaj, Legal and Judicial Reforms in India, available at: http:// icadr.ap.nic.in/ articles/articles.html (last visited on 20.3.2020)

15 Adopted on 23 July 1980 and recommended vide Resolution 35/52 of the UN General Assembly on 4th December 1980; The UNCITRAL has also published the Model Law on International Commercial Conciliation, 2002. The Model Law's objectives include encouraging the use of conciliation and providing greater predictability and certainty in conciliation's use. See William K. Slate II, Seth H. Lieberman, Joseph R. Weiner, Marko Micanovic, UNCITRAL (United Nations Commission on International Trade Law): Its Workings in International Arbitration and a new Model Conciliation Law , 6 Cardozo J. Conflict Resol. 73 (2004)

16 Preamble of Arbitration and Conciliation Act,1996

17 Ujwala Shinde, Conciliation as an Effective Mode of Alternative Dispute Resolving System,1-7 (IOSR Journal Of Humanities And Social Science (JHSS). Volume 4, Issue 3)

other party discards the request, there are no conciliation proceedings for the resolution of that dispute. In general, merely individual mediator is selected to determine the disagreement among the parties.

The parties can assign the only go-between by common approval. But the parties are unsuccessful to appear at a joint conformity, they know how to procure the hold up of one worldwide or nationwide establishment for the selection of a go-between.

Here is no bar to the selection of two or more conciliators. In appeasement procedures among three conciliators, every party appoints single conciliator. The third conciliator is selected by the parties by joint approval. Contrasting adjudication wherever the third arbitrator is called the Presiding Arbitrator, the third conciliator is not term as Presiding conciliator. He is now the third conciliator. The go-between is hypothetical to be unbiased in addition to demeanor the appeasement procedures in an unbiased approach. He is guided by the ideology of impartiality, justice and fairness, as well as via the practice of the trade concerned along with the conditions adjacent the disagreement, with some preceding commerce practice among the parties. The mediator is not bound by the rules of procedure and evidence. The go-between does not bestow any award or order. He tries to fetch a suitable conformity as to the clash among the parties by mutual consent. The concurrence so arrived at is signed by the parties and legitimate by the conciliator. In a few lawful systems the accord so arrived at between the parties resolving their argument has been given the status of an arbitral award. If no consensus could be arrived at between the parties and the appeasement procedures fail, the parties can alternative to arbitration.

A go-between is not anticipated to proceed, subsequent to the appeasement procedures are ended, as an arbitrator except the parties explicitly concur to facilitate the intermediary is capable of act as arbitrator. Likewise, the appeasement procedures are not to be disclosed in nature. Convention of appeasement of the majority of the worldwide institution furnish to facilitate the parties shall not rely on or commence as proof in arbitral or legal actions,

(a) The view articulated or suggestion designed for a likely resolution throughout the reconciliation measures.

(b) Admissions prepared with some party at some point in the course of the conciliation proceedings.

(c) Proposal prepared by the go-between for the deliberation of the parties.

(d) The actuality so as to one party had indicated its keenness to acknowledge a suggestion in favor of resolution prepared by the go-between; in addition to that the mediator shall not be created or accessible as a observer in any such arbitral or legal happening.

Appeasement has acknowledged constitutional recognition because it has been proved helpful with the aim of referring the clash to the civil court or industrial court or family court etc efforts to concile among the parties should be made. It is analogous to the American conception of court-annexed mediation. On the other hand, devoid of prearranged process & legal endorse, it was not probable used for appeasement to attain fame in the countries like USA & as well in additional inexpensively highly developed countries.

Position of conciliator[18]

1. The go-between shall aid the parties in an autonomous as well as unbiased method during their endeavor to arrive at a cordial resolution of their disagreement.

2. The go-between shall be guide by doctrine of impartiality, equality and fairness, philanthropic contemplation toward, between supplementary belongings, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

3. The go-between might demeanor the appeasement measures in such a way like he considers suitable, captivating into description the state of affairs of the case the requirements the parties might utter, as well as any appeal by a party to facilitate the mediator heed verbal statement, and they require for a immediate resolution of the disagreement.

4. The go-between might, at any phase of the appeasement measures, create proposal in favor of conclusion of the heated discussion. Such proposal need not be in writing and need not be accompanying by an avowal of the masons consequently.

[18] The Arbitration and Conciliation Act,1996, s 67

1.4 Meaning of Mediation

A mediator is an independent person who acts as a bridge or put his personal efforts, skill and knowledge with a view to settle the disputes between the parties. The efforts and process adopted by him is called mediation. In other words, this right of self-government is an indispensable constituent of the conciliation procedure. Its outcome surrounded by a resolution formed by the parties themselves and is as a result suitable to them. The parties have eventual have power over the outcome of mediation. Any party may perhaps extract on or after the intercession procedures at any point prior to its extinction and with no conveying any cause.

As it is an informal process, which means that mediation is not governed by rule of evidence. The essence of mediation is to assist the parties and it is broadly focused on facts law and the interest of parties.

Definition of Mediation & Conciliation

According to Webster's dictionary Conciliation means an act of gaining goodwill, winning over, adjusting differences or reconciling the two sides.

According to the Halsbury's law of England, Conciliation is a process of persuading the parties to reach an agreement. [19]

According to Oxford Dictionary, "Mediator means a person or an organization that tries to get agreement between people or groups who disagree with each other. [20]

According to L.B. Curzon, Mediation is the act of a third party relating to the settling of a dispute between two contending parties.[21]

Obviously a mediator is not required to follow the procedural law but he is expected to act adhering to the fundamental principle of natural justice.

History of Mediation

Mediation has its roots in ancient era in other words we can say that mediation has its essence in ancient times. It is documented that mediation was made to settle varieties of disputes outside the courtroom. Such disputes include international disputes, domestic disputes, labor disputes, industrial disputes etc. The system was developed

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19 Halsbury's Laws of England (2) 502 (Butterworth's, London, 4th Edition 1991)
20 AS Hornby, Oxford Advanced Learner's Dictionary,796 (Oxford University Press, 7th edition)
21 Y.S. Sharma, Law of Arbitration and Conciliation, 222(University Book House, 1st edition,2017)

in Ancient Balkan nation where the non-marital intermediary was known as a proxenetas and then the Roman civilization also recognized mediation and its importance. The Romans referred to as mediators by a range of names together with internuncius, medium, treater, philantropus, interpolator, pacifier, interprets, and eventually as intermediary.

Some cultures regarded the intermediary as a sacred figure, ought to have explicit respect and they also overlapped the role played by ancient wise men or leader. Disputes often brought before the members of communities or wise men to resolve the native conflicts. In communities of Buddhists and Confucians they used this peaceful resolution to resolve their conflicts.

In different culture for quite 3000 mediations has been used as technique of dispute resolution. Tracing the roots of this system has been a cruise of culture, understanding, translation, war and peace.

In ancient times before 1940 the petty disputes in the villages were brought before the elder headman or before the panchayat. Then it was realized that dispute settle through the Panchayats and elder headman was better than the courts and was much cheaper and friendly with the needs of disputing parties. Therefore, arbitration act 1940 was enacted to promote the alternative dispute resolution but this act has many lacunas so to overcome these loop holes various amendments was made and then arbitration and conciliation act 1996 was enacted. This Act promoted various alternative dispute resolutions and hence mediation rules 2003 was made to give definition and growth of mediation. And in this way mediation came in the modern era as dispute resolution system. [22]

Types of Mediation

1) **Private Mediation**: In this type, parties themselves decided for mediation, which is independent of court. It can mostly use for pre-litigation cases.

2) **Court Referred Mediation**: In this form the court refer the cases for mediation where it has an element of settlement. It is governed by the rules

[22] Surbi soni, Mediation in Matrimonial Disputes-Indian perspective available at https://www.ijlsi.com/mediation-in-matrimonial-disputes-indian-perspective/ (last visited on 9.03.2020)

framed by High courts under section 89 of Civil Procedure Code, 1908 and the Legal services Authorities Act, 1987.

1.5 Difference between Conciliation and Mediation

The terms Mediation and Conciliation are utilized conversely by different legal scholars as well as different Indian Acts. Over the globe, there is no uniform head on the distinction between the two dispute resolutions. Industrial Disputes Act has expressed that Conciliation officials are stimulating by means of the obligation of mediating and promoting resolution of trade disagreement. [23]

Henry J. Brown explained that intercession is a facilitative method during which disputing parties employ the aid of an unbiased third party, the intermediary, who helps them to endeavor to enter by the side of a settled resolution of their clash. The intermediary has no ability to formulate any decision that is obligatory on them, other than use firm measures, technique, and skill to assist them to discuss a settled declaration of their disagreement devoid of arbitration. [24]

One of the renowned textbooks on alternative dispute resolution stated that intercession is finding the middle ground conceded away with the aid of a third party. The go-between, in disparity to the intermediary or umpire, has no authority to inflict a conclusion on disputing parties. [25]

Justice M. Jagannatha Rao highlighted that In India Conciliator has wider powers than a mediator. The conciliator can make a proposal for settlement and he can formulate and reformulate the terms of settlement of the dispute whereas, the mediator facilitates the parties to come with settlement. [26] He further expressed that in the USA the Conciliator can't be a proactive job for the goals though, the go between plays such a role. He has looked at the situations in different nations lastly reasoned that the Indian understanding of the expression "Placation" is as per UNCITRAL Conciliation rules and Japan, UK nations are deciphering the term Conciliation as a similar Indian Interpretation.

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23 The Industrial dispute Act,1947, s. 4(1)

24 Henry J Brown and Arthur L Marriott, ADR Principles and Practice (Sweet & Maxwell, 2nd edition, 1997)

25 Stephen B Goldberg and others, Dispute Resolution (Aspen Publishers 2014)

26 Justice M. Jagannatha Rao, 'CONCEPTS OF CONCILIATION AND MEDIATION AND THEIR DIFFERENCES' (Lawcommissionofindia.nic.in) available at http://lawcommissionofindia.nic.in/adr_conf/concept%20med%20Rao%201pdf (last visited on 15.4.2020)

There is some Acts mandate the courts to conciliate/mediate their disputes before it precedes further hearing of the disputes. Hindu marriage Act mandates the trial court must try for the reconciliation of the disputants to resolve their dispute amicably before preceding its hearings. It can adjourn the proceedings about 15 days for the parties to conciliate the dispute. [27]

Similarly, the court will not allude to the accompanying matrimonial dispute for conciliation.

i. Either of the spouses ceased to be a Hindu.
ii. Either of the spouses has been incurable of unsound mind.
iii. Either of the spouses has been suffering from a virulent and incurable form of leprosy.
iv. Either of the spouses has been suffering from the general disease in a communicable form.
v. Either of the spouses has renounced the world by entering any religious order.
vi. Either of the spouses has not been heard of as being alive for a period of seven years. [28]

Similarly, The Family Courts Act also encourages the resolution of the matrimonial dispute through conciliation and mediation. [29] The family courts have entrusted the obligation to look at the possibilities of settlement of disputes by the parties through conciliation and mediation. The family court shall adjourn the court hearings if there is any possibility of settlement of the dispute. [30] The family court can pass the decree on the basis of such settlement of the parties. The decree passed by the family court upon settlement of the parties shall be final and binding and it cannot be challenged through an appeal.[31]In spite of this some common points of distinction are-

[27] The Hindu Marriage Act,1955, s. 23(2)
[28] The Hindu Marriage Act,1955, Proviso of section 23(2)
[29] The preamble of Family Courts Act, 1984 states that the purpose of establishing family courts for promoting conciliation in matrimonial disputes and ensuring the speedy disposal of the matrimonial disputes
[30] The Family Court Act,1984, s. 9
[31] ibid s, 19

Basis of Comparison	Mediation	Conciliation
Meaning	Mediation is a procedure of settling issues between parties wherein an outsider helps them in arriving at an agreement	Conciliation is an alternate dispute resolution method in which an expert is appointed to settle the dispute by persuading parties to reach agreement.
Regulated by	Code of Civil Procedure ,1908	Arbitration and Conciliation Act,1996
Basic Element	Confidentiality, that depends on trust	Confidentiality, whose extend is fixed by law
Third Party	As a Facilitator	Act as facilitator, evaluator, and intervener
Result	Agreement between Parties	Settlement agreement

1.6 Concept of Marriage

Men and Women are the indispensable part of society. Social development, Social peace are directly related to stability, peace in private life of people especially in matrimonial life. In India marriage constitutes foundations-stone of social organization. The essence of marriage according to 71st Report of Law commission is the sharing of common life, sharing of all happiness and pains that has to be faced in life. Marriage is one of the oldest institutions of Hindus. It gains a very important place in social life. It is regarded as one of the ten Sanskars (sacrament) for them. Marriage is religious injunction intended to fulfill religious duties and to achieve higher ends of life namely Dharma, Artha, Karma and Moksha. [32]

According to Hinduism Marriage between two souls is a very sacred affair that stretches beyond one life time and continue up to at least seven lives. A Hindu marriage is said to be sacrament because marital relation between spouses is not created on account of any contract. But there are many factors which combined affect the marriage institution and thus causing a lot of problems which young and old married couples contend with.

[32] International Journal of Research in Humanities and social sciences, vol 3, issue 1 Jan (2015), ISSN (P) 2347-5404 ISSN (O) 2320 771X

1.7 Phases of matrimonial disputes

In our society most of the couples try to pacify their conflict; they try to seek their problems by never discussing it. This is the first stage of matrimonial dispute which is known as ignorance. Couples try to ignore the things by not discussing with each other and this pattern continue for long time and eventually couple realize that this type of attitude contributes to distress and soon they start demanding for the fulfillment of their needs This is next stage of ignorance called as Assertion of demands where couples start raising voice and opinions at every opportunity. But woefully, this stage doesn't work either and creates other discord between the husband and wife.

As the couple starts to face other pressure and demands arises out of martial relationships such as time management tensions, hectic schedules and stress from parenting responsibilities, financial burden etc. it leans on them to negotiate and compromise. In the result, they also begin to question their compatibility this is third phase of marital discord.

The fourth stage where the couples feel exhausted due to such unending conflicts, and also feel hopeless about resolving these conflicts. It is a stage where the couple feels to go marriage expert for guidance or as worst-case scenario, seek some legal remedy.

1.8 Matrimonial Disputes

Matrimonial conflicts can be defined as the state of stress and tensions between the spouses while carrying out their marital roles. Two people agree to live together as husband and wife calls for different expectation and hopes some are fulfilled and some are unfulfilled. Since couples are humans and not a god, it is natural to expect that there will be difference of opinions, values, habits and needs and such stuff of everyday living.

Keeping in mind the fact that no human relationship is devoid of conflict and misunderstanding once in a while many families in our society's experiences difficulties which results into matrimonial disputes when little things cannot be handled properly this can cause friction and results into the separation between the partners that may widen over the years. There are many reasons for marital conflict

that are emotional abuse, physical abuse, extramarital sex, financial problems, problematic drinking, drug abuse etc.

1.9 Reasons of Matrimonial disputes[33]

i. **Infidelity:** Infidelity is involved in about one divorce out of five. But if there is another man or woman in a partner's life, then he/she is not in a committed relationship, and there is a problem with the marriage.

ii. **Domestic Violence:** Domestic violence is a pattern of violent and undesirable behavior (both physical and mental) of one member of the family towards another. This creates unwanted tensions in the relationships of couples in the family.

iii. **Control:** Exerting unnecessary Control and wanting to get things done your way is not a gender-specific marital problem. It is one that can kill a marriage.

iv. **Finances:** If one spouse is a spendthrift and another is a saver, conflicts are bound to arise. Different financial strategies and philosophies can cause conflict in a marriage.

v. **Lack of Commitment:** Sometimes, men do fail to develop a strong sense of commitment and sincerity towards their marriage and spouse. The reasons for this deficiency may vary from person to person. Such an attitude inevitably dilutes the marital cohesion and may culminate in marital conflict.

vi. **Lack of Communication:** In today's busy social and professional setup, spouses rarely get ample time to communicate with each other. People often fail to keep track of their marital life, and a sense of disillusionment creeps into their marriage. Many times, such emotional and psychological cynicism may induce a man to seek a divorce.

1.10 Role of mediation and Conciliation in matrimonial disputes

As rightly said by William E. Gladstone that if Justice is delayed it means justice is denied. This implies that if the principle of timely justice isn't adhered to, it's equal to a whole negation of justice. This disadvantage is prevailing within the Indian judicatory wherever there's a backlog of nearly twenty seven million unfinished cases

[33] J.G. Collier, Conflict of laws,319-333 (Cambridge University Press,2001)

out of that, about 55000 comprise of disputes regarding divorce. This impediment in getting timely justice has resulted in alternate dispute resolution mechanisms like negotiation, mediation, arbitration and conciliation gaining regard and acceptance because of their speedy nature of subsidence disputes. These forums give a platform for parties to hunt relief while not involving proceedings, therefore virtually outside a courtroom.

Abraham Lincoln has also supported mediation by stating that Discourage proceedings and persuade your neighbors to compromise whenever you can and illustrate to them however the nominal winner is usually very a loser in fees, expenses and waste of your time. As a peacemaker, the attorney contains a superior chance at being a decent man.

Mediation is that effective remedy which focuses on the non-coercive and accordant method. This methodology of dispute resolution not solely save time however additionally diminishes the acerbity and unloved relationships ensuing from proceedings. Mediation is prevailing these days within the U.S and in foreign countries as well as North American nation and European nation as well in India.

Mediation is very useful in family disputes because family matters involve not solely the law and facts, however additionally feelings. Intervention within the circumstance of matrimonial disagreement is totally dissimilar in its type and satisfied from the state of affairs of trade and assets dispute. The conjugal dispute is distinctive and antithetic from different styles of dispute on portrayal of being there of bound factor that aren't obtain in dissimilar dispute. These factors embrace and constitute impetus, sentiment, communal compulsion, individual liability as well as tasks of the parties, the view of mutually the parties connecting to living in general along with the institution of nuptials particularly, the protection for the extended scurry existence, thus on then forth. Conversation in conditions of the intercession for matrimonial dispute individual should bear in mind so as to the factor that consider the selection of the parties aren't constrained immediately by lucid factor. Within the framework of matrimonial dispute, the go-between cannot merely reflect on the pecuniary or ordinary facet and neglect the distressing portion.

The intermediary needs to prepare both the parties to appear for an answer. The go-between at this point requires molding himself or herself into a analyst in addition to a

umpire to steer the parties intended for an cordially satisfactory respond to bring lifelong serenity. The conciliator has to endow with advice to both the parties and will even have to persuade them so as to shape them observe acceptable of a intended response. The suggestion for the reply may move come back from any party or the mediator himself. The mission of the go-between would be to eternally link the gap within the proposal to achieve settlement.

The advocates of mediation hold mediation to be a favorable mechanism because it safeguards family relationships and specifically kids from having to expertise the severities of the traumatic method usually connected to a typical divorce and additionally give speedy justice.

Whereas the critics of mediation hold mediation to be ineffective because the offender escapes while not being fined through the State's orderly penal equipment.

There are many blessings and eminence connected to mediation of marital affairs like confidentiality, price effectiveness, informal procedures, power of management, full freedom of parties to reject the result mutuality etc. the foremost engaging and indispensable feature is that it follows the principle of timely justice.

Sometimes Court itself refers the case to mediation in case of marital or matrimonial dispute for speedy justice. The court's intention to settle matters as amicably as attainable is obvious. The intention of the court matches the ideology of the advocates of mediation that is to safeguard family relationships and supply speedy justice.

As we have a tendency to continue within the early years of the twenty first Century, our courts and legislatures have provided the bottom work for the resolution of disputes outside of the court. In fact, our courts have voiced a glowing acceptance of alternatives dispute resolution such as mediation, arbitration to traditional court dispute resolution and there's sturdy judicial approval for the employment of arbitration and mediation. However, the procedures for implementing these various dispute resolution approaches aren't clear. Therefore, mediation is very helpful in matrimonial disputes due to its various factors such as confidentiality, privacy, speedy justice, economical and less time consuming. [34]

[34] Surbi Soni, Mediation in matrimonial disputes-Indian Perspective available at https://www.ijlsi.com/mediation-in-matrimonial-disputes-indian-perspective/ (last visited on 11.3,2020

Role of Mediator

All the problems of the relationship are stem from poor communication. Mediator is a type of forum in which a third person who act as neutral and try to facilitate the communication between the parties, promote reconciliation, understanding and settlement. Mediation is particularly suited to divorces, child custody, and maintenance and alimony matters. Mediations allow parties to avoid the risks of trial and decreased the stressful conflict. Furthermore, mediation also protects the children from the pain of conflicting parents. Under the mediation open communication is held between the parties so that they can either decide to part the business on jointly settled stipulations otherwise they desire to scrap up and settle collectively. Intermittently the reason of the confusion in marital dispute is weak and be able to sort. Intercession as a method of another disagreement resolution has also got the recognitions now and the court also referred several matrimonial disputes to the mediation centers. As soon as the clash is taken up by the family court or by the court of first instance for trial, it must be referred to intercession center and that kind of feel must be at earliest stage. Mediation centers also have the process for handling the case in their own way. Accordingly, the couples are first referred to mediation and then only move to the court. The court appoints the mediator as per their qualification in a particular matter.

It is also constitutional mandate for speedy disposal of such disputes and to grant quick justice to the litigants and also strongly recommended the need for special handling of matters pertaining to divorce, child custody, maintenance and alimony. Being grasping in the skill of mediation can only bring the good results.

Procedure of mediation

Unlike the arbitration and conciliation act which deals with arbitration procedure and technicalities, no statute of the same nature exists for mediation.

There are two ways for initiation of mediation proceedings:

1. Parties refer to mediation voluntarily i.e., private mediation.
2. Court refers the parties to mediation under Section 89 of Civil Procedure Code.

In the case of **M/S Afcons Infra Ltd. & Anr v. M/S Cherian Varkey Construction**,[35] the Supreme Court has said that while referring to Section 89 by the Court, the court has the discretion to opt for any of the five methods. Nevertheless, the realistic appliance of the law says that *subsequent to the pleadings are absolute in addition to looking for admission/denials where required and before framing issues the court will have alternative to section 89 of the Code.* Court will reflect on the natural history of the dispute and submit the parties to five options accessible and according to the preference of the parties refer the party to method.

During case wherever the questions are problematical or cases which might need numerous rounds of dialogue, the court may pass on the issue to intercession. Despite the fact that the procedure underneath Section 89 appear to be prolonged and complex, put into practice the method is easy: be acquainted with the dispute; eliminate `unfit' cases; find out approval for adjudication or appeasement; stipulation if there is no consent, opt for Lok Adalat for uncomplicated cases and intercession intended for all further cases, reserving allusion to a Judge assisted resolution only in incomparable or unusual cases.

Under Hindu Marriage Act and Section 23 of Special Marriage Act, reconciliation proceedings are mandatory for parties. Section 23 (2) Hindu Marriage Act, states that prior to proceeding to endowment any aid underneath it, here it shall be a responsibility of the court in the first instance, in every case to formulate every attempt in relation to reconciliation amid parties wherever assistance is required on the majority of the fault grounds for separation particular in Section 13. Here the court may refer the party to mediation for counseling. If the attempt at reconcilement fails then, parties may arrive at a peaceful settlement. The nature of Hindu marriage is that of a sacrament and not a contract. Therefore, every attempt of reconciliation has to be made to avoid divorces that are carried out in haste.

Stages of Mediation[36]

1. Prologue and Aperture avowal
2. Combined Sitting
3. Separate Session
4. Concluding

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35 Arbitration Petition (L.) NO.752 OF 2013

36 *Concept and Processes of Mediation, Mediation and Conciliation Project Committee, Supreme Court of India http://mediationbhc.gov.in/*PDF*/concept_and_process.pdf (last visited on 14.3.2020)*

The mediation proceedings start with an introduction by the mediator wherein he outlines the process, the issues, the rules of mediation etc. The statements are made by each party after the introduction. The parties are given an opportunity to present their viewpoint. Questions may be asked by the mediator to clear certain doubts at this stage for a clearer understanding between both the parties. Mediator holds separate sessions with both the parties trying to solve issues, proposing solutions basically making every effort to have peace between parties. The mediator goes back and forth between the parties during this time, clearing up misunderstandings, and carrying information, proposals, and points of agreement.

Approaching to the strategy to be adopt by the analyst, the subsequent stages can be recommended-

1. Inquisitive of Particulars.
2. Identify the actual reason of dispute.
3. Looking at potential of reunion or separation.
4. Fetch the parties to an decided resolution. and
5. Determining the resolution in the authorized format.

1.11 Mediation under Statutes

Mediation has its roots in Arbitration and Conciliation Act, 1996. This Act provide the resolution during intercession as one of the unconventional dispute resolution methods. The alleged Act in addition define the law connecting to appeasement and matters associated therewith. Whereas Legislative and Legislative provisions related to matrimonial disputes is Hindu Marriage Act, 1955, Special Marriage Act, 1954, Family Courts Act, 1984, Civil Procedure Code 1908, Legal service Authority Act, 1987.

The Arbitration and Conciliation Act, 1996

They said act is to combine and alter the law concerning to domestic arbitration, worldwide profitable adjudication and enforcement of foreign awards the same as also define the law concerning to appeasement and for the matter connected therewith or incidental thereto. The United Nations Commission on International Trade Law (UNCITRAL) has adopted the UNICTRAL. Model Law on global profitable adjudication 1985 The wide-ranging meeting of the United Nations has suggested that all countries give due contemplation to the said Model Law, in view of the desirability

of uniformity of the law of arbitral procedures and specific needs of international commercial arbitration practice. The UNICTRAL has adopted the UNCITRAL Conciliation Rules in 1980. [37] The Arbitration and Conciliation Act 1996 also have the stipulation dealing with the intercession. It provides the resolution all the way through the intervention as one of the unusual dispute resolution systems.[38]

The Code of Civil Procedure, 1908

The practice of intercession gets recognition in civil disputes with the alteration in the set of laws.[39] Section 89 of Civil Procedure Code was new in the alleged code the court has authority to pass on the litigants to any manner of adjudication, conciliation, mediation or Lok Adalat to resolve their clash according to satisfying conditions of resolution among them.

The tendency of the court to choose for any one approach of unconventional dispute resolution. Subsequent to recording the admission and denial, the court shall direct the parties to the suit to select either form of the resolution outer the court as specific in sub-section (1) of section 89 of Civil Procedure Code.[40] Wherever the dissimilarity referred to the intercession the court shall affect an agreement in this regard as per the procedure.[41]

The Hindu Marriage Act,1955

The application intended for separation cannot be file in any court of law within a year of marriage excluding where there is special adversity. At the same time as disposing the request for separation the court shall take into account the wellbeing of the children and shall observe that if there is any proposal of resolution exists amid the parties so that their family member may be saving with reunion.[42]

The courts are underneath the legal requirement to endeavor to accomplish settlement among the parties previous to conceding any assistance under the present Act.[43] On the way to attain compromise between the parties the court may defer the issue for

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37 Avtar Singh, Law of Arbitration and Conciliation ,1(Eastern Book Company, 7th edition)
38 The Arbitration and Conciliation Act, 1996, s. 30
39 The Code of Civil Procedure (Amendment) Act, 2002 (Act 46 of 1999), Section 7 (w.e.f. 1-7-2002)
40 The Code of Civil Procedure ,1908, Order X: Rule 1A
41 Ibid s. 89(1)(d)
42 The Hindu Marriage Act,1955, s 14(2)
43 ibid 23(2)

fifteen days and submit the issue to any person or intermediary named by the parties. The court may assign any individual to attempt and resolution and to report to the court as to whether the issue can be solved through agreeable agreement or not.[44]

The Family Courts Act, 1984

The family courts are under constitutional responsibility to forecast fundamentals of agreement in the dispute. The Court has to follow and encourage the parties to decide their disputes during dialogue as per the method recognized by the respective high court. The court can further suspend the issue as it deems fit to give the parties adequate time to achieve the cordial resolution.[45]

The Special Marriage Act, 1954

Similar to Hindu Marriage Act, it is the obligation of the court to anticipate the option of resolution among the parties prior to yielding any aid to the parties under the Act. [46] Additional it may assign any individual entrusted with the mission of settlement and to testimony the court as to whether the arrangement is achievable or not.[47]

1.12 Law Commission Report

77th report-Law Commission of India in its 77th report had recommended that incorporation of Conciliation Courts model which was prevailing in Japan, France, and Norway can be incorporated in Indian judicial system and civil cases can be resolved through conciliation. [48]

129th Report-Malimath committee Report is a milestone in acceptance and legal backing of Alternative Dispute Resolution (ADR) procedures in India. The Committee underlined the need for Alternative Dispute Resolution mechanisms such as mediation, conciliation, arbitration, Lok Adalat's etc. as a viable alternative to the conventional court litigation. The Committee underlined the need for resolution of disputes resorting to alternative procedure. The Law commission of India in its 129th Report suggested that it must be compulsory in favor of the court to refer the dispute to intercession for agreement.

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44 ibid, s.23(3)
45 The Family Courts Act, 1984, s. 9
46 The special Marriage Act,1954, s.34(2)
47 Ibid s.34(3)
48 Law commission of India,77thReport on Delay and Arrears in Trial Courts 1978 (2014) available on http://lawcommissionofindia,nic,in//reports//Reports pdf (last visited on 15.4.2020)

222nd Report[49]-The 222nd Law Commission Report on require for Justice Dispensation through unconventional dispute resolution etc. April, 2009, went into the details of alternative dispute resolution procedures and their application. The National Litigation Policy announced by the Government of India in 2010 that deals with ADR emphasized the need to streamline the procedures. Further, it listed various points for the success of ADR procedures. National Mission for Delivery of Justice set up in 2011 under the Ministry of Law and Justice to improve a variety of issues relating to the judiciary to reduce pendency and arrears and increase access to justice observed that Section 89A of the Civil Procedure Code, 1908 would reduce the pendency of cases and further proposed to put the commercial arbitration cases on fast track for speedy redressal. Further Report of the Working Group for the Twelfth Five Year Plan (2012-2017), Department of Justice Ministry of Law & Justice Government of India September 2011 endorses ADR procedures. The ADR procedures now have the legal backing.

238th Report[50]**-** The 238thReport of Law Commission dated December, 2011 proposed amendments similar to those suggested by the Supreme Court in Afcons to Section 89 as well as the allied provisions substantially, including Section 16 of the Court fees Act, 1870 also call for reformation of the Section on the contour situate elsewhere by the Supreme Court by means of convinced qualms. The report provided a clear understanding of the existing process of Alternate Dispute resolution.

1.13 Mediation: India & International Scenario

India is not only the country which is adopting the mediation. We the people of India are not only the victims of malicious prosecution or of time-consuming process. In 1910 Roscue Pound had a conference which was entitled as The causes of popular Dissatisfaction with the administration justice. "In that conference what the pound had said is still applicable in the progressing societies that the judges are deciding the matters as per the rules and the counsel pleadings. The witness box becomes the house of slaughter. [51] The concluding remarks of pound conference he suggested to adopt alter dispute resolution especially mediation to resolve the disputes and he also

[49] Law commission of India, 222ndReport, available at file:///F:/stydy%20material%20of%20PHD/32-48-1-SM%20(2).pdf (last visited on 11.3,2020)

[50] Law Commission of India,238th Report on, Amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions, Ministry of Law and Justice, G.O.I, (Dec 2011)

[51] Sriram Panchu, Mediation Practice & Law the Path to Successful Dispute Resolution 330 (LexisNexis, Second Edition, 2017)

suggested that the government should take measure to make laws and rules in this direction.

After that Arbitration and Conciliation was enacted and the process of mediation also gets the international accord which is as under -

International Convention and Organization

Hague Convention

Hague convention on private international law adopted the mediation on the tunes of its previous convention. [52] The Guide on good practice released by body efficiently coined the terms Mediation, Mediator, Direct and Indirect Mediation etc keeping in view the cross border family disputes, custody and a contract the term Indirect Mediation was defined as where the parties do not meet the mediator at the same time but do at the different time and places. Whereas the definition of Indirect Mediation is widening the scope of mediation process, the definition of Direct Mediation which includes the meeting of the parties with the mediator over the telephonic/video conferences widening the method of mediation process. The provision of bicultural and bilingual mediation has been kept for better understanding of the views of the related persons to the concerned parties which are beneficial during Caucus. The importance is also given to the voice of the child in the process. The agreement has been made binding on the parties and the member states has to enforce the judgment as per their existing law.

World Intellectual Property Organization (WIPO)

In 2007 mediation rules were also adopted by the World Intellectual Property Organization having the scope which enumerates as, wherever a intercession conformity provide for intervention beneath the World Intellectual Property Organization Mediation system these regulations shall be deem to outline the part of that intercession conformity. Except the parties have decided or else these regulations as in result on the date of the commencement of the intervention shall pertain.[53]

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[52] Guide to Good Practice under the Hague Convention of 25 Oct. 1980 on the Civil Aspects of International Child Abduction, available at: http://ec.europa.eu/justice/civil/files/mediation_en.pdf (last visited on 10.3.2020)

[53] WIPO Mediation Rules, available at: http://www.wipo.int/amc/en/mediation/rules/ (last visited on 10.3,2020)

The Singapore Convention on Mediation

This rule was adopted on December 2018, the United Nations Convention on Global Settlement Agreement resultant from intercession also recognized as Singapore Convention. These principles apply to worldwide resolution conformity consequential from intervention. This rule is a mechanism which facilitates the global trade and encouragement of intercession as another or effectual technique of trade disputes. Such rule is establishing a synchronized lawful outline for the accurate to invoke resolution agreement as well as its enforcement. [54]

UNCITRAL (The United Nations Commission on International Trade law)

UNCITRAL published the UNCITRAL Conciliation Rules in 1980 and 20 years later the UNCITRAL Model Law on International Commercial Conciliation, whipping up waves of mediation legislation and a rise of mediation activities over the world.

Worldwide use of Mediation /Conciliation

In Asia

India

Intercession has officially been hooked on our lawful method merely ever since 2005. On hand information on execution of intercession in India is consequently very little. Studies undertake by the Vidhi Centre for authorized strategy on intervention in Delhi and Bengaluru make known that even though intercession has established the set-in motion so as to be required, a large amount still wants to be complete to catch the attention of disputants away from legal action.

For illustration in 2011 only 2.79 per cent of all cases were referred for intervention by the High Court of Karnataka and by the year 2015 this figure rises only marginally to 4.83 per cent. The state of affairs in Delhi is not that diverse and it is seen that only 2.86 per cent of cases instituted were referred to mediation by the High Court of Delhi in 2011 which gradually dropped to 2.31 per cent of cases in 2015. Between 2011 and 2015 in Bengaluru amongst the cases that were mediated, 66 per cent of the cases were settled through mediation. It is important to note, however, that not all cases referred for intervention actually proceed. In 17 per cent of cases intercession was concluded even prior to start.

[54] Singapore Convention on Mediation, available at https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements (last visited on 10.3.2020)

The reasons were that the case was not fit for intercession, one or more parties never appear or were not present for follow-up, one or more parties appeared but refused to partake etc. The nonattendance of parties for follow-up intercession was the primary cause for extinction amounting to nearly 45.51 per cent of such cases. In comparison in Delhi 56 per cent of the mediated cases were settled, while 15 per cent of cases referred were terminated prior to mediation commencing. As to types of cases, it is seen that mediation is most popular in matrimonial and family law disputes, such as divorce, partition, and restitution of conjugal rights, protection of women from domestic violence, and dowry prohibition cases, contributing to nearly 80 per cent of the mediation docket in Bengaluru. Cases concerning property disputes amount to around 11 per cent of the total number of cases referred to mediation in Bengaluru.[55] This table contains statistics on referral of cases to mediation and their disposal rates in some of the cities and states. The figures below are only intended to give a general idea of the functioning of mediation centers in India.

State/City	Duration	Number of cases referred	Settlement rate (in %)
Delhi [56]	2005-2016	1,64,674	56.6
Bengaluru[57]	2007-2017	56,759	65
Tamil Nandu[58]	2005-2015	38,592	16.5
Gujarat[59]	2008-2017	17,451	18.9
Kerala[60]	2009-2015	1,05,783	24.8
West Bengal[61]	2012-2016	3,126	17.1
Chandigarh[62]	2008-2017	12080	19.4

[55] Bangalore mediation center, case related to property, available on http://dakshindia.org/Daksh_Justice_in_India/14_chapter_04.xhtml (last visited on 16.9.2019)

[56] Delhi Mediation Centre. 2016 District Courts of Delhi: General Statistical Report (2005–2016), available online at http://www.delhimediationcentre.gov.in/statistical.htm (last visited on 16.9.2019)

[57] Bangalore Mediation Centre 2017,General Statistical Report (2007–2017),available online at http://nyayadegula.kar.nic.in/statistics.html (last visited on 16.9.2019)

[58] High Court of Judicature at Madras 2015 *Madras High Court: Annual Report 2015*. Madras: High Court of Judicature at Madras, p. 99. Available online at http://www.hcmadras.tn.nic.in/ hcreport2015.pdf (last visited on 17.9.2019)

[59] A statement of the High Court of Gujarat showing the details of the matters sent to all ADR/Mediation centers in the state as of 31 March 2017 is available online at http://gujarathighcourt.nic.in/hccms/sites/default/files/Mediation_data%20_31.03.2017.pdf (last visited on 17.9.2019)

[60] Kerala State Mediation and Conciliation Centre 2015 'Statistics: 2009–2015', available online at http://keralamediation.gov.in/Statistics (last visited on 17.9.2019)

[61] West Bengal State Legal Services Authority 2016 'Statistical Information on Mediation: 2012–2016', available online at http://www.wbslsa.org/mediation.html (last visited on 18, 9, 2019)

Hong Kong

Hong Kong SAR has carried out judicial procedure Reform, emphasizing the use of mediation to settle disputes. The Mediation Center of Hong Kong has been established. Quite a number of mediation service organizations are existing. HKIAC (Hong Kong International Arbitration Centre) has set up two mediation councils to deal with mediation matters. People are encouraged to mediation prior to litigation and arbitration. The Law School of City University of Hong Kong, Columbia Law School and CIETAC (China International Economic and Trade Arbitration Commission) has jointly and successfully held Asia Pacific ADR (focusing on mediation) Mooting Competitions in Hong Kong with competing teams from 20 countries, making contribution to the mediator-training for the development of mediation in the world.

Singapore

Singapore set up its Mediation Center in 1997. Mediation has become a part of the Singapore legal system. Mediation is widely and successfully used in Singapore.

In Europe

Europe has issued a 'Directive' demanding its member states to establish legal system of mediation to settle disputes by use of mediation. The demand has been satisfied.

UK

UK has carried out a reform of its civil judicial system, emphasizing the use of mediation to settle disputes. LCIA is using mediation in addition to arbitration to resolve disputes. CIArb is promoting mediation at home and abroad. Many mediation service organizations such as CEDR have emerged with vitality. People are advised to settle their disputes by use of mediation.

France

France has set up a French Mediation Center. The French Civil Procedure Code sets forth that a part of the function of a judge is to conciliate the parties. In recent years,

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[62] Mediation and Conciliation Centre 2017 'Consolidated Updated Work Statement as of March 2017 of the Mediation and Conciliation Centre', *Punjab and Haryana High Court*, available online at http://mediationcentrephhc.gov.in/pdf/Performance%20Chart.pdf (last visited on 18.9.2019)

the French courts have rather often settle disputes by mediation with a high rate of success.

In South Pacific Region

Australia

Australia set up its Arbitration and Mediation Institute in 1975 and enacted its Commercial Mediation Act in 1997. The Australian Center for Peace, Conflict and Mediation has also been established to promote the resolution of disputes by mediation.

1.14 Judicial Pronouncement

K. SRINIVAS RAO v. D.A. DEEPA[63] The Supreme Court Emphasizes Relevance of Mediation in Matrimonial Disputes Including Complaints U/S 406/498A IPC. It was observed that purely a civil Matrimonial Dispute can be amicably settled by directing the parties to look at the option of agreement in the course of intervention. The courts have always adopted a positive approach and encouraged settlement of Matrimonial disputes and discouraged their escalation.

B.S. JOSHI & ORS v. STATE OF HARYANA & ANR[64] The Supreme Court held that complaint involving offence under section 498-A of the IPC can be quashed by the High Court in exercise of its powers under section 482 of the Code if the parties settle their dispute.

GIAN SINGH v. STATE OF PUNJAB & ANR[65] The Supreme Court expressed that certain offences which overwhelmingly and predominantly bear civil flavor like those arising out of matrimony particularly relating to dowry etc. or the family dispute and where the offender and the victim had settled all disputes between them amicably irrespective of the fact that such offences have not been made compoundable The High Court may quash the Criminal Proceedings if it feels that by not quashing the same the ends of justice shall be defeated.

K. SRINIVAS RAO, The Supreme court further observed that through offence punishable under sec 498-A of the Indian Penal Code is not compoundable in suitable

63 (2013)5SCC226
64 (2003) 4SCC 675
65 (2012) 10SCC 303

cases if the parties are keen and if it appear to the Criminal Court that there subsist essentials of the opportunity of resolution in the course of intercession. But there is agreement the parties will be saving from the trial and problems of a criminal case and that will diminish the trouble on the courts which will be in the better community concern.

1.15 Statement of problem

No doubt, efforts at streamlining mediation have been ongoing at various level in judiciary and by the Government. In 2005, the Supreme Court set up the Mediation and Conciliation Project Committee (MCPC) to encourage court referred mediation. The MCPC has since been working towards imparting training and generating awareness regarding the benefits of mediation. Earlier this year the Supreme Court has also established a panel to draft a law governing mediation. Despite the absence of umbrella mediation legislation, the parliament has introduced clear cut provision for mediation in four legislation which governed different categories of disputes. This is the true recognition of potential mediation holds in resolving these disputes.

Not only had this one more recent and significant development in mediation had the Singapore Convention on mediation held in 2019. This convention has set the right tone and benchmark for India to address similar shortcomings in terms of enforcement and certainty in its domestic mediation framework.

Now the question arises that despite the provision listed in the above section and existence of mediation infrastructure created under Legal service Authorities Act, 1987, mediation in India has not really taken off as a popular dispute resolution mechanism. In absence of specific data, it is hard to gauge if and to what extent mediation has prevented disputes from landing up in the courts.

Besides this, there are number of consideration that merit attention for bolstering mediation in the country. In practice Section 89 is not being actively invoked by the Judges because of which the court annexed mediation remains low. Even if the matter is referred for mediation, there is not enough mechanism in place to ensure that parties appear for scheduled sessions.

It is clear that existing piece meal mediation framework in India is perforated with technical and structural deficiencies which have prevented it from a preferred mode of

dispute resolution in India. Due to lack of certainty as regards enforcement the demand for mediation is low and consequently, the capacity of mediators and mediation centers has been slow to build up.

Mediation has significant potential for bringing about qualitative change in the focus of the legal system from adjudication to amicable settlement of the disputes. No doubt, mediation is a dynamic process and understanding its different dimensions to make the system more responsive to the needs of the parties. This study plans to make an appraisal of mediation and conciliation in matrimonial disputes and make a comparative analysis of State of Punjab and Himachal Pradesh

Selection of District

State of Punjab (District Vise)[66]

Sr. No	District	Year	No. of cases Referred	No. of cases settled	No. of cases Unsettled	Success percentage
1.	Hoshiarpur	2008-2019	796	186	528	23.36
2.	Jalandhar	2008-2019	1298	119	902	9.16
3.	Ludhiana	2013-2019	803	113	701	14.07
4.	Amritsar	2013-2019	4395	1984	2411	45.14
5.	Bathinda	2013-2019	809	276	593	34.11
6.	Rupnagar	2013-2019	503	180	57	35.78
7.	Pathankot	2000-2019	482	58	402	12.03
8.	Patiala	2008-2019	3375	1048	2159	31.05
9.	Mansa	2008-2019	424	70	354	16.05
10.	Fazilka	2014-2019	249	73	307	29.31
11.	Fatehgarh Sahib	2014-2019	510	96	414	18.82
12.	Barnala	2014-2019	1899	1854	1	97.63
13.	Faridkot	2014-2019	276	13	254	4.70
14.	Ferozepur	2000-2019	604	120	189	19.86
15.	Kapurthala	2001-2019	299	67	222	22.40
16.	Moga	2008-2019	2553	701	1849	27.4
17.	Gurdaspur	2014-2019	622	259	363	41.6
18.	Sangrur	2014-2019	2214	406	1808	18.3
19.	Muktsar Sahi	2014-2019	107	28	79	22.5
20.	SBS Nagar (Nawa Shahar)	2014-2019	326	12		3.68
21	Taran Taran	2014-2019	15	01	14	6.66

[66] Data was collected through Right to Information Act,2005

State of Himachal Pradesh (District Vise)[67]

Sr. No	Districts	Year	No. of Cases Referred	No. of Cases Settled	No. of Cases Unsettled	Success Percentage
1.	Una	2013-2020	1085	216	869	19.91
2.	Hamirpur	2015-2019	494	63	439	12.75
3.	Bilaspur	2015-2019	438	62	340	14.15
4.	Kangra	2015-2019	1304	271	954	20.78
5.	Mandi	2015-2019	750	114	610	15.2
6.	Kullu	2015-2019	928	365	559	39.33
7.	Chamba	2015-2019	144	21	118	14.89
8.	Shimla	2015-2019	582	212	343	36.42
9.	Solan	2015-2019	645	122	543	18.91
10.	Sirmaur	2015-2019	357	50	292	14.00
11.	Kinnaur	2015-2019	363	108	184	29.75

District Selected for Study

In the Parlance with Provisional Equity the universe of the study is State of Punjab and Himachal Pradesh. And from those universe two districts have been selected i.e., District Hoshiarpur from Punjab and District Una from Himachal Pradesh.

Reasons for choosing these two districts (Hoshiarpur and Una) from State of Punjab and Himachal Pradesh are –

Firstly, both the districts are chosen randomly. Apart from that researcher found that both district (Hoshiarpur and Una) is border centric to each other. Earlier District Una was the one of the Tehsil of District Hoshiarpur (Punjab). Consequent upon reorganization of Punjab, all the hilly areas including Una Tehsil of district Hoshiarpur (Punjab) was transferred to Himachal Pradesh.

As both districts are border centric and their cultures are also connected to each other. So, here researcher has a keen interest to study the functionality and implementation of mediation and conciliation in matrimonial disputes in these two districts and make comparative analysis to assess that which district have greater number of disposals in dispute resolution especially in mediation in matrimonial disputes.

Instead of that they are border areas and their cultures are same but it might be possible that their disposal system vary with each other. So, in order to touch that notion, it is very important for the researcher to find out at what extend mediation and

[67] Data was collected through Right to Information Act,2005

conciliation is really successful in solving the matters of matrimonial disputes particularly in these two districts of State of Punjab and Himachal Pradesh and to find out how effectively it has been used.

1.16 Review of Literature

1. Sabyasachi Mukharji (1990), the former Chief Justice of India said that, an alternative to litigation should be found to resolve disputes. We must develop a new theory of resolving differences through intervention of neutrals. Role of law school in the delivery to legal service to rural poor. The voluntary agencies and social workers are being motivated to public for alternatives. Opportunities should be provided to youths, especially law students, to participate legal services to poor. The average 50% of cases are civil miscellaneous petitions and family matters. Hence the registry of court is overburdened by the court. Hence the Implementation of alternatives is needed.

2. Dr.A. Padmavathi (1990), Research in the field of domestic violence indicates in the family assault need of implementation of laws as well as private counseling. The method of mediation bears fruitful result to deal with family violence. For that the establishment of family courts, free legal aid, counseling for young people. Means shelter of mediation and counseling is protecting to women as well as her matrimonial relations and will change the criminological view towards violence in family.

3. Jeffery G. Kichawen and Vicki stone (1991) Preparing for Mediation rightly observed that, mediation is a powerful tool for setting disputes. It empowers the litigants to take control of the settlement process themselves. Assisted by an impartial mediator, opposing parties speak straightforwardly to each other in an attempt to reach settlement. Mediation recognizes the psychological and emotional constituents of a dispute may be more vital than factual facts. The role of lawyers in mediation is severely different from role of a judge in a trial.

4. P.C. Jain (1993), The author says that for management of justice emphasis on conciliation court. Only function of law should not be to preserve status-quo. The law should rather be the gate keeper of status-quo. There is always must be arising new ideas with changing society. Conciliation court, Lok Adalat,

Family Court is the process of securing social justice to the people of the country.

5. Robert A. Baruch Bush and Joseph P. Folger, The promise of Mediation (1994): the author has narrated that, in a conflict, the main aim ought to come across an approach of being neither sufferers nor victimizers, except associates in enduring human relations, which is always going to involve instability and conflict.

6. Sunil Deshta, Lok Adalats in India (1995): the author deals with a very important and stimulating theme of contemporary relevance. The examination of Lok Adalat as an unconventional means of disagreement resolution has come up to be acknowledged as a possible, cost-effective, effectual and casual one. The Anglo-Saxon system of administration of justice inherited from the Britisher has the inability to dispense informal, cheap and expeditious justice to the common man. It is admittedly under such strain that some jurists have already predicted its imminent collapse if appropriate corrective measures are not initiated. The system has been very rigid, expensive and time consuming. The author has narrated that people are badly fed-up with obsolete, irritating and isolationist ways of administration of justice. Though legislations may not have an ability to improve the Anglo-Saxon legal system, yet there still lies the hope that the institution of Lok Adalat will root out the triple vices of delays, cost and complexities from the existing Courts. The scheme is held to be judge-inspired, judge-induced and judge-aided, invented because of social philosophy expounded in the light of social justice in crises. Lok Adalat is needed to hammer out and reduce the backlog of arrears of cases and provided justice without delay to the poor litigants at their doorstep.

7. Henry J. Brown and Arthur L. Mariot (1997, 2nd Ed. Sweet & Maxwell, Lord on Chapter 7, p 127), in his book ADR Principles and Practice the author in this book says that intercession is a facilitative procedure in which disputing parties attach the support of an unbiased impartial party, the intermediary who help them to turn up at settled agreement. The referee has no power to create any decision to facilitate obligatory on them, however use of definite

technique, trial and skill assist them to bargain an settled resolution of their dispute exclusive of arbitration

8. Alka Srivastava (1999), the author focuses on rural areas. In India, particular in rural areas, the qualities of women are required like they should be passive, patience, sacrificing and modest. Hence the rights like divorce, equality are far from her. She is victim of daily harassment of her husband or his family. Sometimes it resulted into divorce hence there is need for creating special programmes like Conciliation, Mediation etc.

9. Stephen B. Goldberg, Frank E.A. Sander and Nancy H. Rogers (1999, 3rd Ed. Aspine Law & Business, Gaithersburg and New York) (Ch. 3, p. 123), foremost book on Dispute Resolution (Negotiation, Mediation and other Processes), the author says that Mediation is negotiation carried out by the support of third party. The umpire in compare of arbiter or adjudicator has no authority to inflict upshot on disputing parties.

10. Robert (1999) The Author talks about Emergence of Mediation in U.S Mediation in the court, and the mechanics of mediations, training and compensation to mediator certificate to the trained Mediator, reduction of burden on the system etc. .

11. Brown and Marriott, in the Alternative Dispute Redressal methods Principles and Practice , (1999): defined the process of conciliation as the practice by which the services of a impartial third party are used in a clash as a means of helping the disputing parties to trim down the degree of their variation and to appear at an friendly arrangement or settled way out. It is a practice of systematic or lucid dialogue under the supervision of the mediator. The process of Mediation as an informal, voluntary process in which an impartial person, trained in facilitation and negotiation techniques, helps the parties to reach at a mutually acceptable resolution. The process of Negotiation as by itself is not an alternative dispute resolution procedure because it is a bipartite process and does not require a third party to facilitate and promote the settlement.

12. Jagtenbury R and de Roo A, 2001, The ‘New Mediation: Flower of the East in Harvard Bouquet: Asia Pacific Law Review Vol. 9, No.1, p 63-82. In this

paper author exposed to facilitate the terminology ‘conciliation’ and ‘counseling’ have vanished in USA. In USA, the expression ‘conciliation’ has gone and ‘mediation’ is used for the impartial who take a pro-active role.

13. Shalu Nigam (2001). The Indian culture glorifies the image of women who is tolerance and receptive of whatever given to her by the husband. because no source of support like emotional or material or support from paternal family, on availability of alternative in terms of physical, economic and social rehabilitation etc. The main thing is inadequacy of social support network which compels a woman to compromise or reconcile and inadequacy of legal provisions which take long time to dispense justice. But that compromise is done by forcefully and justice delay is the justice denied. Hence ADR only one solution of this problem.

14. Tania Sourdin, Alternative Dispute Resolution (2002) The author states that, each year in Australia an estimated 250,000 disputes is resolved outside the Court and Tribunal system using alternative dispute redressal methods. ADR processes have been widely implemented within business and communities and as specific programs in areas such as family disputes. Most Australian Courts and Tribunals now provide some references to ADR. Alternative dispute resolution provides a comprehensive examination of the theory and application of ADR in Australia.

15. Rao (2003) in this article Author has explained the Conciliation Proceedings under the Indian Arbitration Conciliation Act of 1996 and Code of Civil procedure. The difference between Arbitration and conciliation has been given as to privacy or confidentiality, as to process of adjudication and settlement, as to role of Arbitrator and Conciliator.

16. V.A. Mohta and Anoop V. Nigam of the book ‘Arbitration, Conciliation and Mediation ‘expounded the civil Procedure Mediation Rules, 2003. Rule 2 enumerates the appointment of a mediator and provides that the parties to the suit may all agree on the name of a sole mediator and in case of difference of opinion both the parties may nominate a mediator. The rules further deal with the aspects like panel of mediators which is to be appointed by the High Court, qualification of persons to be empaneled, disqualification of persons, venue of

conducting mediation, cancelation of appointment, confidentiality, offer of settlement etc. most important rules like procedure of mediation and the role of mediator.

17. Myneni (2004), explain the advantages and limitation of ADR in his book Alternative Dispute Resolution Arbitration, Conciliation and Alternative Dispute Resolution Systems. It can be used at any time before filing case, even pending case before court, better solution at less cost, its flexible hence not wasting time for technical procedure, ADR can used with or without lawyer while permission to parties to choose neutral person who is specialist for solving disputes. The ADR is not favored in cases like when any one party not agreed for amicable settlement, in criminal cases etc. But in matrimonial cases most of matter of sentiments and emotions hence the method of ADR is perfect for these matters.

18. Forrest S. Mosten, (2004) Institutionalization of Mediation , held that, the Uniform Laws marks a watershed in the national institutionalization of mediation. Law deals with issues such as the definition of mediation, the affirmation that a mediator need not be a lawyer, and extensive confidentiality provisions. Such national standards and laws will lead to more uniformity within the field. Currently, the policy maker has failed to provide a statutory framework, which administers and regulates the growth of mediation in India. The existence of such legislation would codify the goals, approaches, skills, and ethical standards that are required for smooth institutionalization. It is crucial that the legislators in India congregate the necessary will to effectuate such legislation or else the momentum gathered towards institutionalization would be lost. Eradicating ambiguities within the practice of mediation in India is crucial to its growth and acceptance as a feasible alternative to litigation processes.

19. Peter Worsley (2005) the author explains, The cultures vary in the degree of marital conflict. It is varied from one society to another society and the appropriate solution also varies. But the intensity of marital conflict has not been measured in any culture. Divorce is to be seen one kind of mechanism for dealing with pressures and problems inevitably caused by marriage. Hence

the person who is neutral but knowing the family culture of both spouses, there background etc. Will be good mediator for solving their conflict rather than regular court.

20. Sharad Mishra (2005) through Justice Dispensation through Alternate Dispute Resolution System in India. Mahatma Gandhi had put in correct words as; I had learnt the factual portrait of law. I had learnt to discover out the improved face of human being and to cross the threshold of men's heart. I realize that the correct purpose of a legal representative was to bring together parties riven as under. The tutorial was so lastingly blistered into me that a great part of my moment at some point in the twenty years of my carry out as a attorney was engaged in bringing about personal compromise of hundreds of cases. I gone astray nothing thereby not even wealth undoubtedly not my spirit.

21. Salem Bar Association, Tamil Nadu v. Union of India, 2005 (6) SCC 344, The other development was done in the process of mediation by Honorable Supreme Court in the landmark case Salem Bar Association in which the committee formed by Honorable Supreme Court recommended that the provisions regarding ADR including Mediation enumerated under CPC are to be followed strictly. The author concluded his paper while making his remarks that the judges have been quick to accept the use of Mediation as a helpful mechanism for reducing backlogs. In our view it is very early to say this confidently, as practically it has been seen that some judges do not bother even the written application of the parties to send the case to the mediation centers in one pretext or the other. Some of judges send the limited number of cases just to achieve the targets fixed by the respective High Courts.

22. S.R. Myneni (2006), the author discusses about, the status of women in Vedic or ancient period that man and women play vital roles in the creation and development of their families in particular and the society in general. Women in ancient period was considered more powerful than man and treated as goddess of Adi Shakti . But in later period status of women is degraded. According to Deb, men in India looked upon women as household slaves. The mentality of men changing towards women like slavery or dasi. The present status of women is imbalance they treated as inferior members in their own

family even though they are independent and superior positions in society hence this type of conflict in martial life and the relation becomes stressful. Hence now the need of mediator or conciliation for the removal of their conflict.

23. Justice S.B. Sinha (2006), in this justice Sinha explains The Stages of Mediation . At First stage of mediation, mediator lets lawyers and clients know what to expect and how to prepare. At Second stage Mediators explains the process and procedural guidelines . At third stage identifying the problems . At the fourth stage mediators assist for exploring the problem through values, needs and interest. At fifth stage that mediator and parties identify and evaluate options for resolving the disputes. And at the last concluding the mediation with confirmation of parties understanding and acceptance of the agreement and the future responsibilities of the parties and acknowledge conclusion of mediation.

24. The Hon'ble Ex. President of India Dr. APJ Abdul Kalam has also been supportive of amicable settlement of disputes and has advocated the need to encourage mediation as an alternative dispute resolution (ADR) mechanism in the following words in The 12th Justice Sunanda Bhandari Memorial Lecture – Judiciary and its multidimensions (2006). Mediation and conciliation are definitely a faster method of dispute resolution compared to the conventional Court processes. Only thing is that we have to have trained mediators and conciliators, who can see the problem objectively without bias and facilitate affected parties to come to an agreed solution. In my opinion, this system of dispute resolution is definitely a cost-effective system for the needy... Mediators must possess the qualities of being a role model in the society; unimpeachable truthfulness as well as aptitude to convince also makes assurance amongst the parties.

25. The Hon’ble Shri Y.K. Sabharwal, (2006), in Justice Sobhag Mal Jain Memorial Lecture on Delayed Justice has narrated that; Constitution of India reflects the quest and aspiration of the mankind for justice when its preamble speaks of justice in all its forms: social, economic and political. Those who have suffered physically, mentally or economically, approach the Courts, with

great hope, for redressal of their grievances. They refrain from taking law into their own hands, as they believe that one day or the other, they would get justice from the Courts. Justice Delivery System, therefore, is under an obligation to deliver prompt and inexpensive justice to its consumers, without in any manner compromising on the quality of justice or the elements of fairness, equality and impartiality. He further held that, the judiciary has to ensure that the fundamental right to a speedy trial does not remain merely a pipedream to millions of people. The very existence of an orderly society depends upon a sound and efficient functioning of its Justice Delivery System. Delay in disposal of cases not only creates disillusionment amongst the litigants, but also undermines the vary capability of the system to impart justice in an efficient and effective manner. Code of Civil Procedure under Section 89 brings alternative systems into the mainstream. However, India is yet to develop a cadre of persons who will be able to use these ADR methods in dispensing justice. Lawyers by and large still believe that litigation is the way of resolving disputes. Litigants are also advised accordingly. The challenges that dispute redressal methods in Indian are facing is to bringing about awareness among the people about the utility of ADR and simultaneously developing personnel who will be able to use ADR methods.

26. Raju (2007), in this article author focused that nowadays Alternative Dispute Resolution method is used in India for settlement of dispute. When we look at the number of cases pending in court it is very necessary to use such methods to decrease the burden of pendency. It is also necessary for maintain rule of law. The use of Arbitration, Conciliation, Mediation Lok Adalat, Gram Nayalaya and NayaPanchyat to reduce the burden of pendency.

27. Avatar Singh (2007), explain the Use of Objects and Reasons for interpreting the provision of Arbitration and Conciliation Act , focus on **case Narain Khamman V. Parduman Kumar AIR1985 1 SCC Supreme Court** observed that, It is now well settled that though the statement of objects and reasons accompanying a legislative bill can be used to determining the true meaning and effect of substantive provisions of statute. **And in Furest Day Lawson Ltd V Jindal Exports Ltd AIR2001 SCC 356,** The Supreme Court observed the purpose of the Act is to make available immediate and other way

out to the disagreement and avoid protraction of litigation. The provision of the Act has to be interpreted accordingly. The ultimate object of act is speedy and fair justice to parties.

28. Paras Diwan (2008), author describes The Type of Marriage . Hindu marriage is sacrament, permanent indissoluble and did not regard as contract. Marriage among Muslims is not sacrament but purely a civil contract. The Parsi marriage is also regarded as contract through religious ceremony of Ashirwad and solemnized by Parsi Priest in presence of two witnesses. Marriage among the Indian Jews is also contract is called Kutuba.A Christian marriage in India is also contract by marriage registrar. It means marriage is nothing but social contract. But fulfillment of every contract is impossible. Is means the attitude of society towards marriage is, while there is no rose which has no thorns but if what you hold is all thorns and no rose, better throw it away, but no any problem without solution and the mediation and conciliation is the good solution rather than breakdown of marriage.

29. Tony Whatling (2009), Managing Conflict And High Emotion in Mediation , It creates energy to move from something or somewhere conflict can signal constructive ways of bringing about change and of re-ordering lives. The author in this article explains how too much process control may lead the parties to hand over responsibilities for their behavior to the mediator. Too little process control can create a sense of anything –goes and the buildup of frustration and arousal to danger level.

30. Mathew Thomas (2009), Conciliation as a Necessary precursor to Arbitration , the author explains that, Conciliation when employed as a precursor to arbitration, it gives an opportunity to settle the disputes informally. Conciliation helps the parties to the dispute to understand the nature and crux of the dispute, by providing an opportunity to either party to present a list of their demands according to their priorities.

31. Anil Xavier (2009), Lawyer Mediator, Non-Lawyer Mediator –Who is better ? There can only be good mediators and less good mediators who can engage with a wide range of issues and those who can't. In this article author explains that mediators are trained to look for, capitalize on, and synergize the parties

mutual personal or commercial interests in an attempt to resolve disputes that lawyers reduce to legal cases.

32. L.Michael Hager (2009), An introduction to Deal Mediation , the author explains, it took many years or lawyers to see Alternative Dispute Resolution as a boom for their clients and a revenue earner for their firms. He explains that, the deal mediator should be commercial lawyer with years of experience in representing parties in international transaction. A successful deal mediator helps the parties achieve an enduring collaborative relationship.

33. S.R. Myneni (2010), the author focused on The changes in Indian society . The changes have been undergoing in traditional attitude like westernization, industrialization, urbanization, secularization etc. The changes also in family and marriage system like joint family reduced, paternal choice is selection of bride and bridegroom is decreasing, the age of boy and girl has been increasing, number of social reforms, independency of women, changes in economic system, education, status of women etc. No doubt their good developments of nation but at the same time these factors are adversely affect the relationship of husband and wife, hence the today the need of midway solution.

34. Dr S.C. Tripathi (2010), in this author explains The importance of Alternative Dispute Resolution. No doubt the system of judiciary or adjudication needs drastic improvement and policy makers are compelled to innovate alternate mechanism. While considering the legal aspect the parliament in India introduced the Legal Services Authority Act and Arbitration and Conciliation Act. The need of Alternative means because amicable settlements of disputes, speedy justice, economic settlement, time saving, management, legal recognition. The matrimonial issues are directly affected on individual and life. Hence the need of speedy justice is very important. Every individual has not only right to justice but also right to speedy justice.

35. Hesha Abrams (2010), The Art of Deal- Deal Mediation , Most negotiations move one puny move at a time. Great negotiators negotiate like great chess players, five moves at a time and take actions designed to provoke / encourage a particular move from their opponent. If you don’t diagnose the correct

problem, you can't design workable solution. The author explains that, in negotiations parties are not fully forth coming with each other so you may never know the real reason a deal works, fail apart, or becomes sluggish.

36. Jeff Abrams (2010), Anatomy of Mediation , planning a negotiating strategy with the client while thinking appropriate parameters for settling the disputes with appropriate information which is required to influence the decision. In this article the author explains that, unlike judicial or arbitration procedures where ex-parte contact is prohibited the essence of mediation (what helps a mediator works his magic) is the ability to speak with one party outside the presence of the other.

37. Dr.S.D. Moharana (2010) focus on Legal Aid . The Legal aid conveys the assistance provided by the society to its weaker members in their efforts to protect to their and liberties. While women become in weaker section of society and on the other side every person have right to speedy justice under Article 21 of constitution. It means legal aid is right of both spouses. Legal aid means legal advice, which is pre litigation stage when the legal issue has already arisen. With the aid of such an advice a legally informed person listen to the one facing the problem and advices him as to how should confront with the problem. The advice may be to avoid litigation, it may be to do so or it may take the shape of drafting an application or legal document. It's nothing but conciliation or mediation of pre-litigation.

38. Sahil Vyapakand (2011) in this author says that mediation is mode of alternative dispute resolution which maintains confidence of the parties during the settlement of the dispute. In mediation, mediator assists to parties to arrive at the settlement. Mediator is bound not to disclose the events in the mediation proceedings.

39. Justice P.V. Reddy (2011**)** commented through Supreme Court report that it is not possible for courts to the carry out the act at prelude trial to settle on whether a case ought to be referred to an unconventional dispute resolution method along with if so then which alternative dispute resolution method. Furthermore, what is obligatory to be complete at concluding phase of appeasement by go-between is padlock, accumulation and barrel into Section

89 of C.P.C in addition to the court is mistakenly vital to prepare stipulations of agreement and re-formulate them at point preceding to reference to unusual dispute resolution practice. But the suggestion is to appeasement or intercession or Lok Adalat, after that sketch the requisites of agreement or re-formulating them is the occupation of go-between or intermediary or Lok Adalat moreover subsequent to going throughout the whole method of appeasement or intercession. Hence, the conditions of conclusion haggard up by court will be entirely ineffectual in a few consequents another dispute resolution practice. Why next the courts are supposed to be hampered through the time-consuming and impracticable, excluding unnecessary along with duty of formulate the conditions of arrangement at the pre reference arena.

40. Lalu Varghese (2011**)**, views expressed by the respondents regarding the effectiveness of Panchayats court as an ADR mechanism is summarized. The ADR mechanism of dispute resolution is referred to judicial procedure. It is inexpensive an expeditious. The litigants never rejected as resolution are arrived at on mutual consent. The service of Panchayats court members is voluntary. The Panchayats ensures the services of such persons having the qualities of social commitment, trustworthiness, impartiality, confidentiality, patience, credibility, articulate skill, empathy and respectability.

41. Sangeeta Sehgal (2011) Emphasis on cost of litigation. Alternative Dispute Resolution is the weapon to meet the challenge of raising cost of litigation and reduce the pendency of litigation. But the fact that if anyone is going for arbitration, will end up paying more than what he would in courts as arbitrator are charging above Rs 10,000 per sitting, the lawyers' fees and burden due to adjournment are extra. Lok Adalat also failed as it cannot take decision, if one of the parties not agrees for settlement. The formalities to get legal aid are away from because of illiteracy of people and dependency for filing application forms officer of legal aid is denial of aid in some cases.

42. A.M. Khanwilkar (2012), The author in his handbook on Mediation of High Court of Bombay stated that our immediate concern is now focus on the inappropriate reference, so as to the number of unfit cases and instead to enhance the percentage of the successful mediation cases. The benchmark will

now we have to be moved to the level of settle two cases of mediation per judge per month, the movement has now matured with the presence of trained advocates, mediators and judge mediators across the whole state. The judges and lawyers is able to reach this new heights and we believes that it's not important that others may do better but it's important that to do your best.

43. Ujwala Shinde, Appeasement as a successful means of alternative dispute resolving system (2012) in this article the author stated that Alternative Dispute Resolution system i.e.ADR initiatives have mushroomed in developed and developing countries alike. The author explains that the conciliation is better than other alternative mode of dispute resolution.

44. Mohit Sihghvi (2012) stated The Importance of Family Settlement , The consideration for family settlement is the expectation that such settlement will result in establishing or ensuring amity and goodwill about the relations and after that consideration has been passed by each of the disputants, the settlement consisting the recognition of the right asserted by each other cannot be impeached. The court held that, the consideration for the family settlement being compromise between parties even to a previous suit would be a family settlement. When we put the world right in order then we must first put the nation in order and to put the nation in order then we must first put the family in order. When to put the family in order then we must first cultivate our personal life and ultimate for that we must first set our hearts right.

45. Diva Verma (2013), the author Analysis the matrimonial disputes , In matrimonial disputes, the decision of parties is not taken by rational factors but by emotions. The reasons are promoted by entire family including children or economic or emotions. The negative emotions such as ego, fear, hate, guilt, bitterness and agreed are contributors to a strained relationship. The lack of cooperation and emotional conflict results from lack of cooperation and emotional conflicts. Mediation is important in solving family disputes, the duty of court to make every endeavor for conciliation between parties when the nature and circumstances of case permit to do for maintenance of martial bond.

46. Ibrahim Kalifulla (2013), in this article Various aspects of mediation are explained such as significance of mediation. Provisions in code of civil procedure regarding supporting and promoting ADR such as a Section 89, Section 107(2), Section 147, Order 23 Rule 3, Rule 5 B of Order 27, Order 32 A and Order 36 of the CPC, 1908.Alongwith these the provisions of Industrial Disputes Act, 1947, the Hindu Marriage Act, 1955 and The Family Court Act, 1984 are also discussed. The role of court is also important while selection of case for mediation.

47. Gary Born (2013**),** explain the Supreme Court given the importance to ADR . The Supreme Court of India handed down a landmark judgment in **Bharat Aluminum v. Kaiser Aluminum (Bharat Aluminum) on 6 September 2012.** The Court held that Indian courts would no longer exercise authority to annul awards, or remove and appoint arbitrators in arbitrations seated outside India. In that the Court relied on international authority to domestic decisions in which Indian courts had claimed the right to set aside awards made outside India. It is important to recall that India was one of the first signatories to the New York Convention in 1958 and that the Indian Parliament was one of the first national legislatures to give effect to the Convention, through its enactment of the 1961 Foreign Awards (Recognition and Enforcement) Act. The FARE Act was, in the words of the Supreme Court, calculated and designed to make easy in addition to encourage worldwide trade on condition that for prompt agreement of disputes arising in trade throughout adjudication. It means Supreme Court also prefer the arbitration.

48. Laura (2013) The Canadian International Center for Applied Negotiation (CIIAN) firstly makes a plan for the use of mediation in judicial system of the Romania. The mediation is provided to solve the conflicts among parties, outside trial courts, providing an adequate answer for the problems of the parties. The entire process of the mediation is not supported by the judicial system. The method of mediation is found speedy and effective in solving disputes.

49. Sriram Panchu (2015), in his book , Mediation Practice and Law , has expressed his views on how the litigation process is loss of time, expense and

damage to relationship of the parties. The author stressed the need for alternative method of dispute resolution which are quick, less expensive and yield practical and enforceable solution.

50. Anil Kumar Singh (2016), Conciliation: an extra-Judicial Means of Disputes Settlement , in this research paper the author state that the litigation is endless ,foreign corporations seeking to do business in India takes adequate precaution at the outset .In any democratic society for protecting and enhancing the rights of the people ,it is the judiciary who plays an important role besides legislative and executive body and India is not the exception .Desire for quick and speedy justice is universal. Conciliation is one of the alternative dispute mechanisms which have been given statutory recognition by incorporating the provisions in section 61 to81 of part111 of Arbitration and Conciliation Act, 1996.

51. Marina Kamenecka-Usova (2016), Mediation for Resolving family disputes , the author said that the institution and importance of marriage has been changed in the society. Now spouses no longer assumed marriage to be a commitment for lifetime. The author observed that as the principle of equality has replaced the principle hierarchy of family law and gave the grounds for family disputes and it became socially acceptable to leave marriage which are intolerable or merely unfulfilling. In this article author focus on mediation as a worthy option to resolve the family conflicts.

52. Barnik Ghosh (2016), Conciliation for settling family disputes in this article the author examined the scope of alternative dispute resolution mechanism in resolving family disputes in India and also explains the viability of expanding the scope and function of the family courts in India.

53. N Bhagya Lakshmi (2016), Mediation- Marital Conflict Resolution Therapy , the author said that marriage and family are the two pillars of the Indian society. The entire relationship problem stem from poor communication. Family and matrimonial disputes were considered too sensitive an area to be left to the mercy or adversarial jurisprudence of the present legal system which by its nature involves a lot of mudslinging on either side. To resolve the matrimonial issues the author said that alternative dispute resolution are

important to save the family system especially mediation, it will save time and money .

54. The New Indian Express (2017), in this Conciliatory procedure is needed to settle matrimonial disputes; Delhi High Court said that while highlighting the role of mediation in resolving such issues.

55. G. Jegadeesan (2018), in Mediation: An Effective Dispute Settlement Machinery has discuss, the importance of mediation as a mechanism for dispute resolution, where heaps of disputes are referred to the courts and the court process is very expensive and time consuming. The author has also highlighted the importance of mediation in the increasing trade relations the present globalized world. As per the author, mediation is designed to channelize the conflict and restore the equilibrium of values and interest which have been upset.

56. Singapore convention on Mediation (2018), A new international framework for recognition and enforcement of mediated settlements agreements , In this article, this convention is basically intended to promote the use of mediation settlement of cross border commercial disputes by providing cross border mechanism for enforcement of mediated settlements agreements. The author also state that it will expect that this convention will provide a further incentive to the parties to choose mediation over arbitration and litigation.

57. Manisha T Karia, Effective Implementation of Mediation in India: the way forward (2019), in this article the author focus on mediation says that mediation has been recognized as fastest growing method in resolving the dispute worldwide. The role of court and arbitrator are more adjudicative are formal in nature. Despite mediation and conciliation mechanism having statutory recognition under several laws but still mediation has not been able to achieve great success. Apart from it, if the object of the Mediation & Conciliation Project Committee (MCPC) was to reduce backlog, more attention is required towards framing of a national policy with an appropriate legal framework. The success and popularity of mediation is restricted and there is a need for urgent measures to promote and support its effective implementation.

58. Madonna Jephi (2019) Conciliation and Mediation: An Effective Family Dispute Resolution in this article it is said that litigation does not always leads to satisfactory result, so there is a need of mediation and conciliation in family dispute.

59. Have proposed mediation bar in all courts, Chief Justice Bobde, (2019) gives interview to Times of India on how alternative disputes resolution like mediation could help the judiciary and litigants to get rid of disputes at the initial stage and also help in not adding to the existing pendency of cases. Apart from this, he said there is a big difference between a mediator and a lawyer or a judge. The mediator always finds out the points of settlement in dispute. Whereas lawyer is more interested in disagreement. Only some center like Delhi, Kolkata and Bengaluru has really good mediators and the ratio of dispute settlement is good. But overall, in the country, there's still long way to go before it becomes popular.

60. Supreme Court forms Committee to draft mediation law, will send to government (2020), The Economic times, in this article there is a proposal to draft mediation law. The Supreme court has taken the unique step, to set up a panel to firm up a draft legislation to give legal sanctity to disputes settled through mediation.

61. Chief Justice of India S.A Bobde (2020), Time is ripe for legislation containing compulsory pre- litigation of mediation in economic times Chief Justice of India said that the time is ripe to devise a comprehensive pre-litigation mediation that would ensure efficiency and reduce the time of pendency for parties as well as courts.

62. Chief Justice of India NV Ramana (2021), Make mediation first step to settle disputes, Times of India, With the pendency of cases crossing the 4.5-crore mark over burdening the three-tier justice delivery system, Chief Justice NV Ramana said that mediation should be made mandatory as a first step for the dispute resolution and law should be framed at this regard Given the growing scope of mediation it is time for India to enter the mission mode.

1.17 Significance of study

The road to justice in India is not just full of turns and twist, but also long and seems to be unending. Eminent Jurist, Nani Palkhiwala said if longevity of litigation is made an item in Olympics, no doubt the Gold will come to India. This state of affair made the people more cynical humans. It is very difficult to understand the human minds especially when it comes to matrimonial disputes it is very laborious to understand the problems find solution or seek an alternative way of resolving marital problems. When these disputes come out from private sphere and enter public domain through courts to find solution the courts these issues very delicately.

Family Courts established under Family Courts Act, 1984 emphasizes on resolving these disputes amicably through mediation. Instead of Family courts, Section 89 of the Code of Civil Procedure provides reference of cases pending in the courts to Alternative Dispute Resolution which also includes mediation. Court Annexed mediation and conciliation centers are now established at several courts in India and courts have started referring cases to such mediation and conciliation centers.

Mediation has significant potential for bringing about qualitative change in the focus of the legal system from adjudication to amicable settlement of the disputes. As a field of mediation and conciliation continue to evolve and develop all over India evaluating the functioning / implementation of mediation process is essential and becomes an important indicator of its acceptability by the society. It helps to identify the problems and needs from the perspective of the parties attending the mediation.

No doubt, mediation is a dynamic process and understanding its different dimensions to make the system more responsive to the needs of the parties. This study plans to make an appraisal of mediation and conciliation in matrimonial disputes and make a comparative analysis of State of Punjab and Himachal Pradesh.

1.18 Research Gap

I. Mediation and Conciliation have been playing a significant role in redressal of matrimonial disputes but there is no empirical work conducted in the State of Punjab and Himachal Pradesh.

II. Matrimonial disputes are rising alarmingly in the above-mentioned states but very little research data is available in the context of resolution of the matrimonial disputes through mediation and conciliation.

1.19 Objectives of the Study

The main aim of the study is to know the relevance and importance of mediation/conciliation in matrimonial disputes. The objective of this present study are-

1. To examine the evolution of mediation and conciliation with regards to matrimonial disputes in India.
2. To evaluate the Impact of Mediation and Conciliation on matrimonial disputes at the international level.
3. To analyze the existing laws and reports regarding the mediation and Conciliation centers in India.
4. To appraise the role of Judiciary towards mediation and conciliation in matrimonial disputes.
5. To study the institutional set up and procedure with regard to matrimonial disputes in the State of Punjab and Himachal Pradesh

1.20 Hypothesis

1. That the institutional framework in India is not sufficiently catering to the dispute resolution mechanism of matrimonial issues**.**
2. That the speedy disposal of family disputes through mediation can be increased by providing awareness to the general public.

1.21 Research Questions

i. Is the Mediation and Conciliation system considered as an effective bypass to litigation in family courts?

ii. Whether the courts are effectively referring the matrimonial disputes to the Mediation and Conciliation cells?

iii. Whether Mediators and Conciliator are efficiently handling the matrimonial disputes referred?

iv. Whether existing legislative framework is potent enough to handle the matter referred to Mediation and Conciliation in family disputes?

v. Whether Central Government as well as Government of Punjab and Government of Himachal Pradesh have taken active steps for effective implementation of Mediation and Conciliation with respect to family disputes?

1.22 Research Methodology

The present study is Doctrinal as well as Empirical in nature. This study basically follows doctrinal research methods, Incompiliation organization, Interpretation and systematization of the primary and secondary source material. The researcher has used both primary as well as secondary sources. The secondary data is collected by researcher from the published sources such as various books, Indian and Foreign Journals, online Journals, newspapers, research articles and various websites on the subject for the purpose of collecting literature and data for the study and analysis. The researcher has also adopted the empirical method of research. In this present study in order to collect and generalize the information through the Questionnaire from variety of Respondents on the subject in hand. The researcher has filed also various Right to Information in order to collect the official data on the subject in hand.

The primary data is collected on the selected 500 Respondents of one districts of Punjab and one District of Himachal Pradesh. In this study the primary data collected from the respondents has also been used to prove and disapprove the research hypothesis.

1.23 Method of Data Collection

In this study Questionnaire method has been used for getting the results. An attempt has been made to analyze the views of legal and general respondents through empirical study on the subject in hand. Two Questionnaires have been framed one for Legal Respondents which include Judges, Mediators/ Advocates and other for General Respondents- General Public/Litigants. From Punjab: One districts Hoshiarpur has been selected for collection of data. Total number of respondents fixed are 500.From which 250 Legal Respondents and 250 General Respondents. From Himachal Pradesh One districts i.e. Una has been chosen randomly.

Questionnaire contains both open ended and close ended questions. The data collected is being analyzed by the researcher in the form of Tables, Pie charts, as well as through Statistical inferential tools.

1.24 Limitation of study

1. Due to Covid-19 lockdown the researcher faced difficulty to collect data personally. So the data collection is to be instituted by way of Google forms, emails. whenever possible, the data was collected in person from Judges.
2. In order to perform good research, there should be a harmonious relationship between researcher & respondents but usually what happens is that respondents feel uncomfortable while providing the necessary credentials to the researcher which sometime results into a dead lock. This becomes major obstacle for a researcher to perform the research in right manner.

1.25 Scheme of Chapters

For the purpose of effective study, the entire thesis has been divided into seven chapters.

Chapter 1: Introduction

The first chapter being an introductory chapter contains the Review of literature, significance of study, Objectives, Hypothesis, Methodology, Limitation of the study and Chaptalization.

Chapter 2: Growth and Evolution of Mediation and Conciliation System in India.

This second chapter provides a brief history of growth and evolution of mediation and conciliation system in India, This chapter is an attempt to familiarize the concept of Alternative Dispute Resolution in General and brief history of Mediation and Conciliation in particular

Chapter 3: International Framework on Mediation & Conciliation.

This Chapter explores the development occurred in the concept of mediation and conciliation at various foreign stages. The importance of mediation in resolving the disputes have discussed at the various forum like Hague Convention, WTO and

Singapore Convention. The rules for the mediation were emerged and guiding the member nations to resolve the disputes amicably.

Chapter 4: Legislative Framework Regarding Mediation and Conciliation and Institutional set up in resolving matrimonial disputes in India.

This Chapter explains the legislative framework with regard to mediation and conciliation. In this chapter it also explains the institutional set up in resolving the matrimonial disputes in India.

Chapter 5: Role of Judiciary in resolving matrimonial disputes through mediation and conciliation process.

This Chapter makes an endeavor has been made to analysis the various judgments delivered by Indian Judiciary while dealing with the matter relating to matrimonial disputes .In this chapter researcher tried his best to evaluate the role played by judiciary for the promotion of mediation and conciliation in Indian context. The cases or matter decided by various High courts and Hon'ble Supreme court have been discussed at appropriate place by quoting the various landmark judgments.

Chapter 6: Comparative Analysis of Mediation and Conciliation Centers with regard to matrimonial disputes in State of Punjab and Himachal Pradesh.

This Chapter is the heart and soul of the present study in the State of Punjab and Himachal Pradesh. The data and other allied information have been collected through Questionnaire which has been tabulated and evaluated table wise by the researcher. The conclusion and suggestions are mainly based on the Empirical research and study in State of Punjab and Himachal Pradesh, which has been discussed under this chapter.

Chapter 7: Conclusions, Findings and Suggestions

In the chapter of Conclusion, the researcher incorporates findings, testing of hypothesis and on the basis of conclusion drawn by the researcher and later part incorporates the suggestions by the researcher in the thesis on the basis of overall work done in the research.

CHAPTER-2
GROWTH AND EVOLUTION OF MEDIATION AND CONCILIATION IN INDIA

2.1 Introduction

Disavowal of equity through deferral is the greatest joke of law however in India it isn't constrained to simple joke the postponement in truth slaughters the whole equity regulation arrangement of the nation. Clashes have existed in all societies, religions, and social orders since days of yore, as long as people have strolled the earth, yet what is significant is the way it is oversee or handle. In earlier times no one knows how disputes were resolved. Some of the scriptures show the intentions of the peoples how they came to an amicable settlement. In Ramayana, Angadha son of Bali approached Ravana and delivered the message of Lord Ram to opt the path of peaceful settlement. In Mahabharata, Lord Krishana played a role of mediator between the pandavas and kauravas.

Disputes blocked the development and peaceful conduct of human life. However it can be said that human conflict is inevitable, whereas disputes are equally inevitable. So it is difficult to imagine the human society free from conflict of interests. Disputes must be end up with minimum costs and time. A serious thought to substitutes for litigation for dispute resolution is given all over the world. It is universally accepted that litigation is one of the ways of dispute resolution. However litigation has its own strengths, weaknesses and limitations. It is therefore incumbent for all of us to think about alternative dispute resolution mechanism. India has inherited the British adversarial legal system with its emphasis on common law and litigation .

2.2 Conceptual difference between Conflict and Dispute

To the layman, conflict and dispute "may mean a lot of something very similar since both includes a difference over some issue. In any case, there are some calculated contrasts between the two terms. Strife exists where there is an inconsistency of interest .[1] Conflict as a serious disagreement or argument a prolonged armed struggle; an incompatibility between opinions, principles etc. .[2]

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1 Henry J. Brown and Arthur L Marriot, ADR Principles and Practice, 5(1993)

2 The Concise Oxford English Dictionary Oxford University Press.10th edition,2002)

Disputes between individuals are ordinary piece of human communication. Prathamesh Popat brings up that it is rudimentary information both that debates emerge in the public arena because of association among its individuals and that the more noteworthy as well as the more incessant the communications among those with contrasting needs or clashing interests, the higher the odds of questions. [3]

The distinction between behavioral conflicts and justifiable disputes is important in the alternative dispute resolution discourse because of the differences in approaches which need to be taken in their resolution and the limitations of dispute resolution processes in relation to behavioral conflicts. It has been argued that although conflict can cause distress and is usually viewed negatively, it can function in positive ways and may motivate people to take action and change their situations in ways that improve their lives and better fulfill their self-interests. Those in conflict who want to get it resolved may be forced to consider their role in creating the conflict and often gain insight about themselves and others. [4]

Dispute resolution outside of courts is not new; societies world-over have long used non-judicial, indigenous methods to resolve conflicts. What is new is the extensive promotion and proliferation[5] of Alternative Dispute Resolution models, wider use of court-connected Alternative dispute resolution and the increasing use of ADR as a tool to realize goals broader than the settlement of specific disputes. [6]

Alternate Dispute Resolution system is not a new experience for the people of this country also. It has been prevalent in India since time immemorial. Legal history indicates that down the ages man has been experimenting with procedure for making it easy, cheap, unfailing and convenient to obtain justice. [7] Technique for equity is demonstrative of the social cognizance of the individuals. In any place law is an estimating bar of the advancement of the network. Old arrangement of contest goals

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3 Popat D. Prathamesh (2003), Online Dispute Resolution in India – Proceedings of the UNECE Forum on ODR, available on http://www.odr.info/unece2003 (last visited on 15.7, 2020)

4 Jay Folberg, Dwight Golann, Lisa Kloppenburg, and Thomas Stipanowich Resolving Disputes Theory, Practice and Law,.20 (2005)

5 Available on http://district.ecourts.gov.in/sites/default/files (last visited on 19.7.2020)

6 Alternative Dispute Resolution, Practitioners' Guide, Centre for Democracy and Governance, Washington, 1998 available on http://www.usaid.gov/our_work/democracy_and_ governance/publications/pdfs/pnacb895.pdf and on http://district.ecourts.gov.in/sites/default/fsiles (Last visited on 20.7.2020)

7 Shraddhakara Supakar, Law of Procedure and Justice in Ancient India, (Deep & Deep Publication, New Delhi, 1986) and available on http://district.ecourts.gov.in/sites/default/files(last visited on 24.7.2020)

made a significant commitment, in arriving at resolution of dispute identifying with family, social gatherings and furthermore minor disputes[8] identifying with exchange and property. Town level establishments assumed the main work where questions were settled by older folks including Council of Town (prevalently called Panchayats), which was a casual method for intervention. In prior days questions barely arrived at courts. Choices given by the old board were regarded by all. Yet, hence boom went with bane, the very framework lost its impression because of intervention of political and public component.

2.3 Definition of Alternative Dispute Resolution

The system of alternative dispute resolution method is consisting of three very important expressions **ADR. A means Alternative**. The expression alternative according to lawful vocabulary means one or the additional of two things or of two things such that one or the other may be chosen or capitulation a preference of two or more things. The Alternative in Hindi **means Vikalp.** [9]

The expression **Alternative** according to oxford word list means accessible in position of equivalent item or option of two or more prospective. [10] According to latest version of oxford dictionary the choice means object that you can prefer to do or encompass out of two or more possibilities. The Alternative means process to assist and can be used as an alternative of incredible as well or diverse from the accustomed or conventional mode in which something is concluded. [11] As a result alternative at this point means swap in adding toward obtainable one or an alternate option to individual so as to takes the position of a new, which is incapable to carry out its obligation.

The term **Dispute** in common phraseology means clash or wrangle. The expression dispute according to lawful lexicon means a quarrel, a quarrelsome strife a argument or challenge which in Hindi means **VIVAAD.** [12] The difference of opinion may be along with at least two Countries, States or People. The clash might be in particular perimeter or all things consider however two parties are foremost. There can't subsist

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8 ibid

9 Legal Glossary, Govt, of India, Ministry of Law, Justice and Company Affair,19 (1992)

10 A.S. Hornby, Oxford Advanced Learner's Dictionary of Current English, 33 Oxford University Press (1994)

11 ibid

12 ibid

a subject or great effort lacking converse side. The utterance difference of opinion constantly alludes to the conflict or discord involving two parties.

The expression **Resolution** means somewhat with the purpose of resolve or else to be resolute flanked by the contest parties. [13] The Resolution as per oxford word suggestion implies official elucidation of belief concurred on by a commission or a committee. The manifestation of settle or address problem amid the parties is called resolution. The Resolution may mean to tenacity and the tenacity means a suitable elucidation to a dilemma or complexity in issue. Nevertheless, in Hindi it means **Samjhauta or Sankalp.** [14] The arrangement means method process which in Hindi means **PADHATI and PRANALI.** [15] The Framework as indicated by oxford word reference implies a coordinated arrangement of thought. The System implies specific methodology or method of accomplishing something specifically way and that in Hindi illuminates **Vavastha orYukti.** [16]

2.4 Position of Alternative Dispute Resolution

2.4.1 Ancient Period

Prior Village level establishments assumed the main part, where questions were settled by seniors, including Council of town (prominently called Panchants) which was a casual method of intercession. In old days questions barely arrived at courts. The decisions given by the senior council were regarded by all. The pronouncements of Panch while sitting together as Panchayats commanded immense approbation for the reason of the well accepted faith that they were the quintessence of voice of God and for that reason had to be received and complied with unquestionably with time this style of marvelous dispensation of justice through Panch Parmeshwar (Five Gods). [17] Yet thusly blast went with blight the very framework lost its impression because of the intervention of political and communal elements. The Regulation of 1787 empowered the court to refer certain suits to arbitration but no provision was made in Regulation for cases where difference of opinion among the arbitrator arose. The Bengal regulation of 1793(XVl of 1793) empowered the courts to refer the matter

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13 ibid
14 ibid
15 Oxford Advanced Learner's Dictionary of Current English, 1557, Oxford University Press (2005)
16 ibid
17 N.V. Paranjape Arbitration Conciliation Act, (Central Law Agency, second edition,2002)

whose value does not exceed Rs. 200 to arbitration with the consent of parties. The important development stages were Vedic, Mauryan, and Gupta periods.

The glimpse of the dispute resolution system prevalent in ancient times reveals that the philosophy of amicable and speedy ADR based on the premise participatory justice in family entrenched in the legal of history of India. Ancient Hindu Jurists laid more importance on the determination of dispute by the arbitrator or tribunal not well known by the emperor. Yajnavalkaya and Narada utter that rural community council (Kulani) Corporation (sreni) in addition to assembly (Puga) use to settle on law suits. [18] Most Important period of ancient age is the Dharma sutra period which is also called as the golden period of Indian Legal History. With the advancement of time and society, the people progressed towards Civilization. The law propounded by the Smriti writers was more systematic and comprehensive in nature and laid down certain sets of principles to be followed by the people and the King alike. The Dharma Sutra is the principal Sutras of Gautama and Baudhyana, Sutras of Apastamba, Harita, Vashista, and Vishnu. The areas that were mainly dealt by the Sutras were rules of civil and criminal Law, marriage, inheritance, succession interest and partition. [19]

2.4.2 British period

The British East India Company also came India for trade after receiving the charter from Queen Elizabeth in 1600. They opened their first trading center at Surat, Gujarat in 1612 after making agreement with Emperor Jahangir which was called Farman. That became the chief settlement of the company in India. The system of dispute redressal was start functioning during the beginning of British Raj. The Britisher was unaware from the local language of the people so they delegate their power to the native people to resolute the dispute. The Britisher also had the fear that the act of the punishment of the members of the native population could lead to agitation at any time. [20] India's judicial system is very closely resembled to the judicial system as prevailed during British Period.

The alternative dispute resolution mechanism was found not only in the procedure of working of judiciary but was also seen as a politically safe and significant in the

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18 P.V. Kane, History of Dharmshastra Volume-III page 42 Chanbasappa v. Baslingyya AIR 1927 Bom

19 S.K. Puri, Indian Legal and Constitution History,2 &3 (Allahabad Law agency1980)

20 R.C. Majumdar, An Advanced History of India,553 (1977)

period of British Raj. The British Government reorganized three presidency towns of judicial administration namely the Bombay presidency Madras Presidency and the Calcutta presidency. First time a uniform judicial system was introduced by the commencement of the charter act of 1726 by the creation of Mayors court in each of the presidency towns namely Bombay, Madras and Calcutta. [21]

In 1772 Warren Hasting became the Governor of Bengal, Orissa and Bihar and the established a well organized and systematic judicial system. The main attractive feature of their judicial system (Adalat system) was that there were two separate courts for civil cases and criminal cases .[22] Common court was known as Mofussil Diwani Adalat and the criminal Court known as Mofussil Fauzadari Adalat. Court of the Head Farmer Parganas uses to deal with petty civil cases and while Sadar Diwani Adalat was to hear appeals from the decision passed by Mofussil Diwani Adalat and Sadar Nizamat Adalat was given power to hear the appeals of the orders of Mofussil Nizamat Adalat. Along with the adjudication through court, the British ruler also made some regulations which played an important role in the survival of alternative method for resolving the dispute. Alternative Dispute Resolution in the present form picked up pace in the country, with the coming of East India company.

The Bengal Registration Act 1772 provided that the entire dispute related to accounts was submitted to the arbitrator and the decision of arbitration was final. The Regulation of 1781 was designed to encourage arbitration. [23] It provided that judges have discretionary power that they recommended the cases for arbitration when the parties mutually agreed upon that and the verdict shall be binding on both the parties. The first Indian Arbitration act was passed in 1899 but it was totally based on English arbitration act. It was the first substantive law on the subject of arbitrator. But the act was not fit for the circumstances of India because it was based on English law that was the reason that it suffered for many defects and was faced so many criticisms. That was the main reason that in 1908 the civil procedure code was again enacted and the Arbitration act 1940 replaced the act of 1899 on the basis of recommendations of the civil justice committee. [24] Section 89 clause (a) to (f) of section 104(1) and second

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21 N.V. Paranjape, Indian Legal Constitutional History of India 25 (Central Law Agency, Allahabad 2012)

22 id at 40

23 Nripendra Nath Sircar, Law of Arbitration in British India, 6(1942) cited in 76‟th Report of Law Commission of India, 1978, p. 6, Para 1.14

24 Salil K. Roy Chowdhury Saharay, Arbitration Law,6&7 (Eastern Law House,3rd edition,1979)

schedule of C.P.C 1908 was replaced by the new act of arbitration. Thus Arbitration Act 1940 finally amended and consolidated the law relating to arbitration in British India and it was remained a comprehensive law on Arbitration even in the Republican India until 1996.

2.4.3 After Independence

The principal duty of the government to provide an equal and fast justice to people. The preamble of the Indian Constitution also highlighted the aspect of Political, Social and economic justice of the people. [25] The New article inserted in Indian Constitution Article 39A and also secure the function of lawful method as well as encourage righteousness on top of the same prospect[26] so that citizen can be denied access to justice on account of financial or other disability.

The emergence of alternative dispute resolution has been quite possibly the main developments as a piece of resolution of conflict along with authorized alteration; moreover, it has developed into a global necessitate. Such especially devise equipment be able to be describe as Proper difference of opinion decision or Harmonious Disagreement Decision so as to stress ahead its non-confrontational objectives. Within dispute rising from corner to corner civic outer edge casing the field of confidential wide-reaching law alternative dispute resolution is of exceptional significance to scuffle the issue of application of law as well as enforcement. [27] Undoubtedly, the concept and philosophy of Lok Adalat or Peoples Court Verdict has been mothered by means of the Indian role. It has incredibly profound along with extended ancestry not merely in the record other than still in pre-historical phase. It has finish up being exceedingly effectual option to legal action. Peoples Court is one of the excellent plus identifiable fora which has been pretentious a noteworthy part still today in settlement of disputes. [28]

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25 V.N. Shukla, Constitution of India,1 (Eastern Book Company, 10th edition ,2003)

26 JN. Pandey, The Constitutional Law of India,194-202(Central Law Agency,10th edition,1980

27 Avatar Singh, Law of Arbitration and Conciliation including ADR Systems,393 (Eastern Book Company,Lucknow,7th edition, 2006)

28 Justice, Deshmukh Raosaheb Dilip, Efficacy of Alternative Disputes Resolution Mechanisms In Reducing Arrears of Cases, 26-27, Nyaya Deep-, Vol. X, Issue: 2, (April 2009)

2.5 Reports of different Committees and Commissions for the justice organization framework in India including ADR process

Various boards of trustees and commissions at various occasions put forward significant recommendations for building up the equity organization framework in India. Concerning creating of ADR process additionally the assessments of such advisory groups what's more, bonuses are admirable. The different recommendations put forward by various boards of trustees and commissions with respect to the viability of the working of ADR are significant.

To discover the significant working of the Alternative Dispute Redressal strategies that can substitute the formal and regular strategy for settlement of questions inside the structure of formal methodology imagined in the Code of Civil Procedure through the Courts and different institutions the Government has over and over delegated different Advisory groups and Commission. The significant reports of these Committees and Commission have consistently had a significant influence in the different administrative changes in the legal capacities in India.

From time to time the Law commissions of India additionally loved the significant proposals put sent by these advisory groups and commissions. In 1949 Justice Sudhi Rajan Das High Court Arrears Committee was established to look into the issue of long deferrals of various cases which were pending in various High Courts of India. The board of trustees proposed the reduction of bids and modification to decrease the gigantic build-up of cases in the High Courts.

In 1951, Justice Das Committee made proposals to bring together and merge the lawful calling. In the time of 1972 Justice Shah Committee was established to provide details regarding the unfulfilled obligations in the High Courts. The Seventy-seventh Report of the Law Commission was allocated only to discover the issue of Deferrals and Arrears in Trial Courts. This report was distributed in 1978. In this report the Commission reasonably and honestly conceded that the issue of delay in the removal of cases pending in law Courts is certainly not an ongoing marvel. It has been with us since quite a while.

The enormous build-up of cases some of the time loses certainty of the individuals upon the justice administration framework in India. It has additionally shaken in some measure the certainty of the individuals in the limit of the Courts to change their

complaints what's more to concede sufficient and opportune help. [29] In 1989 the Government of India on the counsel of then Chief Justice of India, established Arrears Committee (1989-1990) under the Chairmanship of Justice Malimath who was the Chief Justice of the Kerala High Court. The terms of reference of the Committee were between alia to propose available resources to lessen and control the unpaid debts in the High Courts what's more, the subordinate Courts. The Committee presented its far reaching report in seventh August 1990 featuring different issues regarding the matter.[30]

The other famous individuals from this Committee were Dr. Justice A.S. Anand, the then Chief Justice of Madras High Court and Mr. Justice P.D. Desai the then Chief Justice of Calcutta High Court. The terms of reference of the Committee were between alia, to propose available resources to lessen and control unfulfilled obligations in the High Courts and Subordinate Courts." It discover the reasons for collection of back payments like the case blast the expanded administrative movement the collection of First Appeals the continuation of common ward in some High Courts; the Inadequate number of Judges the Appeals against requests of semi legal gatherings going to High Courts the superfluous quantities of corrections and offers the absence of present day framework in the High Courts the pointless suspensions the unpredictable utilization of writ locale in High Courts the need of offices to screen track and bundle cases for hearing in Courts the evolving example of prosecution and absence of procedures to manage new suit with new strategies the social mindfulness in the majority and the huge number of cases the Government is the litigator.

An enormous number of valuable proposals were put forwarded by the Malimath Committee like the presentation of Conciliation methodology in writ matters and setting up of Neighborhood Justice Centers with legal status. The capacity of such focuses ought to be restricted to settling questions by compromise process. The Committee additionally preferred the hardware of conciliation Courts for settling debates emerging under the Rent Control Act. The Report of Malimath Committee turned into the premise of discovering arrangements of the issues of back payments during the Law Ministers' gatherings which occurred in 1992-93 at Bangalore, Pondicherry, and Calcutta. A multiparty caucus of the Chief Ministers of the States

[29] 77th Law commission of India Report, 1978

[30] Justice M. K. Sharma, High Court of Delhi, Conciliation and Mediation 2,3, available at www.icadr.org,(last visited on 27.2.2020)

and Chief Justices of High Courts was held on fourth December 1993 at New Delhi under the Chairmanship of the Prime Minister of India and synchronized by the Chief Justice of India. It received the following goal The Chief Ministers and Chief Justices of various States be of the reaction that Courts were not in a circumstances to cleave up underneath the complete burden of impartiality association scaffold moreover with the aim of different question is to be advanced by unconventional mode for exemplar, interference, mediation and conciliation. They underscore the eye-catching eminence of disputants exploit unusual heated discussion decision which give bureaucratic compliance, set aside important time and cash furthermore, maintained a strategic distance from the pressure[31] of a traditional preliminary and furthermore makes a well disposed connection between the gatherings.

The Malimath Committee while making an investigation on 'Alternative Modes what's additional, forum for difference of opinion decision embrace the proposal prepared in the 124th and 129th information of the Law Commission such that the deformity of the contemporary law rising out of the necessitate of greatness in the Courts to confine the gathering to a personal suit to descend back on adjudication or intercession, require to be top off by elementary change being concluded. The agency articulated that the mission of such oblige on judges would set out future pending in relation to diminishing the burden of groundwork courts as well as of the Revisional also appellate Courts and accordingly make a solid harmony between the quantity of cases and administering equity basing on the quantity of cases. Along these lines there would be remarkable variation of exertion at the bottom stage and the course of effort since preface courts to the revisional and appellate Courts would accordingly reduce.[32]

The Law Commission headed by Shri M.C. Setalvad after point by point review of the legitimate and legal framework, gave the Fourteenth Report dated ninth November 1978. The Report said that the major issue of deferral in removal of cases represents a test to the equity organization framework, nearness of clashing choices on different focuses, zones where changes were required and additionally called attention to that suit has expanded complex and expenses of case have expanded baffling regular

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31 Available on http://www.legalserviceindia.com/legal/article-290-mediation-as-an-appropriate-dispute-resolution.html (last visited on 25.8.2020)

32 O.P Malhotra, Indu Malhotra, The Law and Practice of Arbitration and Conciliation, 1,32, (Lexis Nexis,2nd edition, January 2006)

man's endeavors to approach equity. The basic man couldn't get legitimate equity in time. [33]

The Law Commission in its 129th Report altogether brought up and analyzed finally the scheme of examination in metropolitan region with feature the striking pendency of cases in special courts of metropolitan zone. It was brought up that there are enormous quantities of pending cases in the meeting's courts, in the authoritative courts, in common courts of unique ward and furthermore in the investigative side. Unique consideration was given in the Report to house lease and ownership suit in urban territories and as an option in contrast to the current technique for removal of disputes under the Rent Acts, four particular modes were thought of-

In the first place, on the foundation of Nagar Nayalaya with an expert Judge and laying them on lines like Gram Nayalaya and having practically identical forces, authority, locale and technique.

Furthermore on the becoming aware of cases in Rent Courts by panel of judges, by means of least two in numeral, and no intrigue however just an update on inquiries of law to the region Court. In a third place on the scenery up a locality fair dealing center together with persons in the province of the property in the decree of dispute.

Here in the end, lying on the appeasement incite construction, which was then operational with complete efficiency in Himachal Pradesh? [34] Thus the above investigation uncovers that, the Law Commission of India has thought about the topic of postponement and unpaid debts in Courts now and again and has accordingly given around 12 reports covering different perspectives of the said issue and furthermore prescribed to beat such nature of colossal number of pending cases.

2.6 Classification of Alternative Dispute Resolution

Alternative Dispute Resolution can be divided into two categories –

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[33] Law Commission of India,14th Report,252-263, Reform of Judicial Administration, (Government of India Press, Ministry of Law, New Delhi,1958)

[34] Law Commission of Indi,129thReport,78 (1984) available at Law Commission of India, 129thReport,78 (1984) available at https://www.advocatekhoj.com/library/lawreports/codeofcivilprocedure1908/4.php?Title=Amendment%20of%20Section%2089%20of%20the%20Code%20of%20Civil%20Procedure,%201908%20and%20allied%20Provisions&STitle=129th%20Report%20(1988)%20of%20the%20Law%20Commission%20of%20India (last visited on 22.2.2020)

2.6.1 Non Adjudicatory processes

2.6.2 Adjudicatory Processes

Non Adjudicatory processes can be further classified into-

a) **Mediation**
b) **Conciliation**
c) **Lok Adalat**

Whereas Adjudicatory processes includes

a) **Arbitration**
b) **Binding Expert Determination**

The non adjudicatory Alternative Dispute Resolution structures are those dispute resolution methodologies falling inside the umbrella of ADR which, do exclude any last what's more limiting affirmation of real or legitimate issues of the question by the ADR impartial yet incorporate examination of an ordinarily sufficient arrangement with the support of the parties who are helped by the ADR unbiased. The non adjudicatory structures are the authentic instances of the perspective of Alternative Dispute Resolution that a dispute is an issue to be disentangled together rather that a fight to be won.[35]

One of the basic norms of Alternative Dispute Resolution is pleasant issue tackling.[36] The extreme goal is to determine the dispute by arriving at compromise with the support and collective endeavor of the parties encouraged by the alternative dispute resolution impartial. Alternative Dispute Resolution techniques target blunting the ill disposed mentality and empowering more receptiveness and better correspondence between the parties prompting a commonly satisfactory goal. In that sense ADR methodologies are unquestionably more pleasing and less genuine than hostile case. [37] The ADR method revolves around purging the poorly arranged constituent from the dispute resolution process, guiding the parties to esteem their common advantages, keeping them from accepting unbendable positions and persuading them towards

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35 Woodrow Wilson has said that a dispute is a problem to be solved together rather that a combat to be won.

36 S.B. Sinha, Courts and Alternatives, available at: www.delhimediationcentre.nic.in (last visited on 29.04.2020) See also Ujwala Shinde, Challenges Faced by ADR System in India , 4 (2) The Indian Arbitrator 6 (February 2012).

37 S.N.P. Sinha and P.N. Mishra, A Dire Need of Alternative Dispute Resolution System in a Developing Country like India , XXXI (3 & 4) Indian Bar Review 297 (2004)

arranged settlement. The parties control the dispute resolution process just as the result of the procedure and they themselves are answerable for finding a powerful, useful and adequate answer for the dispute. [38] The emphasize in ADR, which is easygoing and versatile, is in this way on "assisting the parties with encouraging themselves. [39]

The overall approach in ADR (non adjudicatory) can be appeared by the record of two cooks fighting about an orange. The adjudicator picks a couple of clarifications behind offering it to the primary cook. The authority separates it in to half. The center individual asks each cook for what valid justification they need it to find that the vital necessities the strip for jam and various requirements the tissue for the juice. The center individual gives the strip to the first and the tissue to the following. The result is smoothing out for the two parties. The cooks and the middle person have taken a gander at the issue from the perspective of intrigue together as opposed to rights and positions. [40]

Mahatma Gandhi had likewise pushed this methodology which frames the spine of Alternative Dispute Resolution and mentioned:

I comprehended that the authentic limit of a lawful consultant was to join parties riven to pieces. The activity was no for all time devoured keen on me to facilitate a gigantic portion of my occasion throughout the twenty years of my groundwork because a lawful guidance was occupied by bringing out confidential conciliation of abundant cases. I didn't misplace something then not in any case hard cash; optimistically not my spirit. [41]

ADR forms are, generally, non adjudicatory and they will undoubtedly be since ADR is essentially an option in contrast to suit which is only settling by an official

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38 It is very important that the parties place themselves in a position of responsibility and create their own solutions, thus maximizing the probability of their long-term success, since no one can really comprehend what is best for the parties better than the parties themselves. See Michael Tsur, ADR — Appropriate Disaster Recovery , 9 Cardozo J. Conflict Resol. 371 (2008)

39 K.S. Chauhan, Alternative Dispute Resolution in India , available at: http://icadr.ap.nic. in/articles/articles.html (last visited on 29.04.2020). In fact, party autonomy is the fundamental principle of ADR. See Dushyant Dave, Alternative Dispute Resolution Mechanism in India , XLII (3 & 4) ICA Arbitration Quarterly 22 (October- December 2007 & January – March 2008)

40 Alexander Bevan, Alternative Dispute Resolution 2 (Sweet and Maxwell, London, 1992)

41 Mahatma Gandhi, An Autobiography: The Story of My Experiments with Truth 134 (Beacon Press, Boston, 1993); In B.S. Krishna Murthy v. B.S. Nagaraj, AIR 2011 SC 784 the Supreme Court after quoting various passages from Mahatma Gandhi's book, My Experiments with Truth' referred the dispute to mediation

courtroom. The instances of non adjudicatory ADR forms are intervention, appeasement, dispute resolutions through Lok Adalats and so on, which get their holiness from the desire of the parties to show up at commonly satisfactory goals by method for a friendly settlement. Of course adjudicatory ADR structures are those dispute resolution techniques which incorporate a last and confining affirmation of honest and legal issues of the contest by the ADR unprejudiced. The adjudicatory structures get their holiness from the craving of the social events to get their advantages interceded by an alternative resolution non partisan external the standard litigative -dispute resolution structures.

Alternative Dispute Resolution is now and then tried to be cautiously and hyper in fact comprehended as a strategy which is confiscated of the features of settling and doesn't finally result into a coupling decision sans the longing of the parties. [42] Nonetheless, since the adjudicatory alternative dispute resolution form similarly work outside the space of the courts developed under the writ of the state and are fundamentally fill in for the conventional litigative method they end up arranged inside the shows of ADR. [43] Further the adjudicatory ADR structures are too consensual as in strategy to such strategies can't be hosted with the exception of if the parties are ad idem, yet once the parties have entered the contention they ought to persevere through a limiting assurance because of the ADR neutral and they can't uniquely pull back from the same.

Beside the broad portrayal of ADR structures into non adjudicatory and adjudicatory there are similarly mutt ADR structures, which are blends of the two and have both adjudicatory and non adjudicatory features. ADR systems for instance, Med-Arb, Con-Arb and dispute resolution through Permanent Lok Adalats are cases of such cross variety methodologies.

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[42] On these lines, sometimes a distinction is sought to be drawn between arbitration on the one hand and ADR on the other. See also V.A. Mohta & Anoop v. Mohta, Arbitration, Conciliation and Mediation (Manupatra, Noida, 2nd edition. 2008)

[43] Luke R. Nottage, Is (International) Commercial Arbitration ADR? , 20 The Arbitrator and Mediator 83 (2002) available at: http://papers.ssrn.com (last visited on 21.07.2020). See also D.K. Jain, Arbitration as a Concept and as a Process , XLI (4) ICA Arbitration Quarterly 1 (January – March 2007); See also P.C. Rao, Alternatives to Litigation in India , in P.C. Rao and William Sheffield (Eds.), Alternative Dispute Resolution 24 (Universal Law Publishing Company Pvt. Ltd., Delhi, 1997)

2.7 Position of Arbitration law before the enactment of Arbitration and Conciliation Act, 1996

Before the establishment of the Arbitration and Conciliation Act, 1996 extraordinary authorization was there which was ordered at various occasions with respect to the settlement of questions through Arbitration and conciliation. Some of such institutions are as per the following-

2.7.1 Arbitration Act, 1899

The first enactment with respect to Arbitration in India was instituted in the year of 1899. This Act was made relevant to issues which were at pre case stage not pending before a Court of law for adjudication. Courts mediation was not there in this Act. This Act perceived for the first time reference of questions that may emerge in future to a mediator regardless of whether named or not. The activity of the Act just because was restricted to the Presidency Towns and was later stretched out to a few other business towns. This Act was to a great extent dependent on a similar model of English Arbitration Act of 1889.

2.7.2 Arbitration (Protocol and Convention) Act 1937

India turned into involved with the Geneva Protocol on Arbitration Clauses of 1923 and the two multilateral conventions, for example, the Geneva Convention on the implementation of Foreign Arbitral Awards, 1927 in addition to the Convention on top of the recognition and enforcement of Foreign Arbitral Awards of 1958 regularly known as the New York Convention of 1958 in light of the fact that it was arranged and finished up in New York. To offer impact to the above protocol and Convention India has ordered actualizing enactments for example the Arbitration (Protocol and Conventions) Act 1937 which came into power on fourth March 1937 offered impact to the Geneva Protocol of 1923 (came into power on 28th July, 1924) and the Geneva Show of 1927 (came into power 25th July, 1929). The Act was passed for the implementation of arbitral understandings to which the Protocol applied and the implementation of remote arbitral honors to which the Convention of 1927 applied. Consequently it shows an away from of the nearness of Arbitration law to give impact to the arbitral agreement.

2.7.3 Arbitration Act, 1940

The Arbitration Act of 1940 is a milestone throughout the entire existence of law of Arbitration in India. It merged and altered the law identifying with intervention as contained in the Indian Arbitration Act 1899 and the second Schedule to the Code of Civil Procedure 1908. It was likewise to a great extent dependent on the English Arbitration Act of 1934 furthermore come into power on first July 1940. The Act reached out to the entire of India but the State of Jammu and Kashmir. The Act managed extensively three kinds of arbitration viz arbitration without mediation of a Court intervention with mediation of a Court where there is no suit pending and intervention in suits. The act set out the system inside which household intervention was led in India. It additionally applied to all arbitration's, including legal arbitrations.

2.7.4 Enactment of new Arbitration and Conciliation Act, 1996

The Arbitration Act of 1940 had various downsides. The fundamental issue is identified with the long defer that occurred in the consummation of Arbitral continuing, the quantity of augmentation of the period allowed for making the grant that were acquired either by assent of the gatherings or through the intercession of the Court the few number of years taken for fruition of arbitral continuing, and the colossal costs brought about by method of charges payable both to the authorities and committee. In the light of this downside the Government of India chose to have a second glance at the arrangement of the Arbitration Act, 1940 and thought for another law of Arbitration. Also thus the Government of India authorized another law on arbitration viz The Arbitration and Conciliation Act, 1996.

The Arbitration and Conciliation Act, 1996 also characterize the rule relating to appeasement accommodating issues associated therewith and coincidental thereto based on Model law on International Commercial Arbitration received by the United Nations Commission on International Trade Law (UNCITRAL) in 1985. [44] This advanced law tries to accommodate a successful method of settlement of questions between the gatherings, both for household and for global business intervention. In this way an expand arranged acknowledgment to the idea of intervention furthermore placation is given in India by the institution of The Arbitration and Conciliation Act, 1996. Its development is one of the most critical developments, both as far as legal

[44] Available on https://researcherclub.wordpress.com/201.(last visited on 29.9.2020)

changes just as refereeing. The alternative dispute redressal strategies like arbitration, conciliation, intervention and their hybrids have become a worldwide need and the investigation on its utility is undeniable. [45]

2.8 Mediation in India

Mediation has not been characterized by any enactment in India yet it is commonly comprehended as intervention is an arrangement procedure wherein outsider impartial helps the contesting parties in settling their disputes. It is intentional procedure and non-coercive in which a fair and impartial go between help the gatherings to arrive at a decision.

2.8.1 Meaning of Mediation

Intervention is the most as often as possible received Alternative Dispute Resolution procedure. It ponders the arrangement and intercession of nonpartisan third individual who help the gatherings to arrive at an arranged settlement. He doesn't have the ability to mediate or force an honor. It is directed on a classified premise and without the preference to the legitimate rights and cures of the gatherings. The procedure may need to go through a few phases like arrangement, joint meeting, private gatherings and conclusive outcome.

According to Black's Law Dictionary, 8th edition Intervention is strategy for non-binding dispute resolutions including an impartial nonaligned third party who try to bring the disputing parties arrive at a reciprocally satisfying elucidation.

The term intercession and appeasement are frequently utilized synonymously and conversely yet there exists a flimsy line of contrast between the two. The distinction lies in the way that Conciliation is an unstructured, proactive and interventionist process while middle person is an organized procedure wherein parties have authority over the choice and can investigate a scope of choices.

Unlike litigation and arbitration which consist of a formal evidentiary hearing mediation is a semiformal negotiation between the parties without the use of witnesses or evidence. While litigation and arbitration are presided over by a judge who renders a decision in the cases mediation is facilitated by a specially trained

[45] S.C. Tripathi, Arbitration and Conciliation Act, 1996 with Alternative means of settlement of disputes,7 (Central Law Publications,4th edition, 2008)

neutral advisor who is not empowered to decide the case, but only to assist the parties in negotiating effectively. Mediation unlike litigation is non- adversial. Indeed, the most effective mediators build a process in which parties understand their role as active participants and collaborate to resolve the dispute. Unlike a trial or arbitration mediation often results in a mutually agreeable outcome. The essence of mediation is its flexibility, which enables the participants to select a process suitable to their needs.[46]

Mediation is one of the most effective forms of dispute resolution throughout the world. Intercession was initially utilized in labor and buyer questions and in global dealings yet it has now become a proper supplement to the legal procedure. It is widely used in divorce, civil and commercial proceedings and even in public law disputes. The areas for undertaking mediation are ever expanding. One reason for this growing popularity is that many people believe that mediation provides more effective, satisfactory and harmonious and less costly way to resolve the dispute. [47]

Along these lines, Mediation is a private, deliberate, casual, practical and non restricting procedure. It is non restricting methodology because of the way that the mediator doesn't have capacity to force a settlement on the parties and that either party may end the procedure of appeasement/intercession at any phase before the marking of a concurred settlement. Hence the achievement of intervention/assuagement relies particularly upon the great confidence and duty of the gatherings in investigating the chance of settlement and furthermore on the skill and confidence of the go between/conciliator.

Mediation/Conciliation being a consensual procedure is often considered to be particularly suitable to disputes arising in the context of existing business relationship, as it offers the best opportunities to reach a settlement that is conductive to the maintenance of further development of the business relationship.

2.8.2 Principal Components of mediation

The following elements distinguish mediation from other forms of conflict resolution:

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[46] Justice S.B. Sinha, Mediation Constituents, process and Merit,34-35, (Nyaya Deep, National Legal Service Authority, New Delhi, Vol VII (Issue 4)

[47] Justice Fung, Mediate first for win win solution, Mediation conference 2014, on Mediators Qualification and Skills

I. The process is willful i.e.; parties can't be forced into intervention and they may quit the procedure whenever.

II. The mediator must be acceptable to all parties involved in the process.

III. The middle person offers procedural help as opposed to substantive assistance for example the mediator controls the way toward settling the contention while the substance is the area of the parties.

IV. The mediator must be impartial i.e., the mediator must be able to set aside his/her opinion on what the solution to the conflict should be. In addition, the mediator should be seen as neutral, in terms that he/she should not be position to benefit from continued conflict or benefit directly (in the form of some sort of compensation from one of the parties.

V. Potential solutions and decisions on agreements are determined by the parties to the conflict, not by the mediator. While the mediator may suggest possible solution, the parties decide what outcome will best meet their interests. The mediator does not serve as judge or arbitrator.

VI. Mediation is an interest based method i.e. it seeks to reconcile the substantive, psychological and procedural interest of the parties rather than to determine who is right or more powerful.

2.8.3 Extent of Mediation

The settlement of disputes through intercession/assuagement covers a wide scope of issues. Among others they incorporate business and common debates and guarantee for penetrate of commitment. These might be true, legitimate or specialized debates that can extend from basic difference to mind boggling and significant specialized or business questions. They may emerge comparable to for all intents and purposes any sort of debates for example issue emerging under agreements business or corporate debates torts and penetrate of obligation including carelessness charge and protection claims purchaser questions, differences in business or expert relationship for example, organization ,standards and specialist franchiser/franchisee and numerous others. Industrial and Labor debates family questions including issues emerging on division and separation. Community and Neighborhood issues Public arrangement issues and social clash may likewise be taken under intervention/appeasement.

There are numerous different fields wherein mediation/conciliation is being utilized for settlement of disputes for instance intercession in scholarly medical clinics and social insurance frameworks for customer questions to manage rancher/bank obligation issues and for some different purposes. In United Kingdom intercession has been also been utilized for different issues and purposes, including objections by patients about specialists, it is especially utilized in the settlement of global business disputes.

2.8.4 Background of Mediation in the Middle East and its Prospect[48]

Intervention exists in the Mid East numerous times back. Genuineness subsists tell, the suggestion of compromise to an unprejudiced furthermore aim intruder for a variety towards the goal of a dispute is very much drenched with Arabic/Islamic conventions. For example one of the most popular in the books of Prophet Muhammad's preliminary days is with the purpose of him being selected by means of hostility clan to resolve a quarrel more or less the remaking of the Ka'ba. As a result of recommend an only one of its kind agreements so as to profit the two gatherings; the psychics conquer a few barriers among the disagree parties. Islamic Law (Shari'a) chains this initiative of a self-sufficient go between in the course of the act of Al Wasata[49]which is fundamentally the same as present day intervention rehearses. Al Wasata is the act of at least one people interceding in a debate, either in line with one or the two gathering otherwise on top of their personal coerce. The independent third party endeavors to conclude the issue through proposing answers for the gatherings, who are in need at that moment to fix on whether they necessitate to concede the planned measures or not. [50]

Additionally, the Middle Eastern traditions of sulh (conclusion) in addition to musalaha (finding the middle ground) are type of controversy decline so as to aboriginal to the constituency. The sulh practice, which has its heredity in inherent along with urban setting, is a systematize variety of serenity creation. Sulh is a sort of conformity that is rightfully authorized on mutually the human being moreover arrangement level. Sulh fetch on two sorts of consequences: complete sulh and

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48 P.C Maskanda's Mediation : Step by Step (Thomson Reuters,1st edition June,2021)

49 Peacemaking and transformative mediation sulh practice in middle east, (Palgrave Macmillan, 1stedition,2018)

50 ibid

intermediate or conditional sulh. [51] The preceding finish an ample variety of disagreement flanked by the two parties, at the same time as the very last part of the bargain the two gathering as indicate by circumstances advanced subsequent to the agreement course of action. The tradition system of sulh usually finishes in an open service of musalaha (finding the middle ground).

Now, the traditions of sulh and musalaha are utilized in regional zone of Lebanon for example, the Bekaa Valley the Hermel region in eastern Lebanon and the Akkar locale of north Lebanon. In the Kingdom of Jordan the legislature formally perceives sulh and musalaha as a legitimately satisfactory custom of the Bedouin clans. Sulh and musalaha are additionally still being used among the Palestinian residents of Israel living in the towns of Galilee. In the course of sulh and musalaha, great effort power happens within a common, instead of a private system. The impact of this olden times along with move toward be still felt in intercession rehearse in the Middle East.[52]

Mediation has not immediately verifiably been the element of settling disputes between clan as well as adjoining nation in the Middle East it carries on the preferential approach nowadays. At hand Islamic law supports negotiation of question all the way through express settlement or appeasement[53] by means of outsider mediations. Instances of this are unending in the Muslim word. In Jordan, the Law on Mediation for the Resolution of Common Disputes was established in 2006.

Article 3 of this law expresses with the purpose of directing arbitrator possibly will, upon the solicitous of the parties or auxiliary to their solicitation, refer the question to an principal selected authority or a private arbiter for the motivation behind considerate goals of the argue. In the United Arab Emirates, the Emirate of Dubai set up a Mediation Center by righteousness of Dubai's Law No. 16 of 2009. The Dubai International Financial Center Courts (DIFC courts) consider intercession for definite system, plus their material Rules advance the benefits of the plan of action to intercession as alternative methods for settling specific issues. Also the DIFC-LCIA Arbitration Center, set up in February 2008 offers intervention administrations to clients of the Center under the principles contained in the LCIA intercession system.

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51 ibid
52 ibid
53 ibid

In Qatar the Qatar International Center for Conciliation and Arbitration (QICCA) was set up in 2006 and embraced a lot of Conciliation Rules in May 2012 (the QICCA Conciliation Rules), which were displayed on the UNCITRAL Conciliation Rules.

The collection of these main beliefs and the invention of this focus, immediately the same as the existence a range of mediation system all the way through overall relations. For paradigm, the International Mediation and Arbitration Center (IMAC), are anticipated to give power to the use of intrusion as a issue goal method in the Middle East today. [54] In a few case, in distinction to Middle Eastern upgrading in the field of prudence, which are in general the same by means of wide-reaching practice, intervention in the Middle East stays one of a kind in various manners that might fill in as the sustain meant for the use of involvement stay hard in the environment.[55]

The foremost sorting out changeable of mediation in the Middle East is the situation of the go between. In the Arab/Islamic approach to compact with intercession, the class and infamy of the go between in spite of the gatherings look upon for the arbitrator be vital to arriving at friendly deal settlement. In Arab/Islamic civilization the go between is seen as an important person having all the apt responses and preparations. [56] Consequently, the middle person assumes a execution work (i.e., as a authenticity pioneer) as well as accept an evaluative position instead of the Western go between who is balanced and assume an heartening work via permit the disputants to enter at a agreement without anyone else. Additionally despite the fact that the Western arbitrator is progressively more anxious on noteworthy concerning the legal method with structure, the go between in the Middle East is obligatory to discover as regards the history along with reality of the disagreement. To one side as of the situation and approach of the middle person, the purpose of the go between is different in the two settings. Since it is serious to continue with the connection between the gatherings and keep social conformity in the gathering, not at all like the Western go between who is centered on the development of individual and assembly wellbeing, the intent of the Middle Eastern arbiter is to reinstate the messed up link between the gathering and within the system. The Western go between see intercessions as have a success/lose or win/win result while the Middle Eastern go

54 ibid
55 ibid
56 ibid

between perceives the safeguard of societal concordance as a tremendous ordinate object.[57]

One more significant difference between the two methodologies is that while in the West intercession happen somewhat than official legitimate events in the Middle East negotiation normally happen close by a connected proper legal enduring. In this way albeit the two methodologies consider circumspection basic to intrusion in the Middle East arbiter may be called to a appropriate grade court to insist in relation to an considerate they have acquired.[58]

It is essential to likewise take note of that in exact nation in the Middle East the topic of the intercession immediately as the intercede kind must regulate to Shari'a. This can frequently be difficult as Shari'a forbids riba (usury) which by and large happens in any business exchange in which one or the two gatherings get intrigue and gharar (betting) which has been prolonged out by comparison to refuse any trade exchange in which a party notion is uncertain as one gathering could out of the azure get something of more prominent incentive than what they gave in return. [59] These limitations can be difficult to explore and fill in as an obstacle on the utilization of intervention as a technique for dispute resolution.[60]

Regardless of the affirmative chronicle along with social underpinning, the Middle East has not encountered a flood in the use of intercession establishment and actions.[61] This is in all likelihood on the grounds that there are not many dynamic and prepared go between in the region and there is a nonexistence of faith in the go between ability to make fair-minded choice. To facilitate issue is maddened by the lack of a managerial system that sets ethics rules for go between and gauge for their fortitude and supervision. Since the history just as the critical periphery blueprint in the milieu underpins the use of intercession nurture to these issues resolve most likely brings about a flood in the utilization of intercession in the Middle East.[62]

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57 ibid
58 ibid
59 ibid
60 ibid
61 ibid
62 ibid

2.8.5 Growth of Mediation in India

Throughout the years, intercession has been perceived as the quickest developing strategy to determine questions around the world. Intervention permits gatherings to relook at common interests and privileges of one another, and to think of friendly and inventive arrangements. This aides in keeping up sincere relations between the parties.

The work of courts or judges is adjudicative and progressively formal in nature. Interestingly the nature of mediators or the procedure of intervention is pragmatic and adaptable. Numerous a periods, it can end up being speedier, more powerful and conservative than the other adjudicative procedures.

Intervention should be advanced as a component that supplements the legal procedure. To accomplish acknowledgment and prevalence of Mediation as the initial step under the steady gaze of moving toward the court or some other Alternative Dispute Resolution (ADR) technique, it is urgent to create trust during the time spent Mediation. Court-annexed mediation to a limited degree has been received as a proportion of docket the board and should go connected at the hip with advancement of intercession as a fruitful, progressive, practical and efficient technique for all the stakeholders.

2.8.6 Current Scenario of Mediation under Statutory Provision

In 2002, an alteration to the Code of Civil Procedure, 1908 (CPC) was gotten. Section 89 read with Order X Rule 1A given to reference of cases pending in the courts to ADR. Moreover, Order XXXIIA of the CPC suggests intervention for familial/individual connections as the customary legal technique isn't unmistakably fit to the delicate territory of individual connections. In spite of the fact that numerous courts in India presently have intercession focuses, there is no precise information accessible to show that this arrangement has been used effectively.

Conciliators appointed under Section 4 the Industrial Disputes Act, 1947 are allocated with the obligation to intercede and advance settlement of modern questions with definite endorsed strategies for pacification procedures. Whenever utilized suitably it’s a modest and brisk procedure. In any case just a couple of cases have been settled and the goal of having such arrangement has been disappointed. Tragically, huge

quantities of issues which should have been settled by this arrangement are as yet pending in courts and new issues are recorded each day.

Indeed even Section 442 of the Companies Act, 2013, read with the Companies (Mediation and Conciliation) Rules, 2016, accommodates referral of disputes to intercession by the National Company Law Tribunal and Appellate Tribunal.

All the more especially, family and individual laws including the Hindu Marriage Act, 1955 and the Special Marriages Act, 1954 require the court in the primary case to endeavor intercession between parties.

Section 32(g) of the Real Estate (Regulation and Development) Act, 2016 accommodates genial conciliation of questions between the advertisers and allottees through contest settlement discussion, set up by purchaser or advertiser affiliations.

The Micro, Small and Medium Enterprises (MSME) Development Act, 2006 orders appeasement when questions emerge on installments to MSMEs.

2.8.7 Intercession (Mediation) through the Years

The main rule in the Act, 1996 was to acquaint the Indian legitimate framework with intervention. [63] It urges the parties required investigating the choice of intervention and assuagement in spite of arbitral procedures having begun and in this manner engages the arbitral council to utilize intercession as methods for dispute resolution. [64] In any case, because of an absence of appropriate implementation (or even arrangement) of a particular guidelines of intervention, this arrangement advancing intercession has nearly been rendered old. This, be that as it may be correct to a restricted amount by the arrangement of Section 89 of the Code of Civil Procedure 1908 which was concerned regarding search of the diverse technique for heated discussion resolution. Moreover, the idea of legal intercession was primary accessible by this section. [65]

Depending on this, the Court, wherever satisfied that the circumstances are with the end goal that the parties can attempt to reconcile their dispute comfortably in protocol when attempted the Court may insist on the parties to seek out the technique for

[63] The Arbitration and Conciliation Act,1996
[64] Ibid s.30(1)
[65] The Arbitration and Conciliation Act, 1996, s 30

mediation, arbitration and different types of alternative dispute resolution. [66] Despite this, not at all like other legally supposed types of non-restricting alternative dispute resolution there is still no firm rule that tends to be anxious and guarantee "privacy" in mediation in India.

It was in reality in the year 2011 that the Supreme Court of India announces that conciliation strategy is confidential in character along with only an executed resolution considerate or on the other hand an explanation that the intercession procedures were fruitless ought to be given to the court by the mediator. [67] It is normal that taking into account this judgment, the prevalence of intervention as a strategy for settling questions in India will increment. Indeed, it has been noticed that during the procedures of significant cases, for example, the one in regards to **the destruction of the Babri Masjid** the Chief Justice of India himself has stepped in to encourage intervention between the warring parties. [68]

In spite of being fruitful in different nations, intervention has not had the option to make a lot of progress in India for the most part because of the absence of mindfulness in regards to intercession and its advantages. It seems to give the idea that there has been an absence of activity with respect to the legislature remembering that for some portion of the legitimate brotherhood to spread awareness about intercession the nation over. In India, despite the fact that the appointed authorities have rushed to distinguish the expanding utilization of intervention as a supportive method for decreasing case excesses and postponement yet legal counselors in India have not had the option to react to intercession sufficiently quick. Additionally the present court helped intercession focuses barely oblige this part of connecting with the individuals. Nevertheless the acclaimed **Malimath Committee Report**[69] tended to specific perspectives to be remembered while putting forth attempts for opening a wide scope of various equity conveyance systems which will have long haul impacts in settling and diminishing the quantity of questions including the regular man. Additionally **the 129th Report of the Law Commission** has recognized certain new

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66 Avtar Singh, Law of Arbitration and Conciliation Act,1(Eastern book company, 7th edition)

67 Moti Ram (D) Tr. LRs and Anr v. Ashok Kumar and Anr (Civic Appeal No. 1095 of 2008)

68 M. Ismail Frauqui and Ors v. Union of India (U. O.I) And Ors AIR 1995 SC 605

69 Law commission of India ,238th Report, available at lawcommissionofindia.nic.in/reports/ report238.pdf (last visited on 24.72020)

techniques which may help encourage the expedient removal of cases in urban regions. These are as follow-

- Building up the Nagar Nayalaya with an expert Judge and two lay Judges in a similar way as the Gram Nayalaya and having practically identical forces, authority, ward and technique. Nonetheless, the Nagar Nayalaya will turn to intercession first and afterward start procedures (just if intervention falls flat).
- Having cases heard in Rent Courts by a Bench of Judges, least two in number, with no intrigue however just an update on study of rule to the district court.
- Set up a area impartiality center together with persons in the area of the premise in the conclusion of disputes. and
- Conciliation court structure, using working in Himachal Pradesh.

2.8.8 Evolution of Mediation[70]

The initial elaborate training for intercession was conducted in Ahmadabad in the year 2000 by American trainers send by Institute for the study and development of Legal system (ISDLS).It was followed by a few repeated advance training workshops conducted by Institute for Arbitration Mediation Legal Education and Development (AMLEAD) a Public Charitable Trust settled by two senior lawyers of Ahmedabad.

On 27th July 2002, the Chief Justice of India, formally Inaugurated the Ahmadabad Mediation Centre, reportedly the first lawyer-managed mediation center in India. The Chief Justice of India called the meeting of the chief justice of all High Courts of the Indian States in November, 2002 at New Delhi to impress upon them the importance of mediation and the need to implement Section 89 of Civil Procedure Code. Institute for Arbitration Mediation Legal Education and Development (AMLEAD) and the Gujarat Law Society introduced in January 2003, a thirty two hours Certificate Course for Intensive training in Theory and Practice of Mediation. [71]

The U.S Educational Foundation in India (USER) organized training workshop at Jodhpur, Hyderabad and Bombay in June 2003. The Chennai Mediation Centre was inaugurated on 9th April, 2005 and it started functioning in the premise of the Madras

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[70] Mediation Training Manual of India, designed by mediation and Conciliation Project committee, Supreme Court of India chapter1 available on https://main.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf (last visited on 30.9.2020)

[71] ibid

High Court. This became the first Court- Annexed Mediation Centre in India. The Delhi Academy organized series of mediation training workshops and opened a mediation center in the Academy's campus appointing its Deputy Director as the mediator. Delhi High Court Mediation and Conciliation Centre have been regularly organizing mediation awareness workshops and Advanced Mediation Training Workshops. [72]

The commencement of the mediation movement can be attributed to the Mediation and Conciliation Project (MCPC) which was constituted by the Chief Justice of India Hon'ble Mr. Justice R.C Lahoti by order dated 9th April, 2005.Hon'ble Justice Mr. Santosh Hedge was the first Chairman. [73] It consisted of other Judges of Supreme Court and High Court Senior Advocates and Member Secretary of NALSA. The Committee in its meeting held on 11th July, 2005 decided to initiate a pilot project of judicial mediation in Tis Hazari Courts.

The success of it leads to the settling up of a mediation Centre at KarKardooma in 2006, and another in Rohini in 2009. Four regional conferences were held by the MCPC in 2008 at Bangalore, Ranchi Indore and Chandigarh. MCPC has been taking the lead in evolving policy matter relating to the mediation. The Committee has decided that 40 hours training and 10 actual mediation was essential for a mediator. The committee was sanctioned a grant-in-aid by the department of Legal Affairs for undertaking mediation training programme, referral judges training programme, awareness programme and training of trainers programme. [74]

With the above grant-in-aid, the committee has conducted till March, 2010, 52 awareness programme/referral judges training programmes. About 869 persons have undergone 40 hours training. The committee is in the process of finalizing a National Mediation Programme. Efforts are also made to institutionalize its function and convert it as the apex body of the entire training programme in the country. [75]

The Supreme Court of India uphold the legitimacy of the new law reforms in the Salem Bar Association Case and appointed a committee chaired by Justice Mr.

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72 ibid

73 Scheme for training under mediation and conciliation project committee, available at https://himachal.nic.in/WriteReadData/l892s/240_l892s/Mediation%20Guidlines-14583357.pdf (last visited on 2.10.2020)

74 ibid

75 ibid

Jagannadha Rao the chairman of the Law Commission of India, to suggest and frame rules for ironing out of the crease[76] if any, in the new law and for the execution of mediation measures in civil courts.

The Law Commission prepared consultation papers on Mediation and Case Management and framed and circulated[77]the model rules. The Supreme Court approved the model rules and directed every High Court to frame them. The Law Commission of India organized an International Conference on Case Management Conciliation and Mediation at New Delhi on 3rd and 4th May2003 which was a great success. Delhi District Courts invite Institute for the Study and Development of Legal System (ISDLS) to train their judges as mediators and help in establishing courts annexed mediation center.

Delhi High Court started its own lawyers managed mediation and conciliation center. Karnataka High Court also started court annexed mediation and conciliation center and trained their mediators with the help of ISDLS. New court annexed mediation centers have been started in trial courts at Allahabad, Lucknow, Chandigarh, Ahmedabad Rajkot, Jamnagar, Surat, and many more Districts in India. [78]

Compulsory intercession through courts has now a legal sanction. Courts Annexed Mediation and Conciliation Centers are now established at several courts in India and the courts have started referring cases to such centers. In Court Annexed Mediation the mediation services are provided by the court as a part and parcel of the same judicial system as against Court Referred Mediation wherein the court merely refers the matter to a mediator.

One feature of court annexed mediation is that judges, lawyers and litigants become participant therein, thereby giving them a feeling that negotiated settlement is achieved by all the three actors in the justice delivery system. When a judge refers a case to the court- annexed mediation service keeping overall supervision on the process, no one feel that the system abandons the case. The judge refers the case to mediator within the system. The same lawyers who appear in a case can retain their briefs and continue to represent their client before mediators within the same set-up.

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76 Salem Bar Association v. union of India (2005)

77 Mediation and Case Management,available on https://www.mediate.com/pdf/MT%20MANUAL%2 (last visited on 4.10.2020)

78 ibid

The litigants are given an opportunity to play their own participatory role in the resolution of the disputes. This also creates public approval for the process as same time tested court system, which has acquired public confidence because of integrity and impartiality, retain its control and provide an additional service.

In Court- annexed mediation, the court is the central institution for resolution of disputes. Where alternative dispute resolution procedures are overseen by the court, at least in those cases which are referred through courts, the effort of dispensing justice can become well coordinated. [79]

Alternative Dispute Resolution service, under the control, assistance as well as supervision of the court would have more legitimacy and smooth acceptance. It would make certain the sense that mediation is corresponding and not competitive with court system. The arrangement will get a encouraging and keen support from the judges who will accept mediators as the integral part of the system. [80]

If reference to mediation is made by the judge 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. [81]

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 agreeable 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. [82]

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79 Ms. Veena Ralli & Ms. Iram Majid, The Court Annexed Mediation Mechanism, An Overlooked Avenue for Justice, *available* https://apcam.asia/2020/09/23/the-court-annexed-mediation-mechanism-an-overlooked-avenue-for-justice/ (last visited on 8.10.2020)

80 P. V Jothirmai, P. Sri Satya Devi et.al. Introduction-Understanding of conflict concept of mediation, available on https://districts.ecourts.gov.in/sites/default/files/workshop-IV%20material1.pdf (last visited on 9.10.2020)

81 ibid

82 ibid

2.8.9 Role of Lawyers in Mediation[83]

Intercession as a means of alternative dispute resolution is where parties are urging to inform, assemble moreover resolve their issues with the help of a unbiased facilitator i.e. middle person. Despite the fact that the job of the legal advisor in intercession is practically not quite the same as his work in case, the administration rendered by the officially authorized advisor to the party during the intercession procedure is an expert help. [84]

Since legal advisors have a proactive task to carry out in the intervention procedure, they should know the idea and procedure of intercession and the positive job to be played by them while helping the parties in intervention. The work of the legal counselor starts even before the case goes to the court and it proceeds all through the intercession procedure and even from that point, regardless of whether the debate has been settled or not. [85]

Mindfulness programs are important to make the legal counselors aware of the idea and procedure of intercession, the points of interest and advantages of intervention and the work of attorneys in the intervention process. The work of legal counselors in intercession can be partitioned into three stages. [86]

a. Pre-Mediation
b. During Mediation
c. Post Mediation

2.8.9.1 Pre -Mediation: At the point when confronted with a dispute and the possibility of moving toward an adjudicatory discussion for help a party first contacts a legal advisor. [87] The legal counselor should initially consider regardless of whether here is extent for revolving to some of the alternative dispute resolution instruments. Wherever intercession is viewed as the proper method of alternative dispute resolution instruct the party about the scheme, practice and preference of intercession turns into a significant stage in the groundwork for intervention.

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83 Role of Lawyers in Mediation, available on https://viamediationcentre.org/readnews/MzE4/Role-of-lawyers-and-parties-in- Mediation#: ~:text=If%20a%20settlement%20between%20the, in%20terms%20of%20the%20settlement%20 (last visited on 12.10.2020)

84 ibid

85 ibid

86 ibid

87 ibid

The legal counselor is best position to help his client to realize the profession of the go between as a facilitator. He encourages the client to understand that the enthusiasm behind intercession isn't just to settle the dispute and thrust aside the trial hitherto in addition to address the requirements of the parties and to look into pioneering answer for accomplish their indispensable reward. [88]

The legal representative can assist the parties to modify their way of thinking from ill-disposed to the public. The party must be knowledgeable that in a fight including the collapse of acquaintance, regardless of whether individual, legally binding or business, intercession assists with reinforcing/ reestablish the connection. Although serving the party to know the justifiable situation also, to study the eminence and inadequacy of his case as well as feasible result of suit the attorney causes him to understand his genuine needs and hidden intrigue which can be better fulfilled through intervention. [89]

2.8.9.2 During Mediation: The work of legal advisors is significant during intercession too. The support of legal counselors in intervention is frequently useful however here and there it may be non-agreeable and unsettling. The characters along with guide of the authorized analyst impact the outlook and undeviating of his client. As a result, so as to guarantee important discourse between the parties and the success of mediation, rightful advocate should have a encouraging character and be supposed to show belief in the mediation interaction confidence in the go between and vision for the ability likewise as the other party and his direction. [90]

The officially permitted counselor must himself stare at the common measures of intercession clarify by the go between and prompt the gathering likewise to watch them. The lawful counselor must be set up on the reality the law and the points of reference. At the same time, he should empower and urge the gathering to introduce his case previously the go between. [91]

Taking into account that the party may not commonly have the preference to articulate the entire and exact reality or allude to the pertinent information the legal counselor must be watchfulness and vigilant to boost them. By means of the

[88] ibid
[89] ibid
[90] ibid
[91] ibid

assistance of reality-testing, utilize the BATNA/WATNA/MLATNA examination, the legal advisor should constantly assess the case of the parties and the improvement of intervention and must be set up to insist the party to change situation, come close to, desires and the level of special consideration. [92]

When it is felt imperative to have a sub-meeting with the lawyer's the go between may hold such sub-meeting with the lawyer's and the lawyers must act as a team with the go between to communicate further the course of action also enlighten up at a settlement. Such sub session with the lawyers can be held by the middle person similarly in line with the party or the attorney. The legal advisor partakes in settle and draft the agreement between the parties. He should assurance that the conclusion recorded is absolute, understandable and executable. He should also make known to his client and make him perceive each term of the agreement. [93]

2.8.9.3 Post Mediation: Once finish of intercession additionally; the legal representative assumes a critical job. Presumptuous no settlement has been shown up at, he hosts to facilitate and direct the party either to keep on with the case or to consider and decide on another alternative dispute resolution system.

In the event that a settlement between the parties has been reached under the steady gaze of the third party, the legal advisor has the contractual obligation to relieve his client about the appropriateness of the client's option and to prompt against any uncertainties. To carry on and maintain the soul of the settlement, the legal advisor must help out the court in the execution of the request/order go as far as the settlement. [94]

2.8.10 Position of Parties in Mediation[95]

Intervention is a procedure where the gatherings have an immediate dynamic and unequivocal job in showing up at a friendly settlement of their dispute.

In spite of the fact that the parties find the aid of their supporter and the independent umpire, an definitive preference is of the parties. Most definitely the entire procedure of intervention is deliberate. Despite the fact that assent of the parties isn't obligatory for alluding a case to mediation and however the parties are necessary to take an

92 ibid
93 ibid
94 ibid
95 ibid

attention in the mediation intercession is deliberate as the parties grasp their rule to decide whether the issue ought to be amiably settled or not and what ought to be the particulars of the settlement. [96]

Neither the middle person nor the legal counselors can take the choice for the parties nor should they identify and look upon the precise of self-assurance of the parties. During the procedure of intervention, parties should concentrate on their inclinations as opposed to their qualification or lawful details. The parties are allowed to benefit of the administrations of legal advisors regarding intervention. Intercession is tied in with conveying, convincing as well as being persuaded for a resolution.

Hereafter, every party wishes to convey its observation to the next party what's added, ought to be offered to get such communication accordingly. Equally dialogue and listen are similarly noteworthy. The attempt must not be to compete and compress on the other hand to recognize and illuminate. Parties may require transforming their position and adjusting it to their well being.

In intercession, trust in the arbiter is fundamental. Henceforth, the middle person must be an individual who keeps on getting a charge out of the confidence of the parties. A conclusion suitably shows up at between the parties in intercession is official on the parties and the parties will undoubtedly participate in the execution of the request/order went as far as the settlement. [97]

2.8.11 Advantage of Mediation[98]

Firstly, it is less costly than evidentiary process. Mediation is normally completed in a matter of hours through a series of one to three conferences. It may occur much earlier and which much less preparation in a dispute than in a trial or arbitration. Furthermore mediation is not a formal evidentiary process requiring extensive use of expert witness or demonstrative proof. Indeed, the process is most effectively accomplished without introduction of evidence or witness, relying instant on the parties to negotiate in good faith.

Secondly, the process efficient than the most evidentiary processes; one of the principle attractions of mediation is the speed with which parties can resolve their

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96 ibid
97 Ibid
98 Justice S.B. Sinha, Mediation: Conciliation, process and Merit, 36, (Nyaya Deep, Vol. VII, Issue: 04, Oct. 2006)

dispute. Because mediators are present to manage negotiations, not to represent a party or render a legal decision, they need not prepare extensively to conduct the conference.

Thirdly, the process offers a range of settlement options limited only by creativity of the parties and the mediator. Parties can create outcome custom designed for their particular situation.

Fourthly, the process does not preclude the use of further, more formal dispute resolution mechanism such as arbitration or litigation. Parties are therefore free to strive for a settlement without jeopardizing their chances for or in trial if mediation is unsuccessful.

Fifthly, as noted earlier, the parties control the outcome of the case. Mediation does not create the risks of outright loss associated with trial, because the parties do not transfer the power to decide the cases to someone else.

2.9 Conciliation

The Act, for first time in India, accommodates acknowledgment of placation in business disputes. [99] Part III of the Act accommodates appeasement of disputes promising out of rightful connections, in spite of whether lawfully required or not and to all procedures relating thereto. [100] This arrangement like that relating to arbitration is apparently the most significant issue and needs cautious consideration.

The decision of the strategy for ADR is an element of the sort of relationship and the idea of the dispute between the parties. [101] The Act obviously applies just to commercial arbitration and placations. From the portrayal of the extension and application in Section 61 one needs to comprehend if just lawful commitments might be the subject of placation. Can contrasts of suppositions that affect the connection between the parties be the topic of the pacification? In the event that the topic of the dispute is the legitimate commitment of the parties at that point a decision of the ADR

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[99] Order XXXII-A of the Code of Civil Procedure, 1908 provides for a judge, in certain matters relating to the family, to make efforts to settle the dispute amicably and adjourn the proceedings to enable the parties to reach a settlement

[100] The Arbitration and Conciliation Act,1996, s.61 and available on https://researchersclub. wordpress.com/201(last visited on 28.10.2020)

[101] Tania Sourdin, Matching Disputes to Dispute Resolution Processes - The Australian Context , and Frank E.A. Sander, Dispute Resolution within and Outside the Courts - An overview of the US Experience in P.C. Rao and William Sheffield (eds.) Alternative Dispute Resolution: What it is and How it Works , ICADR, New Delhi, 1996.

instrument is plainly accessible: the parties may pick either arbitration or on the other hand pacification. To liken conciliation to assertion on so oversimplified an examination is to terribly downplay the importance of pacification. While it is no uncertainty genuine that assuagement could be utilized instead of arbitration and parties might be more joyful with a settlement than an award it must be perceived that appeasement has one exceptional characteristic i.e., it can go to the root of the distinction, the genuine issue between the parties that had driven them to differ with one another.

The Halsbury's Laws of England characterizes Conciliation as a procedure of convincing the parties to agree. [102] Conciliation may completely be characterized as a non-adjudicatory and non adversarial[103] ADR system including a settlement methodology wherein an unprejudiced outsider (conciliator) empowers and steers the disputant parties to show up at a good furthermore, worthy settlement of a contest. It is considered as a successful and significant alternative to litigation for resolution of dispute through the direction and help of an unbiased and fair-minded outsider.[104]

Conciliation is an intentional procedure and the conciliator has no power to force on the parties an answer for the question. Like some other ADR process the sacredness of mollification is the common assurance of the parties to agreeably resolve their questions through an ADR instrument.[105] The consensual nature of the dispute resolution process permits parties to participate in an inviting look for a friendly arrangement, without procedural restrictions or extended fights over formal technicalities[106] and the parties are urged to picture alternatives which give arrangements keeping in see their inclinations and priorities.[107]

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[102] Halsbury's Laws of England (2) 502 (Butterworths, London, 4th Edn., 1991) and available at http://www.legalservicesindia.com/article/725/Principles-&-Procedure-of-conciliation-under-Arbitration-&-Conciliation-Act-1996.html(last visited on 30.10.2020)

[103] Sudipto Sarkar & V.R. Manohar (Eds.), Sarkar's Code of Civil Procedure (Wadhwa and Company, Nagpur, 11th Edition, 2006)

[104] M. K. Sharma, Conciliation and Mediation , available at: www.delhimediationcentre.gov.in (last visited on 26.7.2020)

[105] V.A. Mohta and Anoop V. Mohta, Arbitration, Conciliation and Mediation 483 (Manupatra, Noida, 2nd edition, 2008), Thus, mutual agreement and not an imposed decision, forms the spirit of conciliation

[106] 5 P.M. Bakshi, Conciliation for Resolving Commercial Disputes, 19 (Company. L.aw Journal 1990)

[107] G.K. Kwatra, Arbitration & Alternative Dispute Resolution 184, (Universal Law Publishing Co. Pvt. Ltd., Delhi, 2008).

Conciliation implies the settling the disputes without suit. It is procedures wherein autonomous individual or people are designated by the parties with common agree by consent to achieve a settlement of their dispute through accord or by utilizing of the comparable methods which are powerful. In the Halsbury's Laws of England, the terms arbitration and conciliation have been separated as under the term arbitration is utilized in a few perceptions. It might elude either to a legal procedure or to a non-legal procedure is worried about the ascertainment, affirmation and implementation of rights and liabilities as they exist, as per some perceived arrangement of law. A modern discretion may well have for its capacity to determine and proclaim, yet not to authorize what in the gatherings and such a capacity is non-legal. Placation is a procedure of convincing gatherings to agree, and is doubtlessly not discretion nor is the executive of an assuagement board a judge. Confidence, trust and Faith are the basic elements of mollification. This viable method for ADR is regularly utilized for local just as global questions. Some Significant contrast is there while utilizing it for domestic or worldwide disputes.

2.9.1 Nature and components of Conciliation as a Mechanism of Settling Disputes

Conciliation is utilized to settle disputes which its parties want to utilize this system to settle disputes emerging between them. Conciliation doesn't force direct applications for law corresponding to dispute but instead it regards disputes circumstances, the parties 'circumstances, and its impact on worldwide harmony and security. Placation is a lawful political instrument; subsequently it contrasts and shifts from other serene settlement mechanisms whether negligible political or insignificant lawful. Conciliation is significant from numerous points of view particularly human, lawful, and political angles. [108] The human significance is delineated while thinking about assuagement as a serene way to settle disputes. It is dependent upon what applies to other quiet methods. The substitute of the tranquil methods in settling global disputes is utilizing power to determine dispute with its non human impacts endured by universal society in wars that emitted between nations in various areas. The lawful significance of conciliation is that it is a quiet method subject to the standards of global law in settling worldwide disputes. It meddles to determine question as

[108] Helmy, Nabil Ahmed, International Conciliation ,7 (International, Journal of Multidisciplinary and Current research, Sept/Oct 2014)

indicated by explicit legitimate guidelines, which guarantees to the parties worried that it will be dependent upon objective lawful principles as opposed to ideological or individual contemplation. With respect to the political significance, appeasement is recognized by being a lawful method which utilizes political intends to determine questions. That is conciliation regards the conditions of each party of the dispute and its impact on parties and worldwide community. Conciliation doesn't compel the parties to acknowledge its outcomes or force them on the parties. The parties are allowed to acknowledge or deny its proposals. Thus conciliation engorges them to receive it with no dread of engaging in a global legitimate commitment. That is provided that they are not happy with its outcomes; they reserve the option to deny it and not to follow it.

Despite the fact that conciliation has been utilized in some local social orders for a long time, on the worldwide level it showed up in the early piece of this century, advancing out of both the request and intervention processes. [109] Further in the early long stretches of its utilization, conciliation was executed together with request as a two-advance method where at first the realities associated with the question were discovered, trailed by a compromise phase. [110] As the act of conciliation was refined the two ideas consolidated with the goal that it very well may be gotten from the general meaning of conciliation that in an assessment of the whole question a clarification of the realities by the conciliator is a basic component of the process.

Conciliation has two implications the first is the wide one the procedure of assuagement implies a procedure of settling disputes calmly through an outsider's intercession who directs this settlement between the disputants endeavoring to inexact their perspectives. The subsequent importance is the limited one; it implies eluding the dispute to a board of trustees which gives its proposals to settle the question; these recommendations are official to the two gatherings just in the event that they acknowledge them. Conciliation in the limited importance is dependent upon the settled principles of the worldwide law. Thus mollification is a quiet way to settle questions emerging between parties it depends on picking a conciliator to arrive at a contest settlement through approximating various perspectives without stretching out

[109] Herrmann, Conciliation as a New Method of Dispute Settlement, in New Trends in the Development of International Commercial Arbitration and the Role OF Arbitral and Other Institutions,145 (P. Sanders ed. 1983)

[110] N. Yaakov, bar, The Handling of International Disputes by Means of Inquiry,198-211 (1974)

his job to giving a coupling choice for the disputants. [111] This definition delineates the essential components remembered for pacification, spoken to in.

2.9.1.1 Assuagement (Conciliation) is a Peaceful Means to Settle Disputes

Conciliation is a tranquil way to settle questions emerging between the gatherings and expel the issues that forestall the execution and consummation of their connections. Assuagement is not viewed as a lawful or legal methods received to determine debates emerging between parties rather it is the most plausible instrument by which choice is settled on through the gatherings understanding and assent. Since placation points, similar to every tranquil component, to settle existing questions, it is likewise recognized by being a basically quiet instrument to determine them. This element may make pacification not expose to the legal executive control; the conciliator's endeavors are not dependent upon the legal executive control by and large.

2.9.1.2 Conciliation as an Optional Means to Settle Disputes

Conciliation fundamentally relies upon the parties wish regardless of whether this fulfillment in accepting this means or in genuine support prompts postponing a few rights wanting to arrive at an answer which meets the parties' desire. At the point when a dispute emerges, choosing conciliation springs from the parties unadulterated want; subsequently it may not be forced upon them. Turning to assuagement generally relies upon accepting it and the parties' inclination to it. It is received at the hour of picking it, regardless of whether previously or after the dispute emerges, or previously or in the wake of picking the legitimate methods for example arbitration. The parties consent to turn to the adjudication or arbitration and incorporation of an express condition in such manner in the agreement closed between them doesn't forestall embracing this tranquil way to determine disputes. [112] Conciliation results from the parties' concurrence on an outsider's intercession to settle the dispute. In spite of the fact that the official controls the standards of the peaceful settlement receiving this implies relies upon the parties craving at its start. Conciliation begins with an application by one of the parties informing the other party to take his supposition regardless of whether to acknowledge this implies or not through the association or

[111] Mousa, Mohammed Ibrahim. International Commercial Conciliation and the Change of the Prevalent View about the Means Settling the International Trade Disputes, 23(Alexandria, New University Press, 2005)

[112] Mohamed Hussam Lotfy. Legal Protection Execution and Disputes Settlement according to the Trade Aspects Agreement in Relation to Intellectual Property Rights,8 (IOIP publications, 1997)

the inside to which the settlement application is submitted. The discretionary element is clear while conceding to falling back on this implies. [113] Agreement resorting on assuagement may go before presenting the settlement application or be while settling dispute through the arbitration court; but some like to turn to it in the subsequent stage. That is on the grounds that in the last mentioned, it is anything but difficult to arrive at a good arrangement. As much as a dispute creates, parties become ready to appraise things in explicitly and precisely perceive the conceivable outcomes of accomplishing their objectives. This gives the parties proper possibilities for directing conciliation. [114] Some feel that this implies accomplish its objective just by wanting to depend on it before settling the dispute. Just here the proposed outcomes might be accomplished since the gatherings can discover proper answers for their questions without influencing their future relations. This is positively influenced by beginning the contest between them. On the off chance that the parties look forward while choosing appeasement, it is imperative to assist them with saving their connections and expanding them.

This can be accomplished distinctly by receiving it before settling the contest before the last occasions. This is not at all like depending on mediation or the legal executive, where the gatherings may choose this implies or that one looking in reverse to the consequences of whichever way for example cutting off their associations and a wide range of collaboration between them. Furthermore appeasement doesn't take quite a while therefore its prosperity is an option of depending on different methods which are described by being moderate, confounded, and exorbitant.

Therefore beginning appeasement before beginning controversy with its expenses and trouble is vital but the serene settlement process comes up short, since this concurs with the theory for which this implies is administered specifically the serene settlement of the question and its understanding with the way where the procedure of the settlement between the parties takes place. [115]

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[113] Abu Elwafa Ahmed, Optional and Obligatory Arbitration,21 (Alexandria, Monshaat Elmaaref (1988)

[114] Mousa, Mohammed Ibrahim. International Commercial Conciliation and the Change of the Prevalent View about the Means Settling the International Trade Disputes, 31(Alexandria, New University Press, 2005)

[115] id at 32

2.9.1.3 A Mean's based on Third Party's Intervention

The meaning of appeasement shows the essential component on which assuagement as a serene method depends. This component is the intercession of an outsider, either to rough various perspectives, giving assistance, and exchanging information and records to make parties arrive at a parties point in which their various requests are accomplished or to stretch out its capacity to have the option to furnish the parties with certain arrangements, some of which may prompt their fulfillment without having the option to take a arrangement or force it on them. [116] Since the choices or suggestions gave by the conciliator don't speak to an arbitral or legal choice or a binding decision, the assuagement framework can't utilize the legal executive position dissimilar to assertion which utilizes the legal executive authority without being an option in contrast to it. Arbitration in every case needs the legal executive intercession to settle everything that empowers the mediator to accomplish his errand, and to ensure his duty to his restricted forces. What's more in the wake of giving the proposal and affirming it by the gatherings, the conciliator's systems and proposals are not dependent upon the legal executive assessment to confirm the legitimacy of the gave suggestion. Actually the honor gave by the authority is dependent upon a last assessment to confirm its legitimacy when the condemned party request. [117]

2.9.1.4 Conciliation Committees Issue Only Unbinding Recommendations for the Disputant Parties-

The appeasement boards' work is constrained to giving choices and suggestions by which the disputants may stand in the event that they discover this settlement a gathering point they concur on. This is with the end goal of not depending on the lawful methods which expel quietness from the settlement way. These gatherings may not maintain them on the off chance that they feel that these proposals don't accomplish the most trivial part of their requests or wants. The outsider doing the appeasement is a nonpartisan individual whose activity is restricted to lead the gatherings to an average settlement without reaching out to giving a choice or sentence on the gatherings. Along these lines, the conciliator doesn't accomplish a legal work; so the proposals or choices gave by him don't arrive at the degree of

[116] Salama, Ahmed Abdel Karim, National and International Arbitration Law, Comparative Theorization and Application, 46(2003)

[117] Khaled Hesham, Basics of International Commercial Arbitration, 155(Alexandria, University Thought House, 2004)

restricting standards or choices. [118] In spite of the fact that placation isn't totally different from the other quiet settlement implies, similar to intervention, good offices and truth finding yet appeasement contrasts for instance from certainty finding. As indicated by the principles of the universal law, the certainty discovering board takes a shot at finding realities and reasons which have prompted the contest. In this way, it doesn't tie the gatherings to acknowledge the aftereffects of the reality discovering. Fact discovering advisory groups doesn't give any proposals to settle the question yet rather they make ready for gatherings to haggle so as to arrive at a settlement for the present contest between them. Accordingly truth discovering panels contrast from assuagement advisory groups in that the last gives proposals and suggestions for the disputants despite the fact that the suggestions of the appeasement boards are not authoritative for the contesting parties. [119] Along these lines the connection between conciliation boards of trustees and certainty discovering advisory groups is a unique one; so there is an association between them. It tends to be said that conciliation is a down to earth improvement and required in certain disputes wherein the minor reality finding isn't sufficient. Then again truth discovering boards of trustees are at times a picture of placation advisory groups. They represent and appear through contemplating realities and reasons which have prompted the dispute the shrouded realities which may enable the parties to comprehend the circumstance with the goal that they can arrive at an average settlement affirmed by the parties of that dispute. Likewise, there is a pattern which sees that pacification is an average route between certainty finding and arbitration. [120]

2.10 Need for increase in Conciliation Mechanism in India

The significance of appeasement in the current Indian court framework is expanded as courts are looking with the issue of mounting arrears of pending cases and there is a genuine need of discarding them and for that agreeable repayment Conciliation is the best other option. The Himachal Pradesh High court attempted the undertaking of discarding the pending cases by pacification and demanding pretrial appeasement in new cases. This thought depended on the intervention in Canada and Michigan. They

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[118] Mostafa Elgammal, Abdel Aal, OKASHA, Arbitration in Private Relationships, 134 (Alexandria, University Thought House,1988)

[119] Khaled Hesham, The Beginnings of the International Commercial Arbitration,155 (Alexandria, University Thought House, 2004)

[120] Helmy, Nabil Ahmed, International Conciliation,27 (1990)

said venture had incredible accomplishment in Himachal Pradesh. The Law Commission of India in its different reports (77th and thirteenth) has valued the undertaking in Himachal Pradesh and prescribed different States to follow a similar way.

The other significant point to elevate the Conciliation is that it has legal acknowledgment as remembered for Arbitration and Conciliation act 1996 which depends on UNCITRAL Model and in light of that it has Universal commonality and can be utilized for the settlement of domestic dispute just as global business disputes. The Concept of conciliation has gotten another measurement due to the effective Himachal experiment. The development of assuagement of attention to placation has begun some time before, the main distinction is already parties were eagerly meeting up and picking appeasement yet now the pacification on Himachal design is a court-prompted conciliation making it obligatory for the parties to endeavor conciliation for settlement of their dispute and approach the court if conciliation fail. [121]

In Maharashtra additionally Mumbai High court is stepping up to the plate for Himachal design for example pre-trial conciliation. Therefore it is important to consider conciliation as a sorted out technique for settlement of the dispute through conventional procedures.

2.10.1 History and Evolution of Conciliation

The olden times and progression of Alternative Dispute Resolution is obvious for twelfth century in China England and America. Moreover, in the Indian point of view it has been seen that the act of friendly aim of the discuss know how to be get from the remarkable occasions when in the civic problem were established between individuals from a specific relations or occupations or between persons from a similar family was by and by in the antiquated occasions. In the municipality still the panchayat choose approximately all the argument between the individuals as in prior occasion the matter was settled by the older people. [122]

The suggestion of Conciliation was presented in the rule of Industrial Disputes Act, 1947. The Conciliation is for the majority part directed by an official selected by

[121] ibid

[122] History and Evolution of Conciliation, available on http://www.legalservicesindia.com/article/(last visited on 5.11.2020)

Government under Industrial Disputes Act, 1947. Industrial Disputes Act, 1947 gives arrangements to the parties to settle disputes through Negotiation, Mediation and Conciliation, for instance Section 12, Section 18, and so on. Interchange Dispute Resolution assumes a significant work in the family dispute settlement. Section 5 of the Family Court Act, 1984 gives arrangements to the relationship of social government assistance associations to hold Family Courts level out of government .

Section 6 of the Act accommodates understanding of permanent advocate to sustain settlement choice in the family matters. Further, Section 9 of the Act forces a commitment on the court to put forth attempt for the settlement before taking proof for the situation. [123] Notwithstanding all arrangements eluded above Indian Contract Act 1872 in particular gives a notice about Arbitration Agreement as an exemption to Section 28 that renders an considerate annulled in the event that it controls a lawful continuing. Alternative Dispute Resolution whether arranged for or not can be effectively derived from presence or absence of the Arbitration clause. [124]

In India the Efforts to Provide the Third Party intercession in industrial dispute go back to 1920, when the Trade Disputes Act was established accommodating the Courts of Inquiry and Boards of Conciliation (Malhotra:1973:13). In any case this Act stayed distinctly on the Statute Book, rather than being implemented. The across the board industrial turmoil in the mid l920s in any case, constrained the Government to re-institute the Trade Disputes Act in 1929 along these lines denoting the start of the State endeavors to accommodate the outsider intercession in the industrial dispute through the Boards of Conciliation.

The Trade Disputes Act, 1929 accommodated the Intentional pacification through the Boards of Conciliation. It set out that if any exchange question exists or is captured, the provincial Government or the Employing Department may elude the dispute to a Board of Conciliation or a Court of inquiry. The Act additionally accommodated the reference of the disputes by the disputants themselves. At the point when the parties so elude the disputes for placation the provincial Government or the Employing Department were required to choose a Board of Conciliation or the Court of Inquiry.

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[123] ibid

[124] Sujay Dixit,Principle and Procedure under Arbitration and Conciliation Act,1996 available at http://www.legalservicesindia.com/article/725/Principles-&-Procedure-of-conciliation-under-Arbitration-&-Conciliation-Act-1996.html and http://www.legalservicesindia.com/article/ l(last visited on 27.7.2020)

The Board of Conciliation comprised of one independent executive and two or four individuals speaking to the different sides in equivalent numbers. These individuals were to be delegated based on the suggestions of the concerned, parties to the contest. The Board was a specially appointed body. It was the obligation of the Board to put forth full attempts to achieve the settlements of the questions alluded to it. The Board of Conciliation was urged to do every single such thing as it suspected fit for inciting the parties to show up at an understanding. The Board was required to present a report on the result of the conciliation procedures to the designating authority" which was obliged to distribute the equivalent.

Lamentably the arrangements of the Act identifying with conciliation were not used to any obvious degree by the disputants, in any event when they wanted to do as such for four reasons. Initially the Central and the Provincial Governments took numerous years to outline the important guidelines and set up the conciliation machinery in motion. Secondly since the Boards of Conciliation were of a specially appointed nature, there were undue delays at each stage. Thirdly whatever assistance was given by the Government or the bodies comprised by it, was at too late a stage in dispute. In this association the Royal Commission on Labor saw that the most helpful structure of State help with managing the exchange disputes is barely utilized in India. The official viewpoint, similar to that of general society, has been focused to a great extent on the last phases of disputes. Generally speaking advisory groups and councils have been set up just when disputes had accomplished extensive greatness furthermore, when a strike was impending or in being. Individual officers on the nearly uncommon occasions when they have interceded have likewise paused generally speaking till the later stages. It is at peak of a dispute when the parties have totally fizzled to arrive at a typical point of view that settlement is generally troublesome.

The fourth explanation might be acquired from the Royal Commission on Labor itself. As it has called attention to, the Government neglected to choose individual Conciliation Officers. Rather, the Government made an arrangement in the Trade Disputes Act, 1929 just for the Boards of Conciliation and the Courts of Inquiry, and as needs be delegated, whenever required, the Board of Conciliation. Yet as certain sources put it, even these Boards were not established for more than four or five times. The Royal Commission underlined the disappointment of the Government in perceiving the significance of the Conciliation Official in the accompanying words:

"India has attempted to duplicate the less significant piece of the hardware utilized in Great Britain while disregarding the most important part. There less dependence is put on specially appointed open enquiries of the sort thought about by the Indian Trade Disputes Act than in the endeavors of placation officials and others to bring the parties secretly to understanding. The need of qualified official to attempt placation is most noteworthy in Bengal and in Bombay yet somewhere else additionally the leaders of the work divisions or other qualified officials ought to attempt crafted by conciliation. Therefore the Royal Commission on Labor suggested that Each provincial Government ought to have an official or officials whose errand is embrace crafted by appeasement and to bring the gatherings secretly to agreement. However, the activity with respect to the Government was not quick in this respect. It took scarcely any years to present the Conciliation Officials.

The provincial Government of Bombay established the Bombay Trade Disputes Act in 1934, accommodating the arrangement of Government Labor Officers to take care of the interests of the laborers and to advance better relations among employer and employee. Not at all like the Trade Disputes Act, 1929, The Bombay Exchange Disputes Conciliation Act accommodated ordinary conciliation hardware with the Commissioner of Labor as the ex officio Chief Conciliation Officer. The Bombay area in this manner earned the credit of presenting the pacification officials for the first time in India. The Conciliation Officers named under the arrangements of the Bombay Trade Disputes Conciliation Act were required to request that the disputants go to the mollification gatherings before them based on an immediate methodology by the gatherings themselves or based on a report from the Government Labor Officers. Without precedent for India, the Act made it illicit to impede or picket conciliation procedures. Subsequently despite the fact that the Act was appropriate to the Bombay region only it was the principal methodical endeavor on some portion of the Government in India to accommodate appropriate and standard appeasement apparatus for achieving the settlements of the industrial disputes.

The then Government of India chose, as late as 1937 to set up conciliation machinery comprising of the conciliation Officers, in compatibility of the proposals of the Royal commission on Labor by changing the Trade Disputes Act, 1929 in 1938 for the settlement of the settlement disputes between the Railways organization and its representatives.

In light of the suggestions of the Royal Commission what's more, - the Bombay Trade Disputes Conciliation Act, 1934 the Central Government altered the Trade Disputes Act 1929 in the year 1938. This alteration accommodated the arrangement of the conciliation officials for intervening and advancing the settlements of the industrial dispute. The 1938 alteration controlled the workers in the public utility administrations from falling back on a strike without a notice. Be that as it may the Government didn't execute the arrangements identifying with the foundation of standing mollification machinery.

In the history of industrial relations in India in general, and throughout the entire existence of conciliation in particular a significant advance was taken up by the Government of Bombay in the year 1938. Through the Bombay industrial Disputes Act, 1938, it introduced the standard of quasi~compulsory conciliation framework. The Act accommodated the obligatory reference of the industrial dispute for conciliation, however not for necessary settlement with the exception of those disputes which the disputants concurred what's more chose to submit for arbitration. As it were despite the fact that looking for appeasement was obligatory, the recommendatory nature of appeasement stayed unaffected. This Act gave for the Board of Conciliation, also, and set out the manner in which the labour was to be spoken to at such procedures through the worker's organizations. Another significant advance taken was the assertion of direct activity during and after the finish of the conciliation procedures as illicit. These conspicuous highlights of the Act pulled in the consideration of the considerable number of gatherings intrigued by industrial relations, for they broke new grounds in dispute settlement. The Act was considered as a dynamic measure for it was far ahead of time of the Central Act on the same subject. Endeavors were made by other areas resembles, the United Provinces and Madras, to present comparable enactment what's more, the bills were likewise arranged. These bills: be that as it may, could not be sanctioned as the well known Ministries surrendered in 1939.

During the Second World War the Government felt it especially to have an atmosphere of industry harmony in all the ventures. However, the arrangements of the Trade Disputes Act 1929 (as altered in 1938) were unreasonably lacking for the motivation behind controlling the labor management relations. Subsequently the Government of India embedded a condition in the Defense of India Rules in the year

1942 accommodating the State mediation in the industrial disputes for realizing the agreeable settlements by method for eluding the questions for conciliation and arbitration on a mandatory premise. Along these lines, in a sense the Rule 81A of the Defense of India Rules fortified, the semi necessary arrangement of appeasement, this currently became the national strategy. ' Rule 8lA additionally precluded the strikes include lockouts during the mollification procedures, as well as until a time of two months after the finish of the Conciliation proceedings.

In this way, the imperfection in the Trade Disputes Act, 1929, in particular, no arrangement to render the procedures institutable under the Act (or the settlement of a industrial dispute, either by a reference to a Board of Conciliation or to a Court of Request, indisputable and authoritative on the parties to the contest, although the restrictions were forced by the Act on the rights of the parties to strike or lockout in open utility administrations, was defeated through Rule 81A of the Defense of India Rules .

Rule 81A was kept in power by declaring an Ordinance in 1946 past the initially planned period i.e., till the end of October 1946 until every one of its provisions was consolidated in the Industrial Disputes Act, 1947, which came into power on April 1, 1948.

Before the Government of India instituted the Industrial Dispute Act 1947 the Government of Bombay established the Bombay Industrial Relations Act 1946 supplanting the Bombay Industrial Dispute Act, 1938. The Bombay Industrial Relations Act 1946 came into force on April 15 1947. Again the Bombay region kept up its lead and demonstrated its progressiveness over the Legislature of India by accommodating the necessary conciliation of all disputes identified with both people in general and non-public utility services. Though the Industrial Disputes Act 1947 makes a differentiation between the public utility and non-public utility administrations/enterprises with respect to the intercession of the conciliation machinery is concerned. It is obligatory with respect to either party to a contest identified with an public utility help/industry to look for the mediation of the conciliation proceedings though the parties from the non-public utility administrations/businesses are allowed to look for them. Administrations of the conciliation machinery. Over the years, in any case, the pacification administration in

India has procured the necessary status regardless of the idea of administration or industry.

The Industrial Disputes Act, 1947 accommodates both the Boards of Conciliation and the Conciliation Officers. The Act charges the proper Governments to designate the Conciliation Officers 'for various territories for various industries and to comprise the Boards of Conciliation on an ad hoc basis premise on the solicitation from the parties, to give a ordinary conciliation administration. The Board of Conciliation and the Conciliation Officers are required to intervene in and advance the settlement of the industrial disputes alone. Furthermore, for bringing about a settlement, both the Board and the Conciliation Officers are required to do every single such thing as they might suspect fit to instigate the parties to the dispute to show up at a settlement.. At the point when they finish up the conciliation procedures, a report must be sent to the pertinent Government clarifying the procedures and its result. The Act sets out a 14 days time limit on the assuagement procedures in regard of the standing placation apparatus and two months if there should be an occurrence of the specially appointed body, nonetheless, with an arrangement to expand it with the composed assent of the gatherings to the contest or by the Government in the event of a contest pending before a Board of Conciliation. Like the prior Acts, the Industrial Disputes Act, 1947 restricts the strikes and posts in the open utility administrations/enterprises without an earlier notification, pending the appeasement procedures, also, following the finish of the appeasement procedures. As a support to look for the assuagement administration, the Act gives lawful force to the settlements showed up at over the span of the conciliation proceeding.

The Government of India delegated the National Commission on Labor in the year 1966, to audit the working of the work enactment, and to examine the working and living states of the modern and other work since Independence. The national Commission on Labor presented its report in the year 1969. The Commission has additionally gone into the working of the conciliation proceedings designated by various fitting, Governments. The Commission has discovered the working of the conciliation machinery in the vast majority of the States rather disillusioning, while it is great in a couple of States, including the central industrial relations machinery. The National Commission found an aloof demeanor toward the appeasement on the piece of work, the administration, and the Conciliation Officials themselves. It suggested

the liberating up of an independent· industrial relations machinery instead of the present Government controlled machineries. Its proposal was to set up the Industrial Relations Commissions to go about as the outsider at various phases of disputes settlement process.

With respect to conciliation is concerned, the Industrial Relations Commissions comprise an conciliation wing. The Conciliation Wing is to consist ‘of the Conciliation Officers with endorsed capabilities with or without the legal capabilities furthermore, status. The individuals who have legal capabilities would be qualified for arrangement as the legal individuals from the industrial Relations Commissions however after they obtain the important experience and mastery. Others could try for the participation in the non-legal wing.

The technique for the settlement of the dispute through appeasement, as suggested by the National Commission on Labor is after dealings have fizzled and notice of strike/lockout has been served, either party may approach the Commission for naming a conciliator inside the Industrial Relations Commission to help them in showing up at a settlement during the period secured by the said notice. On account of the unnecessary enterprises/benefits, the Commission suggested that following the disappointment of exchanges and refusal by parties to profit of willful mediation, the industrial Relations Commission after the receipt of notice of direct activity (however during the notification time frame) may offer to the parties its great workplaces for settlement. After the expiry of the notification period, if no settlement is reached, the gatherings will be free to fall back on direct activity.

In this manner, so as to give successful outsider help a departure from the current methodology and strategy was suggested by the National Commission on work, underlining the willful component in dispute settlement. In any case no proper Government is eager to set up the Industrial Relations Commissions and move its privileges and duties in giving the outsider help and the settlement of disputes all the more adequately.

2.10.2 Conciliation’s Rise as a method of Dispute Resolution

As a question settlement alternative, pacification just showed up on the world stage after the First World War in the Locarno Treaties of 1925 and the General Act of

Arbitration of 1928. [125] In spite of the fact that it resembles good offices and intercession from the outset look (it plans to discover shared opinion between the two Parties and propose a nonbinding arrangement) it must be comprehended as referenced above by differentiating it with the two other settlement techniques. It was comprehensively structured as a response against the great good offices and intercession rehearses utilized in the nineteenth century (as exemplified by the Concert of Europe), which made it unreasonably simple for huge forces to camouflage the weight strategies they utilized on little and medium sized states. [126] Conciliation was viewed as being progressively legitimate and formal in nature since the pacification body was increasingly unprejudiced.

The 1960s acquired recharged intrigue this technique for dispute resolution. For instance conciliation was remembered for the 1962 Protocol setting up the conciliation and Good Offices Commission liable for Seeking the Settlement of Any Disputes which may emerge between States Parties to the UNESCO Convention against Discrimination in Education. Every two years at UNESCO's General Conference the Executive Council advances to UNESCO a rundown of individuals introduced by the Parties to this Protocol taking into account their political decision or re-appointment as Commission individuals. [127] Until this point in time, nonetheless, no dispute has yet been settled under the Protocol being referred to. Conciliation is additionally referenced in articles 12 and 13 of the 1965 International Convention on the Elimination of All Types of Racial Discrimination[128] (which came into power in 1969). Here again it gives the idea that conciliation has not been utilized to date. A somewhat later model is the 1982 United Nations Convention on the Law of the Sea[129] which specifies that oceanic delimitation must be set up through understanding what's more bombing that, through worldwide conciliation or legal settling. Taking note of little plan of action to the last mentioned, Richard Meese recommended in an article distributed in 1998 that states would profit by utilizing worldwide conciliation all the more frequently for a portion of the rest of the delimitation. [130]

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125 Jean Pierre Cot, La conciliation international, Pédone, Paris, (1928)

126 ibid

127 UNESCO, doc. 33/C/NOM/7

128 Available on http://www.qil-qdi.org/establishing-existence-dispute-international-court-justice-drawbacks-implications/(last visited on 15.11.2020)

129 ibid

130 Richard Meese, Delimitations Maritimes: règlement jurisdictional et conciliation international, Indemer – Annuaire du droit de la mer, Vol. III (1998)

Beginning during the 1990s, various universal instruments in new regions of law embraced conciliation as a dispute resolution method. [131] This was the situation for the UN Convention on Biological Diversity (1992), the United Nations Model Rules for the Conciliation of Disputes between States (1996), the Rotterdam Show on the Prior Informed Consent (PIC) Procedure beyond a shadow of a doubt Risky Chemicals and Pesticides in International Trade (1998) the Lasting Court of Arbitration Optional Rules for Conciliation of Disputes Identifying with Natural Resources and the Environment (2002) and the United Countries Commission on International Trade Law (UNCITRAL) Model Law on Global Commercial[132] Conciliation (2002). Be that as it may, despite the intrigue appeared in mollification in worldwide understandings, real situations where pacification was utilized remain rather uncommon.

2.10.3 Kinds of Conciliation

1) **Intentional Conciliation**- In this strategy parties can willfully take an interest during the time spent assuagement for settling their disputes.

2) **Obligatory Conciliation**- If parties would prefer not to accept the open door of deliberate appeasement then they can go for mandatory placation. In this technique if the parties would prefer not to meet the other party to determine the disputes then the procedure is said to be obligatory. This technique is normally utilized in labor case.

2.10.4 Advantages and disadvantages of conciliation

Advantages

I. The conciliation procedure is of private nature. The document, evidences or whatever other information which are utilized during the procedure are confidential.

II. One of the most significant preferences is that they are Informal procedure and contains Simple systems which can be effectively trailed by the general individuals.

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131 Ivan Bernier, with the collaboration of Hélène Ruiz Fabri, Implementing the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions: Future Actions ,26 (Ministère de la Culture et des Communications, Government du Québec, 2006)

132 Available on https://researchersclub.wordpress.com/201(last visited on 25.11.2020)

III. The procedure relies on the conditions of the case. In these procedures the need of the parties starts things out like brisk settlement of their cases so there is no way for delay.

IV. The choice of the conciliators relies on the parties. The parties can pick conciliator based on their accessibility involvement with specific field past track records of the cases, information in branch of knowledge.

V. The conciliation is modest when contrasted with case. They are practical and most selected procedure for settling disputes. It absolutely relies on the idea of the dispute yet is generally worthy.

Disadvantages

I. Conciliator is definitely not a legitimately qualified individual for settling disputes. His decision isn't binding upon the parties.

II. As the system of appeasement is casual and straightforward there is high chance of delivering injustice.

III. The job of the conciliator to settle up the case by giving information of one party to another and the other way around. The way toward sending and getting information once in a while prompts blended and off base information. Along these lines by these procedures one can without much of a stretch decipher the information given.

2.10.5 Conciliation Techniques

- Bring the parties to the negotiate table. The parties should go to the perceptive table all alone or on the action of the go between/conciliator. The expression ‘negotiate table' signifies a conventional conversation to attempt to agree. Along these lines for genial settlement of their disputes above all else the parties ought to talk about to attempt to agree. [133]
- Identifying issues. The parties ought to recognize the issues between them. Two focuses have the exact to be referenced here. One, just that issue that exist between parties and require to be settled so as to safeguard their

[133] Available on https://www.indialawjournal.org/ archives/volume1/issue_3/article_by_isha.html (last visited on 27.11.2020)

relationship ought to be talked about. [134] Two those issues ought to be characterized exactly without giving any room for dubiousness and vagueness.

- Setting up realities. The realities ought to be set up. In other words the real factors significant to the case for which arrangement is being attempted ought to be discovered. Truth implies and incorporates anything, situation or connection of things equipped for being seen by the faculties; any state of mind of which any human being is aware.

- Explaining the issues. The issues which shape into the dispute ought to be explained. The disputes may recognize with plainness of issues. For example money matters skilled status disrepute wellbeing etc. including multicolored issues. An issue emerges when a material suggestion of actuality or law is attested by one party and denied by the other. Material suggestions are those of law or authenticity which the inquirer may affirm all together to demonstrate an option to guarantee or which a litigant must claim so as to comprise his safeguard. Issues of truth may emerge from the believability of the parties themselves or from information provided by outsiders including understandings put on such information and issues of law will by and large emerge from conclusions given by particular legitimate delegates. Issues, both of law and reality ought to explain before building up the choice for settlement. [135]

- Configuration of the choices for settlement. The middle person/conciliator opens to the disputing parties a range of accessible choices other than those they can consider themselves. By advancing their perspectives and finding in what fields they might be set up to appear some adaptability he increases a point of view of the issues in query and of option possible outcomes of settlement. These choices may shift in number as indicated by the nature of the issues in disputes; and they might be accessible in regard of a solitary issue or a mix of issues. [136]

- Next to proceeding in agreement. The mediator/conciliator ought not to himself make a proposition for settlement of the dispute except if he has

[134] ibid
[135] ibid
[136] ibid

exhausted all prospects of getting a settlement based on the parties proposed arrangements. In the event that the contest includes various issues his proposition ought to be for a' package settlement that will discard every single such issue. He ought to not officially make his proposition at a joint meeting without having previously acquired the understanding of every one of the parties separately. [137]

2.10.6 Principles underlying the Conciliation Practice

Within the matrix of context and models there are center, particular rules that characterize pacification (rather than intercession) practice that apply to mediations in a legal setting mediation that identify with procedure substance and result. These standards incorporate equidistance, favoritism, skill, and authority.

Equidistance depicts a dissident mediation approach that makes balance in exchanges between parties. Conciliation is regularly a required advance in the goals of a contest or grumbling and can have an elevated level of self-spoke to parties. In this specific circumstance, evenness can be comprehended to incorporate the significance of a worthy degree of intensity differential between parties the nearness of sincere trust arrangements, the administration of outrageous contrasts in exchange techniques (eg worldwide recurrent player versus once-off individual resident) and the revelation and thought of fundamentally significant data.

Conciliators endeavor to make balance through wise utilization of their own **favoritism** as opposed to the activity of unprejudiced nature. They can assume this job on the grounds that the framework unequivocally or verifiably asks them to: their allotted status proceeds inasmuch as they act in harmoniousness with the qualities and objectives of the framework. Be that as it may, these qualities and objectives are not in every case unmistakably verbalized or organized by law thus appeasement practice is an exercise in careful control that dangers getting eccentric and conflictingly applied.

Conciliators have **ability** in the specific situation and parameters inside which goals happen. This information envelops comprehension of the procedure individuals question issues and the scope of useful arrangements and can be portrayed as arranged. Under rule a conciliator is relied upon to have an educative or brightening

[137] ibid

job according to substance and results. There is a part of the organization of equity expected of a conciliator in setting thus they have standard producing, standard teaching and standard upholding duties. The decision for conciliators is to make positive mediations dependent on their insight so as to accomplish equidistance or to meet other foundational objectives, for example, expediency, reasonableness and ease. In certain conditions where key legitimate or administrative objectives apply the insistence of arranged meaningful skill is anything but a decision however a commitment.

Conciliators practice their **power** vested in the job by the legal setting. They balance a decision to engage a gatherings self-governance against the security of a gathering's privilege under law. The perfect of unadulterated assistance is flawed in this setting since it can prompt contorted and dis-enabling desires or the triumph of institutional force or the unseemly nonattendance of legitimate and clinical standards. In this way the utilization of weight by a conciliator might be required to accomplish legal objectives yet it is risky a lot of weight without acknowledgment of the interests of the gatherings will be seen as danger. Lacking weight can fortify force differentials and harm the validity of the assuagement procedure.

2.10.7 Core Conciliation Skill and Competencies

The center facilitative intercession aptitudes as itemized in national codes and accreditation principles apply to conciliators as they first look for goals by agreement. The utilization of weight or influence anyway requires different abilities. For instance the conciliator has a **specific analytic** examination by the way they characterize at the beginning the dispute (for instance, corresponding to resolution) and what decision of approach they take. By and by this outcomes in various activities for the specialist: examination of the reason for the cases that offer ascent to the contest identification of the gap in expert information and the capacity to request this information get ready gatherings before meeting to address noteworthy legitimate clinical or authoritative issues that have surfaced in the finding and separate between what might be lawfully applicable to the dispute and what the gatherings' advantages may request.

The conciliator requires an **objective empathy** with the gatherings that recognizes individual objectives however present applicable requests and desires for the rule that may constrain the extent of what results can be accomplished. This expertise implies

the conciliator keeps up equidistance with members being a functioning avowing process by which prejudice to the rule is utilized to make balance of arranging power. The conciliator endeavors to accomplish a suitable harmony between intercessions stressing member rights and obligations inside the plan and engaging them to settle on choices for themselves and presents master information on the norm, satisfactory lawful and regulatory alternatives accessible in the purview.

The conciliator utilizes their **expert information** on the administrative setting and applies the important arrangements of the law to challenge positions or raise applicable issues for thought for example the supportability of a case in court or the authoritative goals. The conciliator in this manner needs to have working information on pertinent court choices in the locale. While most appeasement practice fortifies the essential facilitative objectives of question goals and gathering control of choices and results the conciliator utilizes navigational information on the law or framework to illuminate party dynamic. For certain conciliators the resolution anticipates that they should successfully direct that gatherings haggle in compliance with common decency or satisfies other legal or administrative commitments, similar to sound and legitimate dynamic.

The conciliator **deals with different jobs** (facilitative, warning, determinative) thus should explain their jobs all through the procedure and sign advances when they happen. The choice to change jobs is connected to legal or case necessities thus include a valuation for fair treatment and the ramifications of interceding all the more mightily. Where conciliators are offered forces to settle on bearings or choices if understanding can't be accomplished they should have dependable dynamic aptitudes and not stray past the legal job recommended the capacity to show unprejudiced nature straightforwardness and responsibility and comprehension of the use of the standards of common equity as it applies to, for instance secured or real inclination.

At last a conciliator must have **self-adequacy** to deal with the exercise in careful control of interests and rights. Conciliators characterize the restrictions of what is conceivable inside the extent of placation and in this manner convey a duty regarding the legitimate and strategy setting. They will unavoidably encounter difficulties to their understanding and reactions of how they complete of this obligation. Given that most conciliators in take a shot at boards or inside an organization as representatives

there is a chance to build up a culture of intelligent practice and friend learning and bolster that is a denied arbiter working secretly. The point of self-adequacy is conciliator versatility dependent on competency and regard earned as opposed to positional power or the inconvenience of status.

2.11 Difference between Mediation and Arbitration

Despite the fact that intervention and arbitration have a similar objective as a top priority a reasonable goal of the current issues there are some significant contrasts which the two gatherings must see in advance.

The fundamental distinction among intervention and intercession is that in mediation the authority hears proof and settles on a choice. Arbitration resembles the court procedure as parties despite everything give declaration and give proof like a preliminary yet it is typically less formal. In intercession the procedure is an exchange with the help of a nonpartisan outsider. The parties don't arrive at goals except if all sides concur.

Middle people don't give orders discover issue or make conclusions. Rather arbiters help parties to arrive at a settlement by helping with correspondences getting important information and creating alternatives. In spite of the fact that intervention methods may fluctuate, the gatherings typically initially get together with the go between casually to clarify their perspectives on the question. Regularly the middle person will at that point meet with each gathering independently. The arbiter talks about the debate with them, and investigates with each party potential approaches to determine it. It is normal for the middle person to go to and fro between sides various occasions. The fundamental spotlight stays on the gatherings as they progress in the direction of a commonly advantageous arrangement. Most debates are effectively settled and frequently the gatherings will at that point go into a composed settlement understanding. Numerous individuals report a higher level of fulfillment with intercession than with assertion or other court forms since they can control the outcome and be a piece of the goals.

Intervention, then again, is commonly a more proper procedure than intercession. A mediator could be a resigned judge a senior legal advisor or an expert for example a bookkeeper or architect. During intervention the two gatherings are allowed a chance to introduce their cases to the judge. Much like a customary court continuing legal

advisors can likewise address observers from the two sides. During assertion there are pretty much nothing if any out-of-court arrangements between parties. The judge has the ability to render a legitimately restricting choice which the two parties must respect and the honor is enforceable in our courts and the courts of 142 nations.

2.12 Difference between Arbitration V. Conciliation

The strategy for conciliation is commonly pertinent to existing questions while the method of arbitration is accessible for existing just as for future disputes. While making an agreement they can include a proviso wherein any dispute emerging out of their authoritative relationship later on can be eluded to assertion. Such a proviso is official on the parties. Arbitration is governed by the doctrine of separability i.e. it is a binding contract in itself which agrees obligatory execution as and when a dispute emerges. [138]

The conciliation procedures start by sending a written invitation and written acceptance thereof between the parties. The invitation may be accepted [139] or dismissed by the other party as it has no coupling impact being a greeting in particular. The earlier composed understanding in intervention orders a coupling impact upon the parties and its break by turning to court forces the court to elude the issue to the arbitration and parties are limited by the arbitral understanding. In intervention, the assertion understanding itself recommends for redress of disputes through mediation and if any gathering approaches the court the other party may demand the court to elude the issue to arbitration and the court will undoubtedly elude such issue to the Arbitral Tribunal.

- While conciliation procedures are in progress, there is a bar on parties from starting arbitral or legal procedures according to Section 77 of the new act 1996.
- While the job of conciliator is to help and help the parties to arrive at a genial settlement of their dispute[140] the judge doesn't just help the parties yet he additionally effectively arbitrates and resolves the dispute by making an arbitral award.

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138 The Arbitration and Conciliation Act, 1996, s. 7(2)
139 ibid s (62)
140 ibid s.72

- Section 62 again says that a gathering sending application for assuagement should quickly distinguish the subject of the dispute. Be that as it may in a arbitration understanding, the substance of dispute must be obviously referenced. As a rule the parties consolidate a statement saying that any dispute emerging out of the agreement must be alluded to arbitration and harms will be granted for the reasons for the equivalent as it were. This proviso is of most extreme significance. Still such a statements presence isn't required if there should be an occurrence of assuagement.

- Where parties neglect to decide the quantity of arbitrators which ought to consistently be even, the demonstration gives on such inability to a sole authority. However, on account of placation as a matter of course just a single referee is sufficient. The parties in any case, can select one conciliator each these two need not designate the third one. Parties may concur for a few conciliators and a most extreme number of conciliators can't surpass three. Where the quantity of conciliators is multiple, they as an issue of general guideline should act together. On account of authorities, there is no bar on their greatest number however the all-out ought not to be significantly number. At the point when gatherings concur for three referees, each gathering will delegate one and these two will designate the third mediator who will be the directing judge. Section 10 and 63 of Arbitration and Conciliation Act, 1996. **In Ethiopian Airlines v. Stic Travels (P.) Ltd**., the Apex Court clarified the extent of this arrangement two authorities will delegate the third judge who goes about as administrator. He can't be regarded to be an umpire regardless of whether one of the assigned authorities of the gathering kicks the bucket; no new right collects to select the new administrator. **In Narayan Prasad Lohia v. Nikunj Kumar Lohia**,[141] the court again clarified that the section 11 will apply mutatis mutandis if the gatherings neglect to determine the quantity of mediators. Additionally in a milestone administering in a similar case, the court said that it isn't important to designate a third mediator if the two referees are in accord of giving a similar honor or if under section 16 the parties to the question neglect to mention criticisms to start with in regards to a two-part board or council, they are esteemed to have postponed their right.

[141] Civil appeal No.1382 of 2002

2.13 Success Rate of Conciliation

In conciliation procedures work of conciliator is confined to manage the parties to a settlement; official choice is shown up at by the parties with the help of the conciliator. The procedure of assuagement being adaptable and pretty much casual, the parties promptly enter upon placation and agree on a settlement of dispute the understanding so came to have the status and impact as though it was an arbitral award. Section 74 of Arbitration and Conciliation Act 1996 gives that status and impact of settlement understanding will have a similar type and impact as though it is an arbitral award on concurred footing on the substance of the dispute rendered by an arbitral court under section 30.[142] The Parties are legitimately occupied with arranging a settlement. In the greater part of the nations which have embraced pacification as an elective strategy for settling questions, the achievement rate is very high. In India with the institution of the Arbitration and Conciliation Act 1996 the Parliament has offered acknowledgment to alternative types of dispute resolution. A settlement came to through pacification as it is named in the Act has a similar status and impact as an arbitration award and along these lines is enforceable as though it were an announcement of court. The business disputes, where it isn't basic that there ought to be an authoritative and enforceable choice are amiable to appeasement. Where the parties in dispute need to defend and keep flawless their business connections for future, conciliation is the most appropriate alternative dispute resolution.

[142] The Arbitration and Conciliation Act,1996, s.30

CHAPTER-3

INTERNATIONAL FRAMEWORK OF MEDIATION AND CONCILIATION

3.1 Introduction

Mediation is an empowering tool which can be used to alleviate long standing conflict between states and hence aim to encourage this peaceful mechanism in the international arena. International mediation has become one of the most significant methods of managing cross border disputes. The concept of disputes between states is as old as the concept of state itself. When two or more states are in conflict often, they require the assistance of a third party to maneuver the tension in a nonviolent way and facilitate an amicable resolution of the dispute. Mediation is one such peaceful mode of conflict resolution which involves a neutral third party who initiates the process by laying down the ground rules. This is followed by a problem-solving approach, in which both the parties address their issues their interests and work towards reaching a mutually beneficial solution with the help of the mediator. Over the years mediation has seen greater acceptance around the globe and has proven to be an effective mode of dispute resolution, extenuating potential rivalry between states. In the past decade, various states as well as global, provincial and transnational organization have played the role of a mediator for resolving aggression between nations.

3.2 Development of Mediation in Global Relations

The settling disputes through the method of mediations have a well-documented history. Inter-state mediation was first observed in as early as the 19th century. For example **Great Britain played the role of a mediator in 1825 between Portugal and Brazil** which gave rise to the Treaty of Rio de Janeiro (1825). In pursuance of the same, Brazil's long-standing war for independence was settled and it came to be recognized as an independent nation. **In 1919 the Covenant of the League of Nations** was established. In accepting the Covenant, states agreed that unsettled disputes would be referred to third party settlement thus minimizing the likelihood of violence. Although the Covenant itself did not refer to the term mediation , it stipulated that matters which cannot be satisfactorily settled by mediation shall be submitted to arbitration or judicial settlement. **In 1945 with the advent of the United Nations (UN),** the term mediation was included as a peaceful tool for dispute

resolution under its Charter. The UN Charter states that all members shall settle their international disputes by peaceful means. Under Article 33 the parties to any dispute likely to endanger international peace and security are enjoined to seek a peaceful solution of their choice which includes mediation. The Security Council may also call upon the parties to settle their disputes via mediation whenever it deems necessary. Various bilateral regional and multi-lateral treaties also provide that the parties must refer their disputes to mediation before resorting to any other legal discourse.

3.3 Distinctiveness as well as strategy of intercession

3.3.1 Uniqueness of mediation

Every mediation is unique depending on the nature, duration and intensity of the dispute as well as the nature of the disputants. The positive attribute of conciliation is that the method is voluntary and non-binding. The success of mediation depends on the parties' willingness to resolve their conflict. This helps not only in pacifying but also in pacifist in the long run. The intermediary is vital to be devoid of unfairness while facilitate the negotiations between parties. The neutral stance of the third-party is crucial to any mediation.

3.3.2 Strategy of Mediation

Experts have identified three distinct mediation strategies in rising level of the mediator's involvement in the proceedings.

3.3.2.1 Communication facilitation- While facilitating communication between the parties the mediator plays a passive role and encouraging them to talk. It is the most widely recognized technique utilize, taking place in 43.7% of the cases.

3.3.2.2 Bureaucratic mediation- The third party takes control of the procedural aspects, wherein he structures the proceeding according to his plan. It occurs in 14.2% of the cases.

3.3.2.3 Directives mediation- The mediator plays an active role by signifying probable outcomes to the conflict. It is employed in 29.6% of the cases.[1]

[1] Christopher w. Moore, The Mediation Process practical strategies for resolving the conflict,(Jossey Bass, 3rd edition 16 May 2003)

3.4 Blooming Inter State Mediations

It is all the time cautious to glance as well as seek help from precedent. The globe has seen abundance of victorious intercession procedures occur with great effect. Mediation in the international arena is not a fairy tale. Approximately 434 international crises occurred between 1918 and 2001, out of which 128 resorted to mediation. Although there was merely 30% rate of incidence during this period when we narrow our focus to the Post Cold War Era, we find that 46% of all the crises were mediated. This information clearly reveals the efficacy of mediation in worldwide relations.

Mediation is apparently the main alternative method of dispute resolution, both provincially and, not including adjudication, universally as methods for settling all way of trade disputes. Its use has significantly expanded in the course of recent years. The progress of intervention nearby in different purview has frequently been driven by changes to the common justice framework, searching for less expensive and speedy options in compare to court case, and has driven in certain examples to the arrangement of court-attached or court-annexed procedure. While by means of far most of mediation that come about are as so far limited, there is an increasing pattern to utilize the procedure to determine worldwide disputes.

The International Union of Lawyers (UIA) built up the World Forum of Mediation Centers, which unites at normal interim the most significant commerce intervention and Alternative Dispute Resolution revolves from around the globe to offer an open door for a trade of perspectives on the advancement of intervention and best practices. One of the most fascinating parts of crafted by the assembly is looking at the dissimilarity among domestic and universal intervention. By their very nature worldwide intervention presents the multifaceted nature of culturally diverse and semantic issues which are typically missing in absolutely private intercession. Though there are without a doubt more entanglements to defeat in global intervention when contrast with restricted mediation unreliable proof would recommend that worldwide intercession directed by a skillful experienced go between appreciate roughly a similar settlement achievement pace of around 80 percent. Intervention won't resolve each question obviously, in any case given the high probability of settlement there are scarcely any hindrances in endeavoring to determine a challenge by mediation.

Intervention progressively frames some portion of a multi layered dispute resolution process and is regularly utilized before falling back on widespread declaration.

3.5 Growth of Mediation in different countries[2]

3.5.1 Spain

Spain passed the law on mediation in civil and commercial matters effective from July 2012 to give effect to the 2008 European Union directive on Mediation. Till the passage of the Act, mediation as an alternative dispute resolution mechanism was not widely used in Spain although the concept of mediation was not unknown in the country. The 2012 Act applies to civil and commercial matters in Spain with the exception of consumer employment and public administration mediations, and criminal cases. Cross-border mediations are covered under the Act if at least one of the parties is based in Spain and the mediation takes place in Spain. As per the Act parties are compelled to attempt to mediate in good faith if there is a mediation clause in a contract. Provisions of the act deal with the qualification of mediators initiating mediation, confidentiality, restriction on litigation or other legal proceedings during mediation and enforceability of settlement agreements, both domestic and foreign. The Act specifies that to qualify as a mediator, an individual has to pass specified courses such as law, psychology negotiation, communication, ethics, etc. In Spain, mediators can be held liable for any damages caused by their actions and are required to have a civil liability insurance policy. Limitation period is suspended for the duration of the mediation but resumes if the constitutive session is not held within 15 days from the date that the mediator received notice of the mediation. Settlement agreements are binding on the parties.

3.5.2. Italy

Mediation has been used in Italy for several years in family and labour related matters, but only in the last fifteen years has it gained prominence. Several laws provide for mediation, but the European Union Mediation Act 2011 incorporated into the system is the main law on the matter. The law provides that mediation can only be conducted by mediation bodies accredited by the Ministry of Justice. Tax incentives and tax credit are available to parties who opt for mediation. A duty is imposed on

[2] Santiago Madrid Libras, Kevin Brown ,Mediation Across the globe(Cambridge Scholar publisher, 2018)

lawyers to inform their clients in writing about the option of submitting the dispute for mediation and the financial incentives of doing so. The presence of lawyers during mediation is mandatory. The non-attendance of a party at a mediation session without valid justification results in penalties in the form of court costs in future litigation. The law provides for criteria to be fulfilled by mediators for accreditation and the minimum training required. They may be held liable for misconduct or gross negligence or improper behavior. Mediation bodies are required to have insurance cover of at least Euros 500,000. [3]

3.5.3. Austria

Austria was one of the first countries of the European Union to enact comprehensive legislation on mediation through the Civil Law Mediation Act of 2004. Under this Act mediators must have proper education and qualifications and be registered with the Ministry of Justice. For registration, a mediator must be qualified through training of at least 29 years of age with no criminal record and with professional liability insurance. Breach of the confidentiality obligation is punishable by a term of imprisonment of upto 6 months or a fine. [4]

3.5.4. The European Union (E U)

The European Union (EU) is a financial and political association of 28 member states that is found essentially in Europe. The EU works through an arrangement of supranational free foundations and intergovernmental arranged choices by the member states. The Institutions of the EU incorporate the European Commission, the Council of the European Union, the European Council, the Court of Justice of the European Union , the European Central Bank, the Court of Auditors, and the European Parliament. The European Parliament is chosen at regular intervals by EU residents. The European Union perceived the need to have rules set up for intervention and passed the EU Directive on Mediation-DIRECTIVE 2008/52/EC of the European Parliament. The Mediation Derivative dates from 21st May, 2008 and came into force on 13th June,2008 and required the European Member States (with the exception of Denmark) to actualize the important laws, regulations and regulatory arrangements by 20 th May, 2011.

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[3] ibid
[4] ibid

The intervention mandate covers the complementary point[5]

Article 1- Objective and Scope

i. The goal of this Directive is to make a simple access to the alternative dispute resolution and to advance the welcoming settlement of questions by empowering the utilization of intervention and by ensuring a decent connection among intercession and legal procedures.

ii. This Directive will apply, in cross border disputes, to common and business matters aside from rights and commitments which are not at the parties' removal under the pertinent appropriate law. The extent of this Directive will not be reached out to revenue, customs or managerial issues or to the risk of the State for acts and exclusions in the activity of State Authority.

iii. The Member State in this Directive will exclude Denmark.

Article 2- Cross Border Disputes

1. With the end goal of this Directive a cross border dispute will be the one where at any rate one party is domiciled in a member state other than that of some other party on the date of which -

   a) The parties pick intervention after the dispute has emerged.
   b) Intercession is requested by a court.
   c) A commitment to utilize intervention emerges under national law. or
   d) For the reasons for Article 5 invitation is made to the parties.

2. Despite passage 1 for the reasons for Articles 7 and 8 a cross-border dispute will likewise be one in which legal procedures or arbitration following intervention between the parties is started in a Member State other than that in which the parties were domiciled or routinely inhabitant on the date alluded to in section 1(a), (b) or (c).

3. For the purpose behind passages 1 and 2, domicile shall be resolved as per Articles 59 and 60 of Regulation (EC) No 44/2001.

[5] Directive/2008/52/Ec of The European Parliament and of the Council Of 21may 2008 On Certain Aspects of Mediation in Civil and Commercial Matters

Article 3- Definitions

1. "Mediation" signifies a basic procedure, anyway name and alluded to, whereby at least two parties to a dispute endeavor without anyone else on a deliberate premise, to agree on the settlement of their dispute with the help of a mediator. This might be started by the parties or recommended or requested by a court or endorsed by the law of a Member State. Intercession is proposed to unite two parties to clear up false impressions, discover concerns, and arrive at resolutions.

2. "Go between" signifies any outsider who is approached to complete an intercession in a viable unbiased and skilled way paying little heed to the calling of the outsider in the Member State concerned and of the manner by which the third individual has been delegated to direct the intervention.

Article 4- Guaranteeing the nature of mediation

1. Member States will support, using any and all means which they think about fitting the improvement of and adherence to deliberate sets of accepted rules by middle people and associations giving intervention administrations just as other compelling quality control instruments concerning the arrangement of intercession administrations.

2. Member States will support the underlying and further preparing of go between so as to guarantee that the intervention is led in a powerful, unprejudiced and able path corresponding to the parties.

Article 5- Recourse to Mediation

1. A court before which an activity is brought may, when fitting and having respect to all the conditions of the case, welcome the gathering to utilize intercession so as to settle the dispute. The court may likewise welcome the gathering to attend an a information session on the utilization of intercession if such meetings are held and are effectively accessible.

2. This Directive is without bias to national enactment utilizing intervention necessary or subject to motivators or assents regardless of whether previously or after legal procedures have begun given that such enactment doesn't keep the parties from practicing their privilege of access to the legal framework.

Article 6- Enforceability of Agreements Resulting from Mediation

1. Member States shall ensure that it is possible for the parties, or for one of them with the explicit consent of the others, to request that the content of a written agreement resulting from mediation be made enforceable. The content of such an agreement shall be made enforceable unless, in the case in question, either the content of that agreement is contrary to the law of the Member State where the request is made or the law of that Member State does not provide for its enforceability.

2. The substance of the agreement might be made enforceable by a court or other capable expert in a judgment or choice or in a credible instrument in agreement with the law of the Member State where the solicitation is made.

3. Member States will advise the Commission regarding the courts or different specialists able to get demands as per passages 1 and 2.

4. Nothing in this Article will influence the standards relevant to the acknowledgment and implementation in another Member State of an agreement made enforceable as per passage 1.

Article-7 Confidentiality of Mediation

1. Given that intervention is proposed to occur in a way which regards secrecy Member States will guarantee that, except if the parties concur something else neither go between nor those associated with the organization of the intercession procedure will be constrained to give proof in civil and commercial legal procedures or arbitration with respect to information emerging out of or regarding a intervention process, with the exception of -

    a) Where this is important for abrogating contemplation of open approach of the Member State agitated, specifically when required to guarantee the security of the eventual benefits of kids or to forestall mischief to the physical or mental respectability of an individual. or

    b) Where revelation of the substance of the agreement coming about because of intervention is fundamental so as to execute or authorize that agreement.

2. Nothing in Section 1 will prohibit Member States from authorizing stricter measures to secure the privacy of intervention.

Article 8-Effect of mediation on limitation and prescription periods:

1. Member States will guarantee that parties who pick intervention trying to settle a dispute are not in this manner prevented from legal procedures or arbitration comparable to that question by the expiry of impediment or remedy periods during the intercession procedure.
2. Paragraph 1 will be without preference to arrangements on impediment or remedy periods in global agreement to which Member States are party.

Article 9-Information for General Public

Member states will urge the overall population to realize how to contact the middle people and associations and establishments giving such administrations by the method for web or some other method of correspondence.

Article 10-Information on Competent Courts and Authorities

The commission will make openly accessible, by any auspicious information on the able courts and Authorities conveyed by the Member States.

Article 11- Review

Not later than 21st May, 2006, the Commission will present the report on the use of this Directive to the European Parliament, the Council and the European Economic and Social Committee. The report will consider the advancement of intercession and its effect on Member States joined by recommendations to adjust this Directive.

Article 12-Transposition

Member States will bring into power the laws, guidelines and managerial arrangements important to conform to the Directive. Member State will speak with the commission the matter of the primary arrangements of national law which they embrace in the field secured by the Directive.

Article 13-Entry into force

This Directive will fall into power on the twentieth day following its publication in the official journal of the European Union.

Article 14-Addresses

This Directive shall be addressed to the Member States.

Analysis -In order to enable the courts to handle cases "justly" through active case management, which is partially described as encouraging the use of alternative dispute resolution methods, the United Kingdom implemented the Civil Procedure Reforms in 1999.Thus, mediation fell clearly outside the purview of formal judicial action. In subsequent cases, where the successful parties had unreasonable refused to undertake mediation, rulings refused to award costs to the successful parties. The Woolf Reports include the introduction of procedural case tracks and pre-action protocols. They did not stop with structural and procedural reform, but sought to change the culture of litigation. This was to be done by active case management, by introduction of the overriding objective , and imposition of a duty on litigants to assist the court in furthering the overriding objective. The overriding objective, as elaborated in Civil Procedure Rule 1.1(2) is to deal with a case justly which includes ensuring that parties are on equal footing, saving expense, dealing with a case in ways that are proportionate to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of each party, ensuring that the case is dealt with expeditiously and fairly, and allotting an appropriate share of the court's resources to it. It follows that justice is now more than justice in individual case; it is justice in all cases. In furtherance of this objective and the shift in legal culture, a greater emphasis was placed on resolving disputes consensually. This was central to the new litigation culture and was to be achieved through active case management to promote settlement. Rule 1.4(1) (e) and (f) and 3.1 and Rule 26.4 (1) enable parties to make requests for, or the court of its own initiative to order, a stay of proceedings to enable parties to arrive at settlements by ADR processes. This squarely brings mediation within the ambit of court power and client duty. Rule 44.5 further encourages this process.

3.5.5 The United States of America

The idea of intervention has got enormously mainstream, exceptionally powerful and generally convenient for all the parties. From an insignificant idea it created as a device, at that point as an ADR instrument and now it has aged into a culture. In San

Diego (California) having the third biggest number of preliminary courts in the USA 97% of the common cases get settled through intervention. [6]

The Administrative Dispute Resolution Act was passed in 1996. Its expressed foundation was that the United States governments consistently entangled in disputes with different parties that one fourth of all cases in bureaucratic courts name the national government as a party and prosecuting them cost the citizen billions of dollars. To empower quicker and less expensive approaches to determine question with the federal government Legislative body authorized the law to make unequivocal the expansive authority of the bureaucratic organizations to utilize Alternative Dispute Resolution strategies. [7]

The US Postal Service, the Air Force, the United States Information Agency and the Department of Veteran Affairs have delegated dispute resolution experts.

More than 2500 separate rules have approved or commanded the utilization of intervention. The American Bar Association's section on dispute resolution has a greater yearly meeting than its litigation section an overview of the National Law Journal noticed that 58 % of litigators and 81% of corporate respondents gave intercession better grades over case or arbitration as a palatable procedure.

Intervention on tort cases has yielded fast help, particularly on pay and beneficial scenario. A model in the suit by US armed force faculty harmed by presentation to synthetic Specialist Orange in the Vietnam War. The preliminary appointed authority, confronted a ceaseless preliminary, sent the issue to intervention an able mediator worked with a scope of interests and members for fiscal pay and different reliefs.

International disputes; trade dispute, Workplace dispute, environment dispute, public policy disputes and so forth have been taken to intervention. A few courts have obligatory intercession programs what's more, the cases are removed the court schedule and doled out to the middle people delegated by the courts. On the off chance that the intervention is unsuccessful, then the issue is taken back to the court docket.

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6 Available at http://gujarathighcourt.nic.in/Articles/msshah.pdf (last visited on 3.5.2020)

7 Sriram Panchu, Mediation: Practice and Law: The Path to Successful Dispute Resolution, 2011 (LexisNexis, Butterworths Wadhwa, Nagpur, Reprint 2012)

Various states in the United States of America follow their own method for intervention, yet in 2001 the Federal Government passed the Uniform Mediation Act with the perspective on having a normalized law in the United States. This demonstration doesn't make a difference to the establishment, negotiation, organization or end of an collective bargaining relationship or to dispute pending under or as part of a procedure built up by an collective bargaining treatment then again actually the Act applies to intervention emerging out of such disputes that have been recorded with the regulatory organization or the court, and so forth.

In the USA the activity for setting up intercession focuses originated from legal advisors. Intervention is both private intercessions (without reference by the Court) just as the intercession referred by the Court. There are private intercession firms like JAMS having 45 full times go between and with all framework offices to hold countless mediation. More individuals go to such places as opposed to holding up in the Courts. The Government just as the Judiciary have additionally understood the significance of intercession and how it can take generous burden off the legal framework and along these lines demonstrate both financially and acceptable in a transient technique just as for since quite a while ago run. Subsequently there are Court Annexed mediation Centers run with reserves promptly made accessible by the Government. The mediator's charges for the initial four hours of interference are borne by the State through the Court and for additional period if all essential, the hourly expenses of the mediators are borne by the parties. Most of the cases get settled in under 4 hours. [8]

In California the enactment which came into movement from 1995 requires Los Angeles Country Judges to arrange non -restricting intervention of all cases in which the sum in dispute is $ 50,000 or less. Later it spread to Connecticut, Minnesota New Jersey, North Carolina, Texas, and so forth; as a court annexed process. Notwithstanding this state program unique trade courts offering moderately speedy preparing of business debates have been set up in three significant urban communities New York Chicago (Illinois) and Wilmington (Delaware). The business division of the New York State Supreme Court is only given to business dispute resolved to

[8] Available on http://gujarathighcourt.nic.in/Articles/msshah.pdf (last visited on 3.5.2020)

speed up procedures and consolation of settlement. Four appointed authorities hear the cases in this court from start to finish. [9]

3.5.6. China

Intervention in China today incorporates a wide assortment of activities, extending from the simply facilitative to the considerably adjudicative yet still mediatory (those that are fundamentally adjudicatory and forced paying little mind to the desire of the defendants ought to be barred). They show that contemporary Chinese court intercession that has been polished is altogether different both from Qing court rehearses and from current alternative dispute resolution (ADR) in the West. Qing courts for the most part didn't intervene, in spite of the Confucian (Confucianism is a moral and philosophical framework now and again depicted as a religion created from the lessons of the Chinese savant Confucius) perfect of settling disputes through intervention and in spite of the authority ceremonial prerequisite that court activities consistently be willfully acknowledged by prosecutors. Contemporary Chinese courts, in any case normally intercede a heritage not from the Qing however from the Maoist time frame. On the off chance that intercession comes up short arbitration or adjudication under a similar adjudicator will quite often follow. That makes the procedure altogether different likewise from current ADR in the West where intercession is commonly independent and particular from court preliminaries and middle people don't work with so much optional force as Chinese appointed authorities.

Types of Mediation in China

a) Civil Mediation: This sort of intercession is an intervention directed by intercession advisory groups outside the court.

b) Judicial Mediation: This kind of intervention happens in the official courtroom concerning common and minor criminal questions.

c) Administrative Mediation: This kind of intercession occurs outside the court and is led by the administration in the issues, for example, labor disputes.

d) Arbitration Mediation: These kinds of intercession are finished by the intervention bodies in arbitration cases.

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[9] Madabhushi Sridhar, Alternative Dispute Resolution Negotiation And Mediation, (lexis Nexis,2006 (Reprint 2013)

Some Important Articles of the Law of Civil Procedures of the People's Republic in China:

Article 35: This article expresses that when dealing with common cases, official courtrooms should, in view of the assent of the disputants, intervene the case on merits.

Article 86: This article given that courts might be directed by a sole appointed authority or by a collegiate of judges and intercession should occur on the spot however much as could be expected**.**

ARTICLE 88: This article specifies that the understanding ought to be drawn up with the assent of the prosecutors and ought not to negate the law.

Article 89: This article expresses that once settlement is arrived at the court ought to set up an intercession report.

Article 91: This article gave that the official courtroom ought to arbitrate in a convenient manner on disappointment of intervention or withdrawal by the gatherings.

Analysis- There are four types of mediation in China. The civil mediation happens by mediation conducted by mediation committees outside the court. Judicial mediation takes place in a court of law concerning civil and minor criminal disputes. Administrative mediation happens outside the court and is conducted by the government in matters such as labour disputes. Arbitration mediation is done by arbitration bodies in arbitration cases. As far as judicial mediation is concerned, Article 35 of the Law of Civil Procedure of People's Republic of China states that 'when handling civil cases, courts of law should, based on the consent of the litigants, mediate the case on merits.' Article 86 provides that courts may be presided over by a sole judge or by a collegiate of judges and mediation should take place on the spot as much as possible. Article 8 stipulates that the agreement should be drawn up with the consent of the agreement should not contravene the law. Article 89 states that once settlement is reached the court should prepare a mediation document. Article 91 provides that the court of law should adjudicate in a timely on failure of mediation or withdrawal by the parties.

3.5.7. Hongkong

Intervention has got greater exposure in the jurisdiction recently after a training bearing which expects gathering to a dispute to give a considerable impetus to declining to mediate. They might be subject for costs if their support isn't acknowledged. So as to manage the expanded number of cases, the Hong Kong specialists have proceeded to control intercession, making the Mediation Ordinance, which came into procedure on 1st January 2013 and the Hong Kong Mediation Accreditation Association Limited (HKMAAL) which was propelled in April 2013. The Ordinance is intended to additionally advance intervention by making an administrative structure for the procedure which expels numerous issues which beforehand repressed intercession while the HKMAAL is would have liked to turn into a solitary accreditation expert for middle people in Hongkong. As the market turns out to be progressively advanced, we see an ascent in the quantity of enthusiastically suggested middle people locally. It is trusted that the new activities in Hongkong can serve to advertise and feature the advantages of intercession and change mentalities all through the lawful network.

The HKMAAL was built up to make the chief accreditation body for go between in Hong Kong, releasing both accreditation and disciplinary capacities. HKMAAL had set norms for preparing and accreditation, yet it had not given instructional classes. The Members of HKMAAL are associations themselves and it was expressed that they themselves need to forsake their own accreditation framework once they are conceded in HKMAAL. The aim is inevitably to shape a solitary accreditation framework in Hong Kong. This is without a doubt another significant achievement in the improvement of intercession in Hong Kong and will additionally reinforce Hongkong's position as a International dispute resolutions center.

Vision, Mission and Fundamental beliefs of Hong Kong Mediation Accreditation Association Limited (HKMAAL)[10]

Vision:

To make the foremost intercession accreditation body in Hong Kong

[10] Available on http://www.hkmaal.org.hk/en/ValuesVisionMission.php (last visited on 3.5.2020)

Mission:

To set guidelines for licensed go between, administrators, assessors, trainers, mentors and different experts associated with intervention in Hong Kong, and to authorize them on fulfilling the imperative standards. To set gauge for important mediation instructional classes in Hongkong and to favor them on fulfilling the essential norms. To advance a culture of best practice and competence in intercession in Hong Kong.

Core Values

- Solidarity
- Uniformity
- Ability
- Enormity and Success

Ongoing Developments of Intercession in Hongkong[11]

Back in 2007-Introduction

Intercession is certainly not another thought in Hongkong's ADR history. Prior to 2007 it had been presented in development contracts or examined on different events. The Hong Kong Airport Core Projects (ACP) embraced it as an approach to settle disputes before falling back on arbitration. Intervention has been effective with more than 70 percent of disputes being understood all through the intercession procedure. The ACP contracts were achievements in the advancement of intervention in Hong Kong. In October 2007 the Policy Address of the Chief Executive of the HKSAR mapped out designs to utilize intercession all the more widely and successfully in Hong Kong. It is utilized to deal with better quality business disputes and moderately little scope neighborhood questions. From that point forward, intervention has been placed in the spotlight.

2008 -Operational Group of Mediation

In 2008 a Working Group on Mediation was set up and led by the Secretary for Justice, Mr. Wong Yan Lung. The Working Group looked into the then-current advancements in intercession and their arrangements in Hong Kong. There were three sub-groups under the Working Group, which concentrated on Public Education and

[11] Available at http://www.hkis.org.hk/en/st/ST2013/201310/2013st10_6_mem.pdf last visited on 3.5.2020

Publicity, Accreditation and Training, and Regulatory Framework. These sub -groups had led conversations, interviews, or even advancements on intercession. In the meantime, a pilot plan to advance intercession in building the board cases in the Lands Tribunal was presented. The Pilot Scheme for Building Management Cases was planned to run from first January 2008 to 31st December 2008 with the point of smoothing out the preparing of building the board cases and to urge gatherings to make endeavors to determine their disparities by intervention. The plan was reached out for an additional a half year in 2009.

2009 – Civil Justice Reform

The Civil Justice Reform (CJR) started on 2 n d April 2009. It had various fundamental targets and one of them was to expand the cost-adequacy of any training and technique to be followed according to common procedures under the watchful eye of the Court which was firmly identified with intercession. The gatherings were urged to determine their debates by implies other than case in court, and one of the most widely recognized ways is intercession. On seventh May 2009, a preparation meeting was held to advance the Mediate First Campaign. This battle meant to advance mindfulness and the utilization of intercession to the business area and organizations, exchange affiliations, and associations, which were welcome to sign the Mediate First pledge. On 21st May 2009 the Pilot Scheme for Building Management Cases was assigned by the Lands Tribunal as a standard system and practice. Gatherings with building the executives questions were urged to determine them by intervention, either previously or after they gave procedures to the Lands Tribunal.

2010 – The Report & Practice Direction 31

The Report of The Working Group on Mediation was distributed by the HKSAR (Hongkong Special Administrative Region) Government in February 2010. The Working Group on Mediation set up in 2008 had 48 recommendations in the report, which plot the fundamental course of intercession improvement in Hong Kong. A Mediation Task Force chaired by the Secretary for Justice was set up in December 2010 to actualize the proposals. This spoke to a solid advance in the development of intervention.

3.5.8. Singapore

Singapore intercession focus (hereinafter called SMC) was set up under the Singapore Mediation Center Mediation Service Small Case Commercial Intercession Scheme Mediation Procedure 2015. Under this demonstration any gathering need to resolve the question through this middle need to fill the structure and to submit in the SMC. Parties are required to sign the agreement according to SMC model and it has the restricting impact on the gatherings. SMC choose the go between/go between according to the necessity. Parties claim all authority to protest on the said arrangement on the legitimate grounds. Middle person helps the gatherings to arrive at a settlement and no video sound chronicle is permitted of the procedure. No transcript arranged which further guarantees the privacy of the intercession procedure. Understanding is to be composed furthermore, appropriately marked by the parties and the arbiter which ties the gatherings.

3.5.9. Australia

In Australia, to mitigate the strain on the legal executive, the courts are showing a drive in elude the issues to intervention. Intervention being an adaptable arranging procedure to address complex issues goes about as a significant answer for resolve matters identified with Courts. The rate of new ADR techniques has been named a Legislative Avalanche Private Law Practitioners have framed Lawyers Engaged in Alternative Dispute Resolution (LEADR). The Attorney General has expressed that it has been accepted by the Government that intervention and Alternative Dispute Resolution ought to be the custom as opposed to the prohibition. In Australia, intervention instead of arbitration is particularly the favored technique for alternative dispute resolution (ADR). It is enlightening to inspect how and why the way of life has changed so significantly in a moderately short space of time. Intercession is authoritatively found in Australia as a liked less expensive and faster option in contrast to customary court suit. There are an incredible number and assortment of administrative acts accommodating intervention, halfway empowering courts to arrange intercession methods against the desire of the gatherings, halfway requiring the parties' consent.

The Australian lawful framework is a customary law framework which works inside the structure of an organization. The consequences of this are, as a result, Australia

has nine legitimate frameworks the eight state and region frameworks and one government framework. The way of thinking of empowering ADR and the general methods by which that consolation prompts a practical institution of an ADR system is normal to the Federal Court framework also to the courts of the states and domains.

While the adjustment in culture in the principal case was started by the Courts, it has been driven by the customers. To some degree it is sensible to accept that the courts were reacting to articulations of disappointment from disputants. Most huge partnerships establishments and back up plans presently request that their legal counselors be dynamic and skilled at the intervention procedure. The refinement and attention to clients particularly governments and institutional associations for example, banks and back up plans is with the end goal that any attorney who effectively advocate extended case as an option in contrast to intercession will run an extraordinary danger of perpetually losing the customer. Insures will effectively pressure their attorneys into accomplishing early settlement. Specialists who often represent protection organizations are dependent upon examination on the particular issue of the level of cases in which they accomplish early settlement. When all is said in done it is the customers and not the legal counselors who in the main example have guaranteed that the culture of ADR and intervention specific has overwhelmed the beforehand existing solid antagonistic lawful culture of Australia. The solid help of the courts has additionally been indispensable to this difference in culture. There is no culture now of a discernment that a proposal of some type of ADR shows an indication of shortcoming or weakness.

Intervention has additionally demonstrated to be strikingly compelling when used in the blink of an eye before the beginning of a long as well as muddled trial. Part of the purpose behind the accomplishment of intercession in territories of complex expert carelessness activities for example, clinical carelessness claims is that it includes not just the parties and their legal counselors giving close thought to the measurable dangers related with such suit yet in addition the way that such preliminaries are perpetually extremely protracted and exceedingly costly to lead.

Intervention in Australia is led as a court associated procedure. The organizations that lead intercession in Australia are -

(I) Institution of Arbitrators and Mediators Australia.

(II) The Association of Dispute Resolver.

(III) National Dispute Resolution Advisory Council.

(IV) Law Society of New South Wales.

(V) The Victoria Bar Mediation Center. [12]

The Law Council of Australia is by and by directing a preliminary on an online talk room style intercession office. This stage gives made sure about visit rooms to various lines of interchanges for example spaces for correspondence with mediator and parties private correspondence with middle person and correspondence between a party and its lawful agents.

Court rules accommodate formal Offers of Compromise and the precedent-based law perceives (Calderbank v Calderbank [1975] 3 All ER 333) offers of settlement. Either gadget can be utilized t o give an assent as to costs against a gathering who absurdly neglects to acknowledge a proposal of settlement. Parties who bring about expenses pointlessly as a result of refusal to acknowledge a sensible offer is harshly punished according to what expenses are appropriately recoverable. The intercession procedure is perceived not just as maybe the best method for settling cases yet additionally gives a fantastic chance to survey a fitting extent for a proposal of bargain. Regardless of whether the issue doesn't resolve at intervention putting instruments to put parties at critical hazard as for cost at the appropriate time further guides the procedure of goals of debates. It is very much perceived that the alleged achievement of intercession ought not to be taken a gander at just based on whether a case settle upon the arrival of the intervention.

In actuality, the overwhelming greater parts of intervention which happen regarding any substantial piece of suit with a lot of cash in question are directed as private intercession not court annexed intervention. Much intervention occurs because of a court request for an intercession. The way of life of intervention is so strong and judges are so disposed to arrange intercession considerably over the protest of parties that numerous interventions happen by assent albeit some gathering doesn't wish the intercession to happen. Its assent is realized by a conviction that it is practically unavoidable that the court will arrange intervention in line with some gathering. Most protests boil down to an issue of timing for example the issue isn't yet ready for

[12] Available on www.iama,org.au; www.leadr.com.au; www.nadrac.gove.au; www.lawsociety.com. au; www.vicbar.com.au (last visited on 4.5.2020)

intervention on the grounds that specific advances should be taken first. The most widely recognized reaction of an adjudicator in those conditions is to arrange the means to be taken and afterward request the intervention. It would be exceedingly uncommon for any matter of any intricacy to arrive at the preliminary stage without it going through in any event one intervention.

What has been the result of every one of these components regarding genuine Australian case in 2012?

Presently for all intents and purposes no case continues to preliminary without at any rate one round of intercession or on occasion more than one. Most intervention in significant case, regardless of whether court requested, are directed by private middle people masterminded by the gatherings. Most go between are authority individuals from the bar (frequently Senior Counsel), senior specialists and resigned judges. There are remarkable exemptions, for instance in development debates, when matters continue to case legal counselors as a rule designate different legal advisors as the arbiter. The truth of what has happened in Australia is summed up in a paper of the Honorable Marilyn Warren AC Chief Justice of Victoria in a paper entitled "Should Judges Be Middle people. Where Her Honor states intervention as a major aspect of litigation process has been uncommonly effective. Without it courts would have confronted unbearable challenges."

In Australia, intervention is certainly digging in for the long haul. Leaving aside the restricted and misdirecting proportion of the accomplishment of intervention for example the pace of on the day settlements there are numerous different advantages which is perceived by totally associated with the procedure. Exact current insights and Australia especially corresponding to private intercession are for all intents and purposes absurd.

Comparative Analysis of Mediation Across the Globe

The use of mediation as a dispute-resolution strategy is not limited to the western world; in fact, mediation mechanisms have gained acceptance and are frequently used in non-western nations.[13] For the purpose of settling disputes that emerge in regular interactions, several non-western nations, particularly those in Asia, Africa, and Latin

[13] Jeffrey M. Senger, 'Federal Dispute Resolution: Using Alternative dispute Resolution with The United States Government' (Jossey-Bass 2004)

America, have institutionalized formal and informal mediation mechanisms. A third party assists the parties in reaching a resolution they both deem acceptable during mediation, a method of resolving conflicts. Evaluative or facilitative mediation are both possible.[14]The distinction between mediation and conciliation, which are sometimes used interchangeably, is that a conciliator[15] can propose resolutions and "formulate" or "reformulate" the terms of a workable agreement, whereas a mediator only listens to offers for resolution. The meaning of these words are similar to the way they are taken in UK which means conciliator plays a proactive role to bring about a settlement and mediator plays a more passive role in bringing about a settlement.[16] This is the position in UK and India under a UNCITRAL model. However, in USA the proactive role is played by the mediator rather than the conciliator.

Name of the Country Manner of its Creation Type of Mediation Confidentiality Dispute

1. China- Chinese Mediation Centre,1987- Informal Confucian Mediation-Not very high confidential. It is the part of everyday process of court. The nature of dispute is commercial in nature.

2. USA- Uniform Mediation Act,2001-In this Conciliator is more active than mediator-To foster uniformity and to ensure confidentiality-It is the primary tool for settling the civil disputes.

3. UK- Directive 2008/52/EC 1 of European Parliament-In UK conciliator are active and mediator are passive-In Article 7(1) the Mediation directive mediator to ensure the confidentiality- The nature of dispute in UK is Commercial as well as Civil.

4. India- Arbitration and Conciliation Act,1996 and Section 89 of Civil Procedure Code,1908-In India mediator are active -It is very highly confidential-The type of dispute came in mediation are mainly civil disputes and also the disputes of Lok Adalat.

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14 Warren Knight, 'California Practice Guide: Alternative Dispute Resolution, 3 (2001)

15 Brian Panka, 'Use of Neutral Fact-Finding to Preserve Exclusive Rights and Uphold the Disclosure Purpose of the Patent System', J. Disp. Resol., 541, (2003)

16 John Lande, 'Failing Faith in Litigation? A Survey of Business Lawyers' and Executives 'Opinions', Harv.Negot. L. Rev. Vol. 3 51, 1998

3.6 Peaceful Settlement of Disputes

Generally, International Law has been viewed by the universal network as a way to guarantee the foundation and safeguarding of world harmony and security. The upkeep of global harmony and security has consistently been the significant motivation behind the International Law. It was the essential goal behind the production of the League of Nations in 1919 and the United Nations in 1945.

Since the immediate reason for war and savagery is constantly a debate between States it is in this way in light of a legitimate concern for harmony and security that questions ought to be settled. Strategies and methods for the tranquil (pacific) settlement of disputes have been made accessible in the International Law.

States have finished up an extraordinary number of multilateral bargains focusing on the tranquil settlement of their questions and contrasts. The most significant bargains are the 1899 Hague Convention for the Pacific Settlement of International Disputes which was modified constantly Hague Peace Conference in 1907[17] and the 1928 General Act for the Pacific Settlement of Disputes which was finished up under the protection of the League of Nations. [18] Furthermore there are provincial understandings for example the 1948 American Treaty on Pacific Settlement (Bogota Pact)[19] the 1957 European Convention for the Peaceful Settlement of Disputes[20] and the 1964 Protocol of the Commission of Mediation and Arbitration of the Organization of African Unity. [21] Notwithstanding such broad arrangements on contest settlement, there are numerous respective and multilateral understandings which incorporate explicit provisions identified with question settlement.

The Charter of the United Nations gives Chapter VI to the techniques and strategies for the pacific settlement of questions. Paragraph 1 of Article 33 of the Charter expresses the techniques for the pacific settlement of questions as the accompanying **negotiation, enquiry, intervention, conciliation, arbitration, legal settlement,** and resort to territorial offices or plans. This passage obliges States gatherings to any issue the continuation of which is probably going to imperil the support of global

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17 Text of the 1899 Hague convention in 9 U.K.T.S(1901) cd,798. Text of Hague convention in 6 U.K.T.S. (1071) cd.4575
18 Text in 93 L.N.T.S.342
19 Text in 30 U.N.T.S.55
20 Text in 320 U.N.T.S.243
21 Text in 3 I.L.M (1964) 1116

harmony and security to look for an answer by any of the recorded techniques or other serene methods for their own decision.

The strategies for tranquil settlement of disputes fall into three classifications conciliatory adjudicative and institutional techniques. Discretionary techniques include endeavors to settle debates either by the gatherings themselves or with the assistance of different substances. Adjudicative strategies include the settlement of questions by councils, either legal or arbitral. Institutional strategies include the resort to either the United Nations or provincial associations for settlement of questions.

3.6.1 Discretionary Techniques

Negotiation [22] "Negotiation" is the most established generally normal, and the least complex strategies for settling universal questions. It is perceived by the extraordinary larger part of arrangements of pacific settlement as the initial move towards the settlement of worldwide questions. A large portion of the bargains make an inability to settle a contest by negotiation a condition point of reference to obligatory arbitration or legal settlement. It is in this manner, not astonishing that negotiation starts things out in the rundown of methods for pacific settlement of disputes specified in Article 33(1) of the Charter of the United Nations.

Negotiation comprises of conversations between the concerned gatherings so as to comprehend the contradicting positions and suppositions and accommodate the distinctions. It is exceptionally fit to the explanation and clarification of the restricting conflicts. It is the most palatable intends to settle questions since it are a willful reciprocal and self improvement implies; the gatherings are legitimately occupied with the procedure; mediation by any outsider in the process isn't vital.

Negotiations, be that as it may, don't generally prevail with regards to arriving at answers for questions or contrasts between the gatherings. Therefore, outsiders intercessions are expected to help the gatherings in arriving at a settlement to their questions and contrasts; here comes the significance of the other discretionary strategies for dispute settlement.

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[22] Collier & Lowe, Chapter 2; P.J. De Waart, The Element of Negotiation in the Pacific Settlement of Dispute between States, The Hague (1973); A. Lall, Modern International Negotiation, New York (1966); Merrills, chapter 1; and Shaw, pp. 918-21

Enquiry One of the normal deterrents forestalling the fruitful settlement of a debate by negotiation is the trouble of finding out the realities which have offered ascend to the contrasts between the disputants. Most worldwide debates include a failure or reluctance of the gatherings to concede to purposes of realities. Thus lays the noteworthiness of the technique of request as methods for pacific settlement of dispute. Numerous respective understandings have been finished up under which truth discovering commissions have been set up for the undertaking of answering to the gatherings worried on the contested realities. What's more, the strategy of request has discovered articulation in arrangements for the pacific settlement of disputes.

The two Hague Conventions of 1899 and 1907 built up commissions of request as formal organizations for the pacific settlement of universal disputes. [23] They gave a perpetual board of names from which the gatherings could choose the chiefs. The undertaking of a commission of request was to encourage the arrangement of debates by explaining the realities by methods for a fair and faithful examination. The report of a commission was to be restricted to reality finding and was not expected to incorporate any proposition for the settlement of the debate being referred to.

With the foundation of the League of Nations, the methods for enquiry took on another thrust. Enquiry and conciliation were seen as essential pieces of a solitary procedure for achieving a pacific settlement to a dispute. [24] It is in the light of this foundation that the Charter of the United Nations explicitly records enquiry as one of the strategies for pacific settlement of global questions.

Enquiry as a different strategy for debate settlement has become undesirable. It has been utilized as a major aspect of different strategies for contest settlement. Its motivation is to deliver a fair finding of contested realities and accordingly to set up the route for settlement of debate by other quiet techniques. The parties are not obliged to acknowledge the discoveries of the enquiry; but, they generally acknowledge them. The usage of enquiry has been clear in the act of universal associations for example the United Nations and its specific organizations. Enquiry has been utilized as a component of different strategies for question settlement with regards to general truth finding.

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[23] The 1899 Hague Convention for the Pacific Settlement of Disputes arts 9, 10, 11, 14 & 32; and the 1907 Hague Convention for the Pacific Settlement of Disputes arts 9, 12, 45 & 57

[24] Goodrich and A. Simons, The United Nations and the Maintenance of International Peace and Security,173 (1955)

Mediation, Conciliation and Good offices [25]: Intervention, appeasement and good offices are three techniques for tranquil settlement of disputes by which outsiders look to help the gatherings to a question in arriving at a settlement. All include the mediation of an as far as anyone knows unbiased individual, State, commission, or association to support the gatherings. At the point when the gatherings are reluctant to arrange or neglect to haggle adequately help by an outsider through its intercession, appeasement, or good offices might be important to help in acquiring a settlement. This help might be mentioned by either of the gatherings, or it might be willfully offered by an outsider.

In spite of the fact that there is no qualification in the general highlights of intervention, conciliation, and good offices, a hypothetical and functional differentiation can be made among them as indicated by the level of outsider investment, and the degree to which the disputants are obliged to acknowledge the results of the techniques.

Intercession is a procedure through which an outside gathering (outsider) tries to unite the disputants and helps them in arriving at a settlement. The outsider offers his help to the gatherings to a question. The assent of the disputants isn't really required at first, however no intercession procedures can be initiated without their assent. The go between effectively and straightforwardly takes part in the settlement itself. He doesn't satisfy himself with making exchanges conceivable and undisturbed. He is required to offer solid recommendations for an answer and a settlement of meaningful issues identified with a question. Nonetheless his proposition speaks to simply proposals. They have no binding force on either disputant. The gatherings to a contest are allowed to acknowledge or dismiss his proposition.

Conciliation is a procedure of settling a dispute by eluding it to a uniquely established organ whose undertaking is to explain the realities and recommend proposition for a settlement to the gatherings concerned. Be that as it may the recommendations of mollification similar to the proposition of go between have no binding force on the gatherings who are allowed to acknowledge or dismiss them. As on account of intercession, conciliators may meet with the gatherings either together or independently. The methods of conciliation are by and large founded by the

[25] Merrills, chapters 2 & 4; Shaw, pp. 921-3 & 925-8; and Malanczuk, pp. 275-7 & 278-81

gatherings who consent to allude their dispute to a previously settled organ commission or a solitary conciliator which is set up consistently or specially appointed premise; outsiders can't step up to the plate all alone. The conciliators are delegated by the gatherings to a question. They can be named based on their official capacities or as people in their own ability.

Conciliation is depicted by some as a mix of enquiry and intercession. The conciliator examines the realities of the contest and proposes the conditions of the settlement. In any case assuagement contrasts from enquiry in that the primary goal of the last is the clarification of the realities so as to empower the gatherings through their own understanding to settle their debate though the principle target of appeasement is to propose an answer for a question and to win the acknowledgment of the gatherings to such arrangement. Likewise, mollification contrasts from intervention in that it is more formal and less adaptable than intercession if a middle person's proposition isn't acknowledged, he can introduce new recommendations while a conciliator normally presents a solitary report.

At the end when the parties to a dispute arrive at the purpose of not having the option to explain it by substitute or where they have severed conciliatory relations yet they are persuaded that a settlement is imperative to them, the use of the procedure of good workplaces might be useful. Good offices might be used uniquely with the understanding or the assent of the two disputants. An outsider endeavors to unite the disputants so as to make it feasible for them to locate a fitting settlement to their disparities through their dealings. In such manner the capacity of the outsider is to go about as a go-between transmitting messages and recommendations with an end goal to make or reestablish a reasonable environment for the gatherings to consent to arrange or continue exchange. At the point when the exchanges start, the elements of the good offices reach a conclusion. The strategy of good workplaces, rather than intercession, has a constrained capacity which is basically uniting the disputants. In intercession, the middle person takes a functioning part in the arrangements between the disputants and may even propose terms of settlement to the disputants. Strategy for good workplaces comprises of different sorts of activity meaning to support dealings between the parties to a contest. Additionally as opposed to the instance of intercession or assuagement the profferer of good workplaces doesn't meet with the disputants mutually yet independently with every one of them. Sometimes if at any

point the profferer goes to joint gatherings between the gatherings to a question. Typically, the job of the profferer of good workplaces ends when the gatherings consent to arrange or to continue exchange. In any case, the profferer might be welcomed by the gatherings to be available during the dealings. As in the event of intercession, a proposal of good offices might be dismissed by either or the two gatherings to a dispute.

The utilization of intervention, conciliation, and good offices has a long history. These strategies have been the subject of numerous reciprocal and multilateral settlements. Be that as it may, with the foundation of the League of Nations, changeless organs were set up to play out the elements of these techniques for pacific settlement of debates. In this specific circumstance, the Charter of the United Nations records in Article 33(1) intercession and conciliation, however not good offices as techniques for pacific settlement accessible to the gatherings to any debate. Exceptionally, in the act of the United Nations the expressions intervention, conciliation, and good offices have been utilized with extensive detachment adaptability and little respect to the qualifications which exist between them.

Intercession and conciliation have the two favorable circumstances and inconveniences when contrasted with different techniques for debate settlement. They are more adaptable than assertion or legal settlement. They leave more space for the desires of the disputants and the activities of the outsider. The disputants stay in charge of the result. Their procedures can be led stealthily. In any case, there are drawbacks to intervention and conciliation. Their procedures can't be begun and be compelling without the assent participation and altruism of the disputants. The proposed settlement is close to a suggestion with any binding force upon the disputants.

3.6.2 Adjudicative Method of Dispute Settlement[26]

The significant burden of the discretionary techniques for dispute settlement is that the gatherings to them are under no lawful commitment to acknowledge the recommendations of settlement proposed to them. In this manner the adjudicative

[26] Brownlie, chapter 32; Malanczuk, pp. 281-95; Merrills, chapter 5; S. Rosenne, The Law and Practice of International Court, 1920-1996, 4 vols., 3rd ed., The Hague (1997); S. Schwebel, International Arbitration: Three Salient Problems, Cambridge (1987); Shaw, chapter 19; L. Simpson and H. Fox, International Arbitration, London (1959)

techniques for contest settlement are best since they give the issuance of restricting choices instead of simple suggestions as in instances of political strategies. It is this binding force of the choices rendered toward the finish of the adjudicative techniques that recognizes these strategies from different techniques for dispute settlement.

Adjudicative techniques for question settlement comprise of two kinds of methods, "arbitration" and legal settlement. Arbitration and legal settlement are two techniques include the assurance of contrasts between States through legal decisions of tribunals. Though if there should arise an occurrence of legal settlement the choice is made by a court permanent (for example, the International Court of Justice) or specially appointed in the event of arbitration it is made by a solitary judge or arbitral council. The significant attribute of these two techniques is that a legal choice or an honor is authoritative on the gatherings and must be completed in compliance with common decency.

It isn't until the foundation of the League of Nations that the expressions arbitration and legal settlement got recognized. Under the Covenant of the League "legal settlement" implied settlement by the Permanent Court of Justice (PCIJ), while intervention implied settlement by different councils. This equivalent qualification is continued by the Charter of the United Nations, yet with the International Court of Justice (ICJ) filling in for the Permanent Court of International Justice (PCIJ).

Arbitration was characterized in the 1899 Hague Convention for the Pacific Settlement of Disputes as "the settlement of contrasts between states by judges of their decision and based on regard for law[27] this equivalent definition was rehashed in the 1907 Hague Convention. [28] The systems of arbitration developed somewhat out of the procedures of strategic settlement and represented to a development towards a created universal legitimate request.

The Charter of the United Nations alludes to arbitration and legal settlement in Article 33(1) as two techniques among different strategies for pacific settlement that States are urged to use in looking for an answer for their worldwide questions. It is likewise gives in Article 36(3) a direction to the Security Council expecting it to contemplate those lawful questions ought to when in doubt be alluded by the

[27] The 1899 Hague Convention for the Pacific Settlement of Disputes art 15
[28] The 1907 Hague Convention for the Pacific Settlement of Disputes art. 37

gatherings to the International Court of Justice. In spite of this arrangement, the Charter doesn't force on individuals from the United Nations the commitment to present any contest, even legitimate one, to the Court. Additionally, the Charter gives that nothing in it will keep Members of the United Nations from entrusting the arrangement of their disparities to different councils by goodness of understandings as of now in presence or which might be deduced in the future. [29]

3.6.3 Institutional Methods of Dispute Settlement

Institutional techniques for dispute settlement include the retreat to universal associations for settlement of global questions. These strategies have appeared with the production of the universal associations. The most prominent associations, which give systems to settling contest between their part States, are the United Nations and the local associations for example, the European Union, the Organization of American States, the Arab class and the African Union.

Peaceful Settlement by United Nations[30]

The Settlement of worldwide debates is one of the most significant jobs of the United Nations. The Charter of the United Nations specifies that it is the errand of the United Nations "to realize by serene methods and in congruity with the standards of equity and global law, modification or settlement of worldwide disputes or circumstances which may prompt a penetrate of the peace."[31] To this end the Charter gives a framework to the pacific settlement or alteration of universal questions or circumstances under which the wide ability of the United Nations in this issue is built up and the comparing commitments of the individuals from the United Nations are forced. This framework is portrayed primarily in Chapter VI of the Charter.

Peaceful settlement by Regional Organization

Article 33(1) of the Charter of the United Nations requires the gatherings to any question, the duration of which is probably going to imperil the support of universal harmony and security to look for, as a matter of first importance, an answer by any of the serene strategies counted in that. Among these listed techniques is the resort to territorial arrangements or agencies.

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29 U.N. Charter art. 95

30 Malanczuk, pp. 385-7; Merrills, chapter 10; M. Roman, Dispute Settlement through the United Nations, Oxford (1977); and Shaw, pp. 1099-119

31 U.N. Charter art.1(1)

Article 52 of the Charter perceives the privilege of the individuals from the United Nations to build up local game plans or offices for managing such issues identified with the support of worldwide harmony and security. Section 2 of this Article requires the part States that are individuals from provincial courses of action or organizations to bend over backward to accomplish pacific settlement of neighborhood debates through such local plans or by such territorial offices before eluding them to the Security Council.

It appears that the commitment forced upon the part States by Article 52(2) is predictable with their commitment under Article 33(1). In any case, passage 1 of Article 52 forces two unequivocal constraints as to the use of territorial plans and offices. To start with, it necessitates that the issues managed must be proper for provincial activity. Second, it requires that the "game plans or offices and their exercises are steady with the Purposes and Principles of the United Nations. Besides a third express restriction is forced by Article 54 which necessitates that the Security Council should consistently be kept completely educated regarding exercises attempted or in consideration under territorial game plans or by local offices for the upkeep of universal harmony and security. No comparative express impediments are forced as to the usage of different strategies for pacific settlement.

Article 52 isn't just restricted to legitimizing provincial courses of action or offices and forcing a commitment upon the part States, however goes past such legitimization and commitment by pacing an obligation on the Security Council itself. Passage 3 of this Article requires the Security Council to support the improvement of pacific settlement of nearby questions through such territorial game plans or by such provincial offices either on the activity of the states concerned or by reference from the Security Council.

This arrangement is in congruity with the general methodology of the Charter identified with the pacific settlement of questions which requires the gatherings themselves to look for an answer for their debate willingly and that the Council should offer each chance to the gatherings to do as such. On the off chance that the gatherings have alluded their neighborhood debate to the Security Council before putting forth any attempt to accomplish a settlement through the provincial game plans or offices at that point the Council is under an obligation to help them to

remember their commitment, or to allude such question at its own drive to such courses of action or offices.

3.7 International Organization/Bodies

3.7.1 World Intellectual Property Organization

The WIPO is unmistakable on the grounds that it approves mediator, where he accepts that any issues in dispute between the parties are not susceptible to goals through intercession to propose to the meeting strategies or means for settling those issues which the middle person considers are in all likelihood considering the conditions of the dispute and any business connection between the assembly to prompt the most effective least expensive and most beneficial settlement of those issues. In this association an arbiter may propose.

i. A specialist determination of one or more parties.
ii. Arbitration.
iii. The accommodation of last proposals of settlement by each gathering.

The standards additionally characterize the privacy endeavors of the WIPO focus. Upon the end of WIPO intervention, the middle person is required to send to the WIPO focus a notification recorded as a hard copy that the intercession is ended. The inside keeps this notification private and won't, without the composed approval of the parties unveil either the presence or the consequence of the intercession to any individual. [32]

World Intellectual Property Organization (WIPO) Mediation Rules (Effective from 1st January, 2020)[33]

Article 2- Scope and Application of Rules

Where a Mediation Agreement accommodates intercession under the WIPO Mediation Rules, these Rules will be regarded to frame some portion of that Mediation Agreement. Except if the parties have concurred something else, these Rules as in actuality on the date of the beginning of the intervention will apply.

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[32] Sriram Panchu, Mediation: Practice and Law: The Path to Successful Dispute Resolution‟, 2011 (LexisNexis, Butterworths Wadhwa, Nagpur, Reprint 2012)

[33] Available at https://www.wipo.int/amc/en/mediation/rules/#2a (last visited on 4.5.2020)

Article 3- Commencement of the Mediation

a) Involved with a Mediation Agreement that desires to begin an intervention will present a Request for Mediation recorded as a hard copy to the Center. It will simultaneously send a duplicate of the Request for Mediation to the next party.

b) The Request for Mediation will contain or be joined by.

   i. The names, locations and phone, email or other correspondence references of the parties to the dispute and of the agent of the party documenting the Request for Mediation.

   ii. A duplicate of the Mediation Agreement.

   iii. A concise articulation of the idea of the dispute.

Article-4

a) Without a Mediation Agreement, a party that desires to propose presenting a dispute to intervention will present a Request for Mediation recorded as a hard copy to the Center. It will simultaneously send a duplicate of the Request for Mediation to the next party. The Request for Mediation will incorporate the points of interest set out in Article 3(b) (i) and (iii). The Center may help the parties in thinking about the Request for Mediation.

b) Upon demand by a party, the Center may select an outer nonpartisan to help the parties in thinking about the Request for Mediation. The outside nonpartisan act as middle person in the dispute provided all parties agree. Articles 15 to 18 will apply mutatis mutandis.

Article -5

The date of the beginning of the intercession will be the date on which the Request for Mediation is received by the Center.

Article-6

The Center shall forthwith inform the parties in writing of the receipt by it of the Request for Mediation and of the date of the commencement of the mediation.

Article -7

a) Except if the parties have in any case concurred themselves on the individual of the go between or on another technique for selecting the middle person the arrangement will happen as per the accompanying strategy.

   i. The Center will send to each party an indistinguishable list of applicants. The list will typically include the names of in any event three applicants in sequential request. The list will incorporate or be joined by an announcement of every applicant's capability. On the off chance that the parties have conceded to specific capabilities, the list will contain the names of applicant that fulfill those capabilities.

   ii. Each party will reserve the privilege to erase the name of any applicant or applicants to whose arrangement it questions and will number any outstanding applicants arranged by inclination.

   iii. Each party will restore the checked list to the Center inside seven days after the date on which the list is received by it. Any party neglecting to restore a check list inside that time frame will be regarded to have consented to all applicants showing up on the list.

   iv. As quickly as time permits after receipt by it of the list from the parties, or in default of this after the termination of the time frame indicated in the past subparagraph, the Center will be considering the inclinations and protests communicated by the parties, choose an individual from the list as mediator.

   v. If the lists which have been returned don't show an individual who is adequate as middle person to the two parties, the Center will be approved to designate the mediator. The Center will comparably be approved to do as such if an individual can't or doesn't wish to acknowledge the Center's encouragement to be the go between or if there give off an impression of being different reasons blocking that individual from being the go between, and there doesn't stay on the lists an individual who is satisfactory as mediator to the two parties.

b) Notwithstanding the procedure provided in paragraph (a), the Center shall be authorized to otherwise appoint the mediator if it determines in its discretion that the procedure described therein is not appropriate for the case.

c) The prospective mediator shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the mediation to be conducted expeditiously.

Article-8

The middle person will be nonpartisan, unprejudiced and free.

Article -9

a) The parties might be spoken to or aided their parties with the go between.

b) Immediately after the arrangement of the middle person, the names and addresses of people approved to speak to a party and the names and places of the people who will attend the meetings of the parties with the mediator for the benefit of that party will be interfaced by that party to the next party, the go between and the Center.

Article-10

The intervention will be led in the way concurred by the parties. In the event that, and to the degree that, the parties have not settled on such understanding the middle person will as per these Rules, decide the way where the intercession will be lead.

Article -11

Each party will participate in accordance with some basic honesty with the go between to propel the intercession as quickly as could be expected under the circumstances.

Article -12

The mediator shall be free to meet and to communicate separately with a party on the clear understanding that information given at such meetings and in such communications shall not be disclosed to the other party without the express authorization of the party giving the information.

Article-13

As quickly as time permits in the wake of being designated the go between will in conference with the parties set up a timetable for the accommodation by each party to the middle person and to the next party of an announcement summing up the foundation of the dispute the gathering advantages and conflicts corresponding to the dispute and the current status of the contest together with such other information and materials as the gathering thinks about vital for the reasons for the intervention and, specifically to empower the issues in dispute to be distinguished.

a) The mediator may whenever during the intercession recommend that a meeting give such extra information or materials as the go between considers valuable.

b) Any gathering may whenever submit to the go between, for thought by the middle person just, composed information or materials which it considers to be secret. The go between will not, without the composed approval of that party, reveal such information or materials to the next party.

Article-14

a) The go between will advance the settlement of the issues in contest between the parties in any way that the mediator accepts to be suitable however will have no position to force a settlement on the parties.

b) Where the middle person accepts that any issues in contest between the gatherings are not at the mercy to resolution through intercession the mediator may propose for the consideration of the gatherings methodology or means for settling those issues which the go between considers are in all probability having respect to the conditions of the dispute and any business connection between the gatherings to prompt the most proficient, least expensive and most beneficial settlement of those issues. Specifically, the middle person may so propose.

i. A specialist assurance of at least one specific issue.
ii. Arbitration.
iii. The accommodation of last proposals of settlement by each party and, without a settlement through intervention, arbitration directed based on

those last offers in accordance with an arbitral system in which the task of arbitral tribunal is limited to figuring out which of the last offers will win.

Article-15

No account of any sort will be made of any meetings of the parties with the middle person.

Article-16

Every individual engaged with the intercession including specifically the go between the parties and their delegates and consultants any free specialists and some other people present during the meetings of the parties with the middle person will regard the classification of the intervention and may not except if in any case concurred by the parties and the mediator utilize or uncover to any outside party any information concerning or acquired over the span of the intercession. Each such individual will sign a appropriate confidentiality undertaking preceding participating in the intercession.

Article-17

Except if in any case concurred by the parties, every individual engaged with the intercession will on the end of the intervention return to the gathering giving it any short record or different materials provided by a gathering without holding any duplicate thereof. Any notes taken by an individual concerning the meetings of the parties with the middle person will be decimated on the end of the intervention.

Article -18

Except if in any case concurred by the gatherings, the arbiter and the gatherings will not present as proof or in any way at all in any legal or arbitration proceeding.

i. Any perspectives communicated or recommendations made by a party concerning a potential settlement of the dispute.
ii. Any affirmations made by a party throughout the intervention.
iii. Any proposition made or vision communicated by the go between.
iv. The way that a party had or had not shown eagerness to acknowledge any proposition for settlement made by the mediator or by the other party.

v. Any settlement understanding between the parties, except to the extent necessary in regarding an activity for authorization of such understanding or as in any case legally necessary.

Article -19

The intervention will be ended.

i. By the signing of a settlement arrangement by the parties covering any or the entirety of the issues in dispute between the parties.

ii. By the choice of the go between if, in the middle person's judgment, further endeavors at intercession are probably not going to prompt a resolution of dispute. or

iii. By a composed announcement of a party whenever.

Article-20

a) Upon the end of the intercession, the middle person will instantly send to the Center a notification recorded as a hard copy that the intervention is ended and will demonstrate the date on which it ended, regardless of whether the intercession brought about a settlement of the dispute and assuming this is the case, whether the settlement was full or fractional. The go between will send to the parties a duplicate of the notification so addressed to the Center.

b) The Center will keep the said notice of the go between secret and will not, except to the extent necessary in connection with an action for implementation of a settlement agreement or as in any case legally necessary reveal either the presence or the result of the intercession to any individual without the composed approval of the parties.

c) The Center may, nonetheless, incorporate data concerning the intercession in any total factual information that it distributes concerning its exercises given that such information doesn't uncover the character of the gatherings or empower the specific conditions of the dispute to be distinguished.

Article -21

Except if required by a courtroom or approved recorded as a hard copy by the parties the go between will not act in any way at all in any case than as a middle person, in

any pending or future procedures, regardless of whether legal arbitral or something else identifying with the topic of the dispute.

Article-22

a) The Request for Mediation will be dependent upon the installment to the Center of an organization charge, the measure of which will be fixed as per the Schedule of Fees appropriate on the date of the Request for Mediation.

b) The organization expense will not be refundable.

c) No move will be made by the Center on a Request for Mediation until the organization expense has been paid.

d) If a assembly who has recorded a Request for Mediation comes up short inside 15 days after an update recorded as a hard copy from the Center to pay the organization expense it will be esteemed to have pulled back its Request for Mediation.

Article-23

a) The sum and cash of the expenses of the go between and the modalities and timing of their installment will be fixed by the Center after interview with the middle person and the parties.

b) The measure of the expenses will, except if the parties and the middle person concur something else, be determined based on the hourly or if pertinent day by day demonstrative rates set out in the Schedule of Fees appropriate on the date of the Request for Mediation considering the sum in debate the multifaceted nature of the topic of the question and some other applicable conditions of the case.

Article-24

a) The Center may, at the hour of the arrangement of the go between require each gathering to store an equivalent sum as a development for the expenses of the intervention including specifically the evaluated charges of the arbiter and different costs of the intercession. The measure of the store will be dictated by the Center.

b) The Center may require the gatherings to make valuable stores.

c) If a Party falls even, inside 15 days after an update recorded as a hard copy from the Center, to pay the necessary store, the intervention will be regarded to be ended. The Center will by notice recorded as a hard copy educate the gatherings and the go between in like manner and demonstrate the date of end.

d) After the end of the intercession the Center will render bookkeeping to the gatherings of any deposits made and return any unexpended parity to the gatherings or require the installment of any sum owing from the parties.

Article-25

Except if the gatherings concur something else, the organization charge, the expenses of the middle person and every single other cost of the intervention, including specifically, the necessary travel costs of the go between and any costs related with acquiring master guidance will be borne in equivalent offers by the gatherings.

Article-26

Aside from in regard of intentional wrongdoing, the middle person WIPO and the Center will not be subject to any gathering for any act or omission regarding any intercession led under these Rules.

Article-27

The parties and, by accepting arrangement, the go between concur that any announcements or remarks regardless of whether composed or oral, made or utilized by them or their agents in anticipation of or over the span of the intervention will not be depended upon to establish or keep up any activity for maligning defamation, libel or any related grumbling, and this Article might be argued as a bar to any such activity.

Article-28

The parties concur that, to the degree allowed by the appropriate law, the running of the restriction time frame under any material legal time limit or an identical guideline will be suspended comparable to the dispute that is the subject of the intercession from the date of the initiation of the intervention until the date of the end of the intercession.

3.7.2 United Nations Commission on International Trade Law (UNCITRAL) Conciliation Rules, 1980

At the universal level likewise United Nations Commission on International Trade and Law (UNCITRAL) has observed improvement of ADR and has set down principles for conciliation in the year 1980. [34] Additionally a Model Law on International Commercial Conciliation is sanctioned by UNCITRAL in the year 2002.[35]

The United Nations Commission on International Trade Law (UNCITRAL) has Surrounded Model Law on International Commercial Conciliation in the year 2002. Article 1 (3) characterizes Conciliation to mean a procedure regardless of whether alluded to by the articulation mollification intercession or a declaration of comparable import whereby parties demand a third individual or people (the conciliator) to help them in their endeavor to arrive at an agreeable settlement of their question emerging out of or identifying with legally binding or then again other lawful relationship. The conciliator doesn't have the position to force upon the parties an answer for the question.

The UNCITRAL has not utilized word Alternative Dispute Resolution. Under Article 1(3) Conciliation is characterized in more extensive sense to incorporate inside its significance all structures of procedures used to determine the questions between the gatherings with the assistance of third impartial individual yet who can't force his/her choice upon the gatherings. The wide nature of the definition shows that there is no expectation to recognize among the procedural styles or ways to deal with intercession. Conciliation would communicate an expansive thought of an intentional procedure constrained by the gatherings and directed with the help of an impartial third individual or people. Various styles and methods may be utilized to by and by to accomplish settlement of a debate and various articulations may be utilized to those styles and methods. The techniques may vary as respects the method, how much outsiders are engaged with the procedure and the sort of inclusion whether as a facilitator or making meaningful recommendations as to conceivable settlement. [36]

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[34] Resolution 35/52 adopted by the General assembly on December 4, 1980

[35] UNCITRAL Model Law on Conciliation with Guide to Enactment and Use, 2002, was adopted by United Nations Commission on International Trade Law in its 35th Session in 2002

[36] Guide to Enactment and Use of the UNCITRAL Model Law on International Commercial Conciliation 2002

UNCITRAL Conciliation Rules, 1980[37]

Article 1-Application of the Rules

1. These Rules apply to conciliation of disputes emerging out of or identifying with an authoritative or other legitimate relationship where the parties looking for a genial settlement of their debate have concurred that the UNCITRAL Conciliation Rules apply.
2. The parties may consent to bar or differ any of these Rules whenever.
3. Where any of these Rules is in strife with provision of law from which the parties can't derogate, that provision prevails.

Article 2-Commencement of Conciliation

1. The party starting conciliation sends to the next party a written invitation to pacify under these Rules, quickly recognizing the subject of the dispute.
2. Conciliation procedures initiate when the other party acknowledges the encouragement to conciliate. If the acceptance is made orally, it is recommended that it he affirmed recorded in writing.
3. If the other party discards the invitation, there will be no appeasement procedures.
4. If the party starting conciliation doesn't get an answer inside thirty days from the date on which he sends the invitation or inside such other time frame as indicated in the invitation, he may choose for treat this as a dismissal of the invitation to pacify. If he so chooses, he tells the other party appropriately.

Article 3-Number of Conciliators

There will be one conciliator except if the parties concur that there will be a few conciliators. Where there is more than one conciliator, they should, when in doubt, to act together.

[37] Available at https://www.jus.uio.no/lm/un.conciliation.rules.1980/doc.htmlvisited on 5.5.2020

Article 4-Appointment of conciliators

1.

a) In conciliation procedures with one conciliator, the parties will try to agree on the name of a sole conciliator.

b) In conciliation procedures with two conciliators each party names one conciliator.

c) In conciliation procedures with three conciliators, each party names one conciliator. The parties will attempt to agree on the name of the third conciliator.

2. Parties may enroll the help of a suitable establishment or individual regarding the arrangement of conciliators. Specifically

a) A party may demand such an organization or individual to prescribe the names of appropriate people to act as conciliator. or

b) The parties may concur that the arrangement of at least one conciliator be made legitimately by such an organization or individual.

Article 5- Submission of statement to conciliator.

1. The conciliator, upon his arrangement, demands each gathering to submit to him a concise composed explanation portraying the general idea of the question and the focuses at issue. Each assembly sends a duplicate of his announcement to the next party.

2. The conciliator may demand each gathering to submit to him a further composed explanation of his position and the realities and grounds in help thereof, enhanced by any records and other proof that such gathering regards proper. The gathering sends a duplicate of his announcement to the next gathering.

3. At any phase of the conciliation proceeding the conciliator may demand a gathering to submit to him such extra information as he esteems proper.

Article 6- Representation and assistance

The parties might be spoken to or helped by people of their decision. The names and addresses of such people are to be imparted recorded as in writing to the next party and to the conciliator; such correspondence is to determine whether the arrangement is made for reasons for portrayal or of help.

Article 7-Role of conciliator

1. The conciliator helps the parties in a free and fair-minded way in their endeavor to arrive at a friendly settlement of their dispute.
2. The conciliator will be guided by standards of objectivity reasonableness and equity, offering thought to, in addition to other things the rights and commitments of the parties the utilization of the exchange concerned and the conditions encompassing the contest including any past strategic policies between the gatherings.
3. The conciliator may lead the conciliation proceedings in such a way as he thinks about proper considering the conditions of the case the desires the gatherings may communicate, including any solicitation by a crowd that the conciliator hear oral proclamations, and the requirement for a quick settlement of the contest.
4. The conciliator may, at any phase of the conciliation proceedings, make recommendations for a settlement of the question. Such recommendations need not be recorded in writing and need not be joined by an announcement of the reasons therefore.

Article 8- Administrative assistance

So as to encourage the lead of the placation procedures the gatherings or the conciliator with the assent of the gatherings, may set out managerial help by an appropriate organization or individual.

Article 10- Disclosure of Information

At the point when the conciliator gets verifiable information concerning the question from a gathering, he unveils the substance of that data to the next gathering all together that the other party may have the chance to introduce any clarification which

he considers appropriate. Be that as it may, when a party gives any data to the conciliator subject to a particular condition that it be kept private, the conciliator doesn't reveal that data to the next party.

Article 11- Co-operation of party with conciliator

The parties will in good faith co-operate with the conciliator and, specifically, will attempt to conform to demands by the conciliator to submit composed materials, give prove and attend meetings.

Article 12- Suggestion by the parties for settlement of dispute

Each assembly may, on his own drive or at the request of the conciliator, submit to the conciliator recommendations for the settlement of the contest.

Article 13-Settlement Agreement

1. At the point when it appears to the conciliator that there exist components of a settlement which would be adequate to the gatherings, he defines the details of a potential settlement and submits them to the gatherings for their perceptions. After receiving the perceptions of the parties, the conciliator may reformulate the particulars of a potential settlement in the light of such perceptions.
2. If the parties reach agreement on a settlement of the dispute, they draw up and consent to a composed settlement arrangement. Whenever mentioned by the parties, the conciliator draws up, or helps the parties in drawing up, the settlement agreement.
3. The parties by consenting to the settlement arrangement put an end to the dispute and are limited by the agreement.

Article 14-Confidentiality

The conciliator and the parties must keep secret all issues identifying with the mollification procedures. Privacy stretches out likewise to the settlement understanding with the exception of where its divulgence is important for reasons for usage and authorization.

Article 15-Termination of conciliation proceedings

The conciliation proceedings come to an end:

a) By the consenting to of the settlement arrangement by the gatherings, on the date of the agreement or

b) By a composed announcement of the conciliator, after discussion with the gatherings, such that further endeavors at conciliation are not, at this point advocated, on the date of the presentation. or

c) By signing of the settlement arrangement by the gatherings, on the date of the agreement. or

d) By a composed affirmation of the conciliator, after meeting with the gatherings, such that further endeavors at conciliation are not at this point defended on the date of the announcement.

Article 16-Resort to arbitral or judicial proceedings

The parties attempt not to start, during the placation procedures any arbitral or legal procedures in regard of a question that is the subject of the conciliation proceedings then again actually a meeting may start arbitral or legal procedures wherein his opinion such procedures are important for saving his privileges.

Article 17- Costs

1. Upon the termination of the conciliation proceedings, the conciliator fixes the expenses of the conciliation and gives composed notification thereof to the gatherings. The expression costs incorporates as it were:

    a) The expense of the conciliator which will be rational in sum.

    b) The movement and different costs of the conciliator.

    c) The movement and different costs of witnesses mentioned by the conciliator with the assent of the parties.

    d) The expense of any master counsel mentioned by the conciliator with the assent of the parties.

    e) The expense of any help provided pursuant with articles 4, section (2) (b), and 8 of these Rules.

2. The expenses, as characterized above, are borne equally by the gatherings except if the settlement understanding accommodates an alternate distribution. Every single other cost caused by a gathering is borne by that party.

Article 18-Deposits

1. The conciliator, upon his arrangement, may demand each gathering to deposit an equivalent sum as a development for the expenses alluded to in article 17, passage (1) which he expects will be brought about.
2. Throughout the assuagement procedures the conciliator may demand valuable deposit in an equivalent sum from each assembly.
3. If the necessary deposits under passages (1) and (2) of this article are not forked over the required funds by the two gatherings within thirty days the conciliator may suspend the procedures or may make a composed revelation of end to the gatherings, effective on the date of that declaration.
4. Endless supply of the appeasement procedures, the conciliator renders bookkeeping to the parties of the stores got and restores any unexpended balance to the gatherings.

Article 19-Role of conciliator in other proceedings

The parties and the conciliator take up that the conciliator won't go about as an authority or as a delegate or insight of a gathering in any arbitral or legal procedures in regard of a question that is the subject of the conciliation proceedings. The assembly also undertakes that they won't present the conciliator as an observer in any such procedures.

Article 20-Admissibility of evidence in other proceedings

The parties undertake not to rely on or introduce as evidence in arbitral or judicial proceedings whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings.

a) Perspectives communicated or recommendations made by the other party in regard of a potential settlement of the question.
b) Admission made by the other party throughout the conciliation proceedings;

c) Proposals made by the conciliator.

d) The way that the other party had shown his readiness to acknowledge a proposition for settlement made by the conciliator.

3.7.3 International Chamber of commerce (ICC)[38]

The intervention technique of the International Chamber of Commerce (ICC) is represented by the ICC Conciliation Rules. These ICC Conciliation Rules are adaptable and gives the gathering significant dynamic limit. The parties have authority over both the choice to settle and the conditions of any settlement agreement. In intercession procedures, parties stay in charge of the result by arranging a legally official, win win understanding dependent on their business advantages. Since authority over the choice to settle and the conditions of any settlement agreement stays with the parties the middle person has no capacity to force a settlement on the meeting however encourages the parties‟ settlement arrangements.

During the intervention, the mediator may hold conference or meetings with the entirety of the parties present and may likewise hold separate meetings or calls with every one of the parties alone. Throughout the intervention, the parties can trade settlement recommendations which may prompt an arranged understanding. Such proposition can be made legitimately between the groups or through the go between.

Intervention takes typically less time than arbitration or case and includes lower costs. Besides the procedure empowers gatherings to agree on arrangements which couldn't be accomplished through an adjudicative procedure for example arbitration or prosecution and which would not in this manner be accessible through the creation of an arbitral award or a legal decision. For instance the parties preferred answer for a legally binding dispute might be to renegotiate the details of the agreement. The renegotiation of an agreement is conceivable in intercession, while it is probably not going to be any lawful reason for looking for such alleviation in arbitration or prosecution.

While the adjudicative procedures center on the parties legitimate rights mediation encourages parties likewise to think about business and different interests. The intervention procedure can assist parties with gaining a superior comprehension of

[38] Information about ICC and mediation are available at http://www.iccwbo.org/visited on 6.5.2020

each other's needs and interests so they can search for an answer which suits these requirements and interests beyond what many would consider possible. Intervention can be an especially helpful apparatus when the parties in question have an ongoing relationship (for example, a joint endeavor or long haul flexibly contract).

Anybody can utilize ICC Mediation regardless of whether an organization, state element, global association or person. It isn't important to be an ICC part or to have some other alliance with ICC. ICC Mediation is managed by the ICC International Center for ADR in accordance with the ICC Mediation Rules. The Center is the main body enabled to manage procedures under those Rules.

Rules[39]

Article 1-Introductory Provision

1. The Mediation Rules of the International Chamber of Commerce are managed by the ICC International Center for ADR which is a different managerial body inside the ICC.

2. The Rules accommodate the arrangement of an unbiased outsider to help the gatherings in settling their dispute.

3. Intervention will be utilized under the Rules except if, before the affirmation or arrangement of the Mediator or with the agreement of the Mediator the gatherings concur upon an alternate settlement strategy or a blend of settlement methodology. The expression intervention as utilized in the Rules will be considered to cover such settlement technique or systems and the expression Mediator will be regarded to cover the nonpartisan who leads such settlement method or strategies. Whatever settlement methodology is utilized, the expression Procedures as utilized in the Rules alludes to the procedure starting with its initiation and consummation with its end as per the Rules.

4. The entirety of the gatherings may consent to alter any of the provisions of the Rules gave be that as it may that the Center may choose not to manage the - Proceedings if in its tact it thinks about that any such change isn't in the soul of the Rules. Whenever after the affirmation or arrangement of the Mediator

[39] Available at https://iccwbo.org/dispute-resolution-services/mediation/mediation-rules/ (last visited on 6.5.2020)

any consent to adjust the arrangements of the Rules will likewise be dependent upon the endorsement of the Mediator.

5. The Center is the main body approved to direct Proceedings under the Rules.

Article 2-Commencement where there is Agreement to Refer to the Rules

1. Where there is an agreement between the gatherings to allude their dispute to the Rules any gathering or gatherings wishing to start intercession compliant with the Rules will document a composed Request for Mediation with the Center. The Request will include.

    a. The names, addresses, phone numbers, email addresses and some other contact particular of the gatherings to the dispute and of any persons speaking to the parties in the Proceedings.

    b. A portrayal of the dispute including if conceivable an evaluation of its worth.

    c. Any consent to utilize a settlement method other than intervention or in the absence thereof, any proposition for such other settlement strategy that the party documenting the Request may wish to make.

    d. Any agreement as far as possible for directing the intercession or in the nonattendance thereof, any proposition with deference thereto.

    e. Any agreement concerning the language of the intercession, or, in the nonappearance thereof, any proposition as to such language.

    f. Any agreement concerning the area of any physical meetings, or, in the nonappearance thereof, any proposition as to such area.

    g. Any joint selection by the entirety of the gatherings of a Mediator or any agreement of the entirety of the gatherings with respect to the credits of a Mediator to be delegated by the Center where no joint designation has been made or without any such understanding, any proposition regarding the qualities of a Mediator.

    h. A duplicate of any composed agreement under which the Request is made.

2. Together with the Request the gathering or gatherings documenting the Request will pay the recording expense required by the Appendix hereto in power on the date the Request is documented.

3. The party or parties recording the Request will all the while send a duplicate of the Request to every single other gathering except if the Request has been documented mutually by all gatherings.

4. The Center will recognize receipt of the Request and of the filing fee in writing to the parties.

5. Where there is consent to allude to the Rules, the date on which the Request is gotten by the Center will for all purpose be considered to be the date of the initiation of the Proceedings.

6. Where the gatherings have concurred that a period limit for settling the dispute according to the Rules will begin running from the recording of a Request such documenting for the selective reason for deciding the beginning stage of as far as possible will be esteemed to have been made on the date the Center recognizes receipt of the Request or of the recording charge, whichever is later.

Article 3- Commencement where there is no prior agreement to refer to the rules

1. Without an understanding of the parties to allude their dispute to the Rules, any party that desires to propose alluding the question to the Rules to another gathering may do as such by sending a composed Request to the Center containing the data determined in Article 2(1), sub paragraphs a)- g). Never ending supply of such Request, the Center will tell every single other gathering regarding the proposition and may help the gatherings in thinking about the proposition .

2. Together with the Request the gathering or gatherings recording the Request will pay the documenting charge required by the Appendix hereto in power on the date the Request is documented.

3. Where the gatherings agree to allude their contest to the Rules the Proceedings will begin on the date on which the Center sends composed affirmation to the gatherings that such an agreement has been reached.

4. Where the gatherings don't agree to allude their debate to the Rules inside 15 days from the date of the receipt of the Request by the Center or inside such extra time as might be sensibly dictated by the Center, the Proceedings will not start.

Article 4- Place and language of the Mediation

1. Without an agreement of the gatherings the Center may decide the area of any physical gathering of the Mediator and the gatherings or may welcome the Mediator to do as such after the Mediator has been affirmed or named.

2. Without an agreement of the gatherings the Center may decide the language in which the intercession will be led or may welcome the Mediator to do as such after the Mediator has been affirmed or designated.

Article 5-Selection of the Mediator

1. The Parties may mutually designate a Mediator for affirmation by the Center.

2. Without a joint designation of a Mediator by the parties the Center will in the wake of counseling the gatherings either choose a Mediator or propose a rundown of Mediators to the gatherings. The entirety of the gatherings may together designate a Mediator from the said list for affirmation by the Center, in default of which the Center will name a Mediator.

3. Prior to arrangement or affirmation, a planned Mediator will sign an announcement of acknowledgment, accessibility, unbiased and freedom. The planned Mediator will uncover recorded as a hard copy to the Center any realities or conditions which may be of such a nature as to raise doubt about the Mediator's freedom according to the parties just as any conditions that could offer ascent to sensible questions regarding the Mediator's unprejudiced nature. The Center will give such data to the gatherings in writing and will fix a period limit for any remarks from them.

4. While affirming or designating a Mediator, the Center will consider the forthcoming Mediator's properties including however not constrained to nationality, language aptitudes, preparing, capabilities and experience, and the planned Mediator's accessibility and capacity to direct the intervention as per the Rules.

5. Where the Center chooses a Mediator it will do so either based on a proposition by an ICC National Committee or Group, or something else. The Center will put forth all sensible attempts to select a Mediator having the properties, assuming any, which have been settled upon by the entirety of the gatherings. In the event that any gathering items to the Mediator delegated by the Center and advise the Center and every single other gathering recorded as a hard copy expressing the purposes behind such protest, within 15 days of receipt of notice of the arrangement, the Center will designate another Mediator.

6. Upon the agreement of all the gatherings, the gatherings may assign more than one Mediator or solicitation the Center to delegate more than one Mediator as per the arrangements of the Rules. In fitting conditions the Center may propose to the gatherings that there be more than one Mediator.

Article 6-Fees and Costs

1. The party or parties recording a Request will incorporate with the Request the non-refundable documenting charge required by Article 2(2) or Article 3(2) of the Rules, as set out in the Appendix hereto. No Request will be prepared except if joined by the recording charge.

2. Following the receipt of a Request according to Article 3 the Center may demand that the gathering documenting the Request pay deposits to cover the authoritative costs of the Center.

3. Following the beginning of the Proceedings the Center will demand the gatherings to pay at least one deposits to cover the authoritative costs of the Center and the charges and costs of the Mediator as set out in the Appendix hereto.

4. The Center may remain or end the Proceedings under the Rules if any mentioned deposit isn't paid.

5. Upon termination of the Proceedings the Center will fix the all out expenses of the Proceedings and will by and large repay the gatherings for any overabundance installment or bill the gatherings for any equalization required as per the Rules.

6. Regarding Proceedings that have initiated under the Rules all deposits mentioned and costs fixed will be borne in equivalent offers by the gatherings except if they concur in any case recorded as a hard copy. Notwithstanding, any gathering will be allowed to pay the unpaid balance of such deposits and expenses should another gathering neglect to pay its share.

7. A congregation other use will remain the obligation of that party, except if in any case concurred by the parties.

Article 7- Conduct of Mediation

1. The Mediator and the gatherings will immediately talk about the way in which the intervention will be directed.

2. After such conversation the Mediator will immediately give the gatherings a composed note educating them regarding the way wherein the intervention will be directed. Each gathering by consenting to elude a question to the Rules consents to take an interest in the Proceedings in any event until receipt of such note from the Mediator or prior end of the Proceedings in accordance with Article 8(1) of the Rules.

3. In building up and leading the intercession the Mediator will be guided by the desires of the gatherings and will treat them with decency and unprejudiced nature.

4. Each group will act in compliance with common decency all through the intercession.

Article 8-Termination of the proceedings

1. Procedures which have been initiated as per the Rules will end upon composed affirmation of end by the Center to the gatherings after the event of the most punctual of -

   a. The signing by the gatherings of a settlement agreement.

   b. The notification in writing made to the Mediator by any gathering, whenever after it has gotten the Mediator's note alluded to in Article 7(2) that such gathering has chosen no longer to seek after the intervention.

c. The notice in writing by the Mediator to the gatherings that the intercession has been finished.

d. The notice in writing by the Mediator to the gatherings that, in the Mediator's feeling, the intervention won't resolve the question between the gatherings.

e. The notification in writing by the Center to the gatherings that whenever limit set for the Proceedings, including any expansion thereof, has terminated.

f. The notification in writing by the Center to the gatherings, at the very least seven days after the due date for any installment by at least one gathering as per the Rules, that such installment has not been made. or

g. The notification in writing by the Center to the gatherings that, in the judgment of the Center there has been an inability to designate a Mediator or that it has not been sensibly conceivable to name a Mediator.

2. The Mediator will speedily tell the Center of the consenting to of a settlement arrangement by the gatherings or of any warning given to or by the Mediator according to Article 8(1) sub sections b) d) and will give the Center a duplicate of any such notice.

Article 9- Confidentiality

1. Without any understanding of the gatherings despite what might be expected and except if denied by appropriate law.

   a. The Proceedings, however not the way that they are occurring, have occurred or will happen, are private and confidential.

   b. Any settlement agreement between the gatherings will be kept secret, then again, actually a gathering will reserve the option to reveal it to the degree that such revelation is required by appropriate law or important for reasons for its usage or authorization.

2. Except if required to do as such by relevant law and without any agreement of the gatherings in actuality a gathering will in no way produce as proof in any legal arbitral or comparable proceedings.

a. Any records articulations or interchanges which are put together by another party or by the Mediator in or for the Proceedings except if they can be gotten autonomously by the gathering trying to create them in the legal arbitral or comparative procedures.

b. Any perspectives communicated or proposals made by any gathering inside the Proceedings with respect to the contest or the conceivable settlement of the question.

c. Any confirmations made by another gathering inside the Proceedings.

d. Any perspectives or recommendations set forward by the Mediator inside the Proceedings. or

e. The way that any gathering showed inside the Proceedings that it was prepared to acknowledge a proposition for a settlement.

Article 10- General Provisions

1. Where before the date of the section into power of the Rules, the gatherings have consented to allude their question to the ICC ADR Rules they will be regarded to have alluded their dispute to the ICC Mediation Rules, except if any of the gatherings protests thereto, in which case the ICC ADR Rules will apply.

2. Except if the entirety of the party has concurred in any case recorded in writing or except if disallowed by pertinent law, the gatherings may start or proceed with any legal arbitral or comparable procedures in regard of the contest, despite the Proceedings under the Rules.

3. Except if the entirety of the gatherings concurs in any case recorded in writing a Mediator will not act nor will have acted in any legal arbitral or comparable procedures identifying with the question which is or was the subject of the Proceedings under the Rules regardless of whether as an appointed authority a referee a specialist or a delegate or guide of a gathering.

4. Except if required by relevant law or except if the entirety of the gatherings and the Mediator concur in any case recorded in writing the Mediator will not

give declaration in any legal, arbitral or comparable procedures concerning any part of the Proceedings under the Rules.

5. The Mediator, the Center, the ICC and its workers, the ICC National Committees and Groups and their representatives and agents will not be at risk to any individual for any demonstration or exclusion regarding the Proceedings, but to the degree such restriction of obligation is precluded by pertinent law.

6. In all issues not explicitly accommodated in the Rules, the Center and the Mediator will act in the soul of the Rules.

3.7.4 Singapore Convention

On August 7 2019 the Singapore Convention on acknowledgment and authorization of worldwide intervened settlement agreements hereinafter the Singapore Convention[40]gets open for signature. This multilateral agreement was drafted by UNCITRAL after a persistent conversation that spread over relatively a long while also was embraced by the United Nations General Assembly on December 20, 2018. So as to reflect the arrangements of the Singapore Convention, the UNCITRAL Model Law on International Commercial Conciliation of 2002 was altered and renamed as UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation. [41]

The Singapore Convention, an agreement premeditated for giving standardized implementation instruments to the intercede settlement agreements by which worldwide business questions are resolved. The aspiration is that the Convention will advance a more extensive utilization of cross-border intercession. Similarly as the New York Convention of 1958[42] has been instrumental to the accomplishment of worldwide arbitration the Singapore Convention is relied upon to make intercession

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[40] United States Convention on International Settlement Agreements Resulting from Mediation, available at https://uncitral.un.org/sites/uncitral.un.org/files/singapore_convention_eng.pdf. The name 'Singapore Convention' is connected to the fact that Singapore offered to be the location where the States will convene for the signing ceremony of the treaty

[41] UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 (amending the UNCITRAL Model Law on International Commercial Conciliation, 2002), available at https://www.uncitral.org/pdf/english/commissionsessions/51stsession/Annex_II.pdf(last visited on 18.2.21)

[42] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, available at https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention-E.pdf (last visited on 27.2.21)

all the more engaging gratitude to explicit and fit principles that are proposed to settle on requirement of settlement agreements simpler and more rapidly.

The Singapore Convention will go into power 'a half year after deposits of the third instrument of confirmation acknowledgment endorsement or assent Article 14 implying that, on a fundamental level for the passage into power of the settlement it is adequate that no less than three States sanction the Convention. There was a lot of theory with respect to the States that would be the initial ones to sign the treaty[43]considering the way that the drafting of the Convention advanced in any event in its underlying stages along an uneven street and needed to confront and inevitably survive the laborious resistance of the European Union's delegates. [44]

Regardless, because of the Convention, the party ready to uphold a global settlement understanding coming about because of intercession in a State that is involved with the Convention itself will have the option to go to the courts or some other 'able power of that State and solicitation help. On the off chance that the prerequisites of the understanding set somewhere around the Convention are met, the court must 'act quickly' Article 4, Section 5 since it is without any forces to force further customs concerning either the structure or the substance of the understanding. Authorization can be denied by the court just to the extent that it discovers one of the justifications for refusal recorded in Article 5.

For the pertinence of the Singapore Convention, a settlement understanding must consent to various necessities: it must be intervened, worldwide and commercial. Furthermore, it must not fall inside the extent of the rejections recorded in Article 1 Sections 2 and 3. Most definitely it is simple that the agreement must be the result of a fruitful intervention system. The Singapore Convention at Article 2 Section 3 offers a meaning of intercession that echoes the definitions one may discover in other universal legitimate instruments for example the UNCITRAL Model Law on worldwide business mediation or on the other hand the EU Directive 2008/52/EC on certain part of intervention in common and business matters[45]of their dispute is

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43 Eunice Chua, 'The Singapore Convention on Mediation – A Brighter Future for Asian Dispute Resolution' (2019) 9 Asian J. of Int'l L. 195. As of August 9, 2019, the Convention has been signed by forty six countries: not surprisingly, no EU Member State is among the signatory States

44 Bruno Zeller, Leon Trakman, 'Mediation and arbitration: the process of enforcement' (2019) Uniform L. Rev., available at https://doi.org/10.1093/ulr/unz020, (last visited on 29.2.21)

45 Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters [2008] OJ L 136/3

alluded to. This element seems to make it understood that what tallies is the nearness of a third uninvolved individual whose help should bring the gatherings closer to go to tranquil goals of their debate. While the EU Directive characterizes intervention as 'an organized procedure[46] the method by which the agreement is reached doesn't appear to have any bearing on the relevance of the Convention. By a similar indication, it tends to be seen that no reference to the unbiased of the middle person shows up in Article 2 section 3 that characterizes intervention and its essence. [47]

Underline that the Singapore Convention doesn't stand firm on the wellspring of intervention. At the end of the day, the gatherings may have concluded deliberately to depend on intercession as opposed to starting case or an endeavor at intervention may have been required on the grounds that it was requested either by a legitimate principle or by a court or an arbitral tribunal. This issue which is debated in the European Union where some Member States accept that the best way to convince people to fall back on intercession is to make it mandatory[48] doesn't surface in the Convention. Be that as it may on an alternate issue the content of the Convention is inflexible it gives that the 'third individual' helping the party qualifies as go between insofar as he is without any power 'to force an answer upon the gatherings to the contest. [49] With regards to the Convention, the accentuation is on the absence of adjudicative powers in the hands of the middle person while the inquiry whether he is permitted to propose to the parties an answer for their debate remains out of sight and it isn't explicitly tended to.

So as to fall inside the extent of the Singapore Convention the settlement understanding must be worldwide, as well. This prerequisite is basically associated with the parties' places of business, which must be situated in various States. This is recorded as the primary basis to consider assessing whether the settlement agreement is worldwide, hitherto Article 1 accommodates other supplemental measures, recreating practically precisely the pertinent piece of the meaning of global business intervention set somewhere near the Model Law at Article 2(2).

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46 The EU Directive, art. 3(a)

47 Ibid art.3(b)

48 Elisabetta Silvestri, 'Too Much of a Good Thing: Alternative Dispute Resolution in Italy' (2017) 21 Netherlands-Vlaams Tijschrift voor Mediation en Conflict management 29.

49 Article 2, sec. 3 of the Singapore Convention and, along the same lines, Article 1, sec. 3 of the Model Law

Last but not least the Singapore Convention applies to global settlement agreements that have settled business disputes. Like the Model Law the Singapore Convention doesn't offer any meanings of business questions yet some direction with respect to which sorts of settlement agreements despite the fact that interceded and worldwide can't be implemented under the convention is given by the various avoidance recorded in Article 1,sections 2 and 3. In such manner, what is important is the topic of the question along these lines buyer disputes just as questions emerging out of family law legacy law or labor law are prohibited from the utilization of the Convention. Different rejections concern settlement agreements that are enforceable as decisions or as arbitral awards just as settlement agreements affirmed by a court or came to over the span of a legal proceeding.

Conditions that are required to be met for enforceable settlement agreement under the convention[50]

1. The settlement agreement must be recorded in writing (for example that it is recorded in some structure. [51]

2. It must emerge out of an 'intervention', characterized under the Convention as a procedure regardless of the articulation utilized or the premise whereupon the procedure is completed whereby parties endeavor to arrive at an agreeable settlement of their disputes with the help of a third persons coming up short on the power to force an answer on the gatherings.

3. The contest must be a 'business' question. Despite the fact that the word 'business' is itself not characterized intentionally it is intended to be perused in a wide way like the New York Convention. [52] One may take note of the Supreme Court's choice in M. Speculation and Trading Co. v. Boeing Co which extensively characterized the word 'business' as "having respect to the

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50 Shaneen Parikh and Ifrakh Shaikh, India: The Singapore Convention on Mediation- India's Pro-Enforcement Countries, available at https://www.mondaq.com/india/Litigation-Mediation-Arbitration/838414/The-Singapore-Convention-On-Mediation-India39s-Pro-Enforcement-Run-Continues (last visited on 8.5.2020)

51 *The Singapore Convention, art 1(1) of defines a settlement agreement as 'an agreement resulting from mediation and concluded in writing by parties to resolve a commercial dispute*

52 *Timothy Schnabel, The Singapore Convention on Mediation- A Framework for the Cross Border Recognition and Enforcement of Mediated Settlements' (September 18, 2018), pg. 18, Footnote 119, Available at https://www.ilsa.org/ILW/2018/CLE/Panel%20%2351%20-%20SSRNschnabel. pdf (last visited* on 8.5.2020)

complex exercises which are a fundamental piece of universal exchange today. [53]

4. Further, the settlement can't identify with an exchanges occupied with by one of the gatherings a purchaser for individual, family or family unit purposes or (b) family, legacy or employment law.

5. The settlement agreement must be global in that

   - At least two gatherings to the settlement agreement have their places of business in various States. or

   - The state wherein the gatherings have their places of business is diverse to the state in which the generous piece of the commitments under the settlement agreement is performed or the State with which the topic of the settlement agreement is most firmly associated.

6. The Convention doesn't make a difference to those settlement agreements that are, an affirmed by a court or finished up in court procedures on the premise that these would almost certainly be recorded as requests/decisions of a court, and enforceable accordingly or (b) recorded and in this manner enforceable as arbitral awards.

United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention)[54]

Article 1- Scope of application

1. This Convention applies to an agreement coming about because of intervention and deduced in writing by parties to determine a business dispute settlement agreement which at the hour of its decision is universal in that. -

   a) In any event two gatherings to the settlement agreement have their places of business in various States. or

   b) The State where the gatherings to the settlement agreement have their places of business is unique in relation to either.

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53 *R.M. Investment & Trading Co. v. Boeing Co 1994 (4) SCC 541*

54 Available at https://www.uncitral.org/pdf/english/commissionsessions/51st-session/Annex_I.pdf (last visited on 9.5.2020)

i. The State wherein a generous piece of the commitments under the settlement agreement is performed. or

ii. The State with which the topic of the settlement agreement is most firmly associated.

2. This Convention doesn't have any significant bearing to settlement agreements.

a) Concluded to determine a dispute emerging from exchanges occupied with by one of the gatherings a purchaser for individual, family or family unit purposes.

b) Relating to family, legacy or business law.

3. This Convention doesn't matter to -

a) Settlement agreements.

i. That have been endorsed by a court or deduced over the span of procedures under the watchful eye of a court. and

ii. That is enforceable as a judgment in the State of that court.

iii. Settlement agreements that have been recorded and are enforceable as an Arbitral Award.

Article 2- Definitions

1. For the reasons for article 1, section 1.

(a) If a assembly has more than one spot of business, the pertinent spot of business is what has the nearest relationship to the dispute settled by the settlement agreement having respect to the conditions known to or mulled over by the parties at the hour of the finish of the settlement agreement.

(b) If a assembly doesn't have a position of business, reference is to be made to the gathering's constant home.

2. A settlement agreement is in writing if its substance is recorded in any structure. The necessity that a settlement agreement be in writing is met by an electronic correspondence if the data contained in that is open in order to be usable for ensuing reference.

3. Intercession" signifies a procedure, independent of the articulation utilized or the premise whereupon the procedure is done whereby parties endeavor to arrive at an agreeable settlement of their debate with the help of a third individual or people the go between lacking the position to force an answer upon the gatherings to the dispute.

Article 3- General Principles

1. Each Party to the Convention will authorize a settlement agreement in accordance with its standards of method and under the conditions set down in this show.

2. In the event that a question emerges concerning an issue that a gathering claim was at that point settled by a settlement agreement a Party to the Convention will permit the gathering to conjure the settlement agreement as per its principles of technique and under the conditions set down in this Convention so as to demonstrate that the issue has as of now been settled.

Article 4-Requirement for reliance on settlement agreements

1. An assembly depending on a settlement agreement under this Convention will flexibly to the equipped authority of the Party to the Convention where help is looked for.

   a) The settlement agreement marked by the parties.

   b) Evidence that the settlement agreement came about because of intervention. for example

      i. The go between mark on the settlement agreement.

      ii. A report marked by the go between demonstrating that the intervention was done;

      iii. A validation by the organization that directed the intervention. or

      iv. Without (I), (ii) or (iii), some other proof admissible to the able position.

2. The necessity that a settlement agreement will be marked by the gatherings or, where appropriate, the go between is met according to an electronic correspondence if.

a) A strategy is utilized to distinguish the gatherings or the mediator and to show the parties or go between aim in regard of the data contained in the electronic correspondence. and

b) The technique utilized is either.

   i. As authentic as suitable for the reason for which the electronic correspondence was created or conveyed, in the light of all the conditions, including any significant agreement. or

   ii. Proven in actuality to have satisfied the capacities portrayed in subparagraph (a) above without anyone else or together with additional proof.

3. In the event that the settlement agreement isn't in an official language of the Party to the treaty where help is looked for, the capable authority may demand an interpretation thereof into such language.

4. The equipped authority may require any important archive so as to check that the prerequisites of the Convention have been followed.

5. While thinking about the solicitation for alleviation, the equipped authority will act speedily.

Article 5- Grounds for refusing grant relief

1. The equipped authority of the Party to the Convention where alleviation is looked for under article 4 may decline to give alleviation in line with the gathering against whom the help is looked for just if that gathering outfits to the capable power evidence that -

   (a) Involved with the settlement agreement was under some insufficiency.

   (b) The settlement agreement tried to be depended upon.

      i. Is invalid and void out of commission or unequipped for being performed under the law to which the gatherings have truly oppressed it or failing any sign consequently under the law regarded pertinent by the capable authority of the party to the Convention where alleviation is looked for under article 4.

ii. Is not authoritative, or isn't conclusive, as per its terms. or

iii. Has been in this way changed.

(c) The commitments in the settlement agreement.

i. Have been performed. or

ii. Are not satisfactory or intelligible

(d) Granting help would be in opposition to the conditions of the settlement agreement.

(e) There was a genuine violation by the middle person of principles pertinent to the go between or the intercession without which breach that gathering would not have entered into the settlement agreement. or

(f) There was a disappointment by the go between to reveal to the gatherings conditions that raise reasonable questions with respect to the go between's unprejudiced nature or freedom and such inability to reveal affected a gathering without which disappointment that gathering would not have gone into the settlement agreement.

2. The capable authority of the Party to the Convention where alleviation is looked for Under article 4 may likewise decline to grant relief if it finds that.

(a) Granting alleviation would be in opposition to the open strategy of that Party. or

(b) The topic of the dispute isn't fit for settlement by intervention under the law of that Party.

Article 6-Parallel applications or claims

In the event that an application or a case identifying with a settlement agreement has been made to a court an arbitral tribunal or whatever other skillful power which may influence the alleviation being looked for under article 4 the equipped authority of the Party to the convention where such help is looked for may, in the event that it thinks of it as appropriate defer the choice and may likewise on the solicitation of a gathering, request the other party to give appropriate security.

Article 7-Other laws and treaties

This Convention will not deny any interested individual of any correct it might have to benefit itself of a settlement understanding in the way and to the degree permitted by the law or the arrangements of the Party to the Convention where such settlement agreement is tried to be depended upon.

Article 8- Reservation

1. A Party to the Convention may pronounce that.

   (a) It will not have any significant bearing this Convention to settlement agreements to which it is a gathering, or to which any administrative offices or any individual following up for a legislative organization is a gathering, to the degree determined in the affirmation.

   (b) It will apply this Convention only to the extent that the gatherings to the settlement agreement have consented to the utilization of the Convention.

2. No reservations are allowed aside from those explicitly approved in this article.
3. Reservations might be made by a Party to the Convention whenever. Reservations made at the time of signature will be dependent upon affirmation upon confirmation, acknowledgment or endorsement. Such reservations will produce results at the same time with the passage into power of this Convention in regard of the Party to the Convention concerned. Reservations made at the time of confirmation, acknowledgment or then again endorsement of this Convention or increase thereto or at the hour of making a presentation under article 13 will produce results all the while with the section into power of this Convention in regard of the Party to the Convention concerned. Reservations stored after the section into power of the Convention for that Party to the Convention shall produce results a half year after the date of the deposit.
4. Reservations and their affirmations will be saved with the depositary.
5. Any Party to the Convention that reserves a spot under this Convention may pull back it whenever. Such withdrawals are to be kept with the depositary also will produce results a half year after deposit.

Article 9-Effect on settlement agreements

The Convention and any booking or withdrawal thereof will apply just to settlement agreements finished up after the date when the Convention, reservation or withdrawal thereof goes into power for the Party to the Convention concerned.

Article 10- Depository

The Secretary-General of the United Nations is thus assigned as the depositary of this Convention.

Article 11-Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States in Singapore, on 1 August 2019, and from that point at United Nations Headquarters in New York.
2. This Convention is dependent upon endorsement, acknowledgment or endorsement by the signatories.
3. This Convention is open for increase by all States that are not signatories as from the date it is open for signature.
4. Instruments of sanction, acknowledgment, endorsement or increase are to be stored with the depositary.

Article 12- Participation by regional economic integration organizations

1. A local monetary reconciliation association that is established by sovereign States and has skill over specific issues administered by this Convention may so also sign sanction acknowledge, affirm or acquiesce to this Convention. The local financial reconciliation association will all things considered have the rights and commitments of a Party to the Convention, to the degree that that association has ability over issues administered by this Convention. Where the quantity of Parties to the Convention is pertinent in this Convention the provincial financial incorporation association will not consider a Party to the Convention notwithstanding its part States that are Parties to the Convention.
2. The regional economic integration association will, at the hour of mark confirmation, acknowledgment endorsement or increase make an announcement to the depositary indicating the issues administered by this

Convention in regard of which capability has been moved to that association by its part States. The territorial financial combination association will quickly inform the depositary of any progressions to the distribution of capability, including new exchanges of skill, determined in the affirmation under this paragraph.

3. Any reference to a "assembly to the Convention Gatherings to the Convention a State or States in this Convention applies similarly to a regional economic integration association where the specific circumstance so requires.

4. This Convention will not beat clashing principles of a territorial financial joining association, regardless of whether such principles were received or gone into power previously or then again after this Convention if under article 4 help is looked for in a State that is individual from such an association and all the States pertinent under article1 paragraph 1 are individuals from such an association or as concerns the acknowledgment or requirement of decisions between part States of such an association.

Article 13-Non Unified legal system

1. In the event that a Party to the Convention has at least two regional units in which unique frameworks of law are appropriate according to the issues managed in this Convention it might at the hour of mark sanction acknowledgment endorsement or promotion proclaim that this Convention is to reach out to all its regional units or just to at least one of them and may change its assertion by presenting another announcement whenever.

2. These revelations are to be told to the depositary and are to state explicitly the regional units to which the Convention broaden.

3. If a Party to the Convention has at least two regional units in which unique frameworks of law are appropriate according to the issues managed in this Convention.

    a) Any reference to the law or rule of technique of a State will be read as alluding, where suitable, to the law or rule of method in power in the applicable regional unit.

b) Any reference to the location of business in a State will be understood as alluding, where proper to the location of business in the important regional unit.

c) Any reference to the capable authority of the State will be interpreted as alluding, where suitable to the skilled expert in the applicable regional unit.

4. On the condition that a Party to the Convention makes no announcement under passage 1 of this article the Convention is to reach out to every single regional unit of that State.

Article 14- Entry into force

1. This Convention will go into power a half year after deposit of the third instrument of sanction acknowledgment endorsement or promotion.

2. At the point when a State confirms acknowledges affirms or acquiesces to this Convention after the deposit of the third instrument of endorsement acknowledgment endorsement or increase this convention shall into in regard of that State a half year after the date of the deposit of its instrument of endorsement acknowledgment endorsement or increase. The convention shall enter into force for a regional unit to which this Convention has been reached out as per article 13 six months after the notice of the presentation alluded to in that article.

Article 15- Amendment

1. Any Party to the Convention may propose an amendment to the present Convention by submitting it to the Secretary-General of the United Nations. The Secretary General shall thereupon communicate the proposed amendment to the Parties to the Convention with a request that they indicate whether they favor a conference of Parties to the Convention for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the Parties to the Convention favor such a conference the Secretary General shall convene the conference under the auspices of the United Nations.

2. The conference of Parties to the Convention will bend over backward to accomplish accord on every revision. On the off chance that all endeavors at accord are depleted and no agreement is reached the alteration will if all else fails require for its appropriation a 66% dominant part vote of the Parties to the Convention present and voting at the conference.

3. An embraced alteration will be put together by the depositary to all the Parties to the Convention for confirmation acknowledgment or endorsement.

4. A received revision will go into power a half year after the date of deposit of the third instrument of sanction, acknowledgment or endorsement. At the point when a revision enters into force, it will be authoritative on those Parties to the Convention that have communicated agree to be limited by it.

5. At the point when a Party to the Convention sanctions acknowledges or favors an alteration allowing the store of the third instrument of endorsement acknowledgment or endorsement, the correction will go into power in regard of that Party to the Convention six months after the date of the store of its instrument of approval acknowledgment or endorsement.

Article 16- Denunciations

1. A Party to the Convention may decry this Convention by a formal notice recorded as a hard copy routed to the depositary. The reprimand might be restricted to certain regional units of a non-brought together legitimate framework to which this Convention applies.

2. The denunciation will produce results a year after the notice is gotten by the depositary. Where a more drawn out period for the reprobation to produce results is indicated in the warning, the reprobation will produce results upon the lapse of such longer period after the warning is gotten by the depositary. The Convention will keep on applying to settlement understandings finished up before the reprobation produces results.

3.7.5 American Arbitration Association (AAA)[55]

The American Arbitration Association hosts elevated and offered intercession to gatherings for the genial goals of disputes. Mediation methods are remembered for

[55] American Arbitration Association, available at https://adr.org/ (last visited on 11.7.2020)

the entirety of the significant intervention rules, either as an alternative or as a stage before a discretion hearing. The AAA is notable for its enormous volume intercession projects to determine guarantees after catastrophic events for example Hurricane Katrina/Rita and Super Storm Sandy. The AAA has likewise been named to determine a large number of debates during the ongoing private home loan dispossession emergency. Another downturn related intercession program directed by the AAA was the Motors Liquidation Company Bankruptcy once General Motors Corporation Claims. The AAA has been and will consistently be an asset for people, courts, government offices and different associations with huge volume claims goals needs.

3.7.6 The Hong Kong International Arbitration Centre (HKIAC)

The Hong Kong Mediation Council HKMC a division of the HKIAC was built up in 1994 so as to advance the turn of events and utilization of intervention. It is controlled by a board of trustees with four dynamic intercession intrigue bunches in the regions of Commercial, Development, Family and General which conducts intercession courses, workshops and gatherings to both private associations and open bodies.

The HKIAC model spots significant accentuation on speed. The intercession continuing is to close inside the time frame determined. Article 7 of the Rules express that the middle person is required to begin the intercession at the earliest opportunity after his arrangement and must utilize his best undertakings to finish up the intercession inside 42 days of his arrangement. The mediator's arrangement may not stretch out past a time of 3 months without the composed assent of the considerable number of gatherings. Article 10 of the HKIAC Rules orders that each party will have full power to settle or be joined by an individual with such position. [56]

3.8 Family Mediation in United States, Canada and England

In most countries nowadays, mediation is becoming the preferred means of settling disputes rather than adversarial methods. In the realm of family disputes for instance United States of America, England and Wales, Australia, Canada, New Zealand, Japan and Singapore have instituted the practice of mediation in the dispute resolution process over the past two years or so. With emergence of the concept and practice of

[56] The Hong Kong International Arbitration Centre**,** available at t http://www.hkiac.org (last visited on 11.7.2020)

restorative justice in the past decade mediation is also increasingly coming to be accepted as a method of dispute resolution in Criminal law.

3.8.1 Family Mediation in United States

The Divorce and Mediation Project in California was a multidimensional study of the comparative legal, economic, psychological, and relationship effects of mediation and adversarial divorce on the participants during and after the divorce process. The longitudinal study collected data at five points in time, where time 1 was the beginning of divorce, time 3 final divorce, and time 5 two years after the final divorce. At time 1 the mediation sample consisted of 212 individuals' 106 couples and the adversarial divorce group consisted of 225 respondents (including 47 couples. The overall sample of 437 was mostly well educated, primarily white, and middle class. The mediation sample had more education and minor age children compared to the adversarial group but median income did not differ and there were no differences in amount of marital conflict or anger at spouse as reported at the beginning of divorce. [57]

This study compared process and outcomes in the private sector for two groups: those who voluntarily chose to mediate their divorces from 1983 through 1985 at a nonprofit mediation center and agreed to participate in the study and those who filed a divorce petition between 1984 and 1986 were randomly selected from court records agreed to participate in the study, and had an attorney representing them in divorce proceedings. For the mediation couples the timing of the intervention varied, as one-third of couples had not yet separated at entry into mediation and the remaining couples began mediation several months to more than a year after separation. Co mediations were conducted by a lawyer and two psychologists specifically trained in mediating property, support, and custody issues and with knowledge of family law. [58] The mediation was a task-focused, facilitative, and problem-solving model, and responsibility for decision making remained with the parties on all issues. Final agreements were recorded in detailed memorandum of understanding, and any issues not resolved in mediation were left for subsequent attorney negotiations or court

[57] Available on https://www.researchgate.net/publication/227983689_Family_mediation_research_Is_there_empirical_support_for_the_field(last visited on 1.1.2021)

[58] ibid

hearings. [59] The average number of mediation sessions for those reaching agreement on all issues was ten approximately fifteen hours which varied with the legal and psychological complexity of issues, amount of conflict, and motivation of clients. Sliding-scale fees ranged from $40 to $120 per hour per couple, with an average fee per couple of $110 per hour, which was comparable to family law attorney fees at that time. [60] Mediation respondents were encouraged to consult attorneys as needed and used counsel to prepare the legally binding marital settlement agreement and to file divorce papers. The mediation clients had high levels of self-determination with respect to selecting and ordering issues for discussion and negotiation, length of sessions, the pace of the mediation, the use of outside counsel and additional experts, and all temporary and final decisions.

This comparative research provides insights on a variety of outcome measures one of it is the settlement rates. Four groups were distinguished within the mediation sample. Comprehensive completers 50 percent reached agreement on all issues pertaining to their divorces resulting in a memorandum of understanding. They were not more cooperative than the other subgroups, but both spouses reported similar levels of knowledge about finances. Second group partial completers 8 percent, were able to reach full written agreement within a particular area, usually custody and parenting or child support, but not reach full resolution on the other issues. [61] This group was more likely to have attorneys active on their behalf prior to coming to mediation and had the largest discrepancy between the husbands and wives self ratings of financial knowledge. Thus the overall rate of reaching partial and full agreement was 58 percent. Among those who terminated mediation were two groups the productive terminators 15 percent resolved one or more critical issues, most often related to details of their separation including visitation or temporary support, but did not return to negotiate final divorce issues. [62] This group scored highest on interest in reconciliation and a number later reached agreement on their own. The true terminators 26 percent were unable to reach agreement on anything and as a group they were more likely to report that they had an angry demeaning spouse or an

[59] ibid
[60] ibid
[61] ibid
[62] ibid

emotionally unstable, substance-abusing spouse. They also gave the lowest ratings of their spouses honesty, fair mindedness, and level of cooperation.

These settlement rates are somewhat lower than rates reported in the court-based custody mediation studies in Virginia and Colorado but comparable to a large Canadian study of court based comprehensive divorce mediation, which found full agreement in 49 percent of cases partial agreement on 15 percent, and 64 percent when combined Richardson, 1988. Comprehensive divorce mediation involves settling multiple complex issues, which requires an ability to comprehend all the issues and remain in mediation for the longer course. [63]

1. Satisfaction with mediation- Significant group differences were found on eighteen of forty items from a fifty-four-item Client Assessment of Mediation Services (CAMS) scale assessing participants' perceptions of and satisfaction with their respective divorce processes (see Kelly and Gigy 1988 Kelly 1989. Between 65 and 82 percent of all respondents viewed their mediators and attorneys as warm, sympathetic, and sensitive to feelings helpful in standing up for their rights in disagreements with spouses staying focused on the important issues and having clear and sufficient information for decision making with no group differences. The mediation group rated their mediators as more skillful and more helpful in proposing ways to resolve disagreements and getting to workable compromises, compared to the litigation group ratings of their attorneys. [64] Mediation clients particularly women, viewed mediation as more empowering than did the adversarial men and women in helping them assume greater responsibility in managing their financial affairs, and in better understanding their spouses points of view. Men in both groups rated their attorneys or mediators as more often favoring their spouses point of view than did the women but there were no sex differences within just the mediation group. Seventy six percent of mediation women and 62 percent of the men indicated that mediation helped them to become more reasonable with each other, compared to 26 and 39 percent of the adversarial men and women, respectively. [65] More than half of the adversarial group reported that the divorce process had caused deterioration in their communication compared to 11 percent of the mediation group. Finally on a global measure of satisfaction, 69 percent of mediation respondents were somewhat to very

[63] ibid
[64] ibid
[65] ibid

satisfied compared to 47 percent of adversarial men and women, with no sex differences. [66]

Compared to the adversarial process, mediation was more effective in increasing the general level of cooperation between beginning of divorce and final divorce, after controlling for initial baseline differences. These differences were still evident at the end of the first year of divorce but were no longer significant two years post divorce. However, mediation parents continued at two years' post divorce to seek parenting help from each other more often than the adversarial parents were more likely to accommodate any requested changes in parenting schedules and could communicate by telephone with their children whenever they or the children wanted to compared to adversarial parents Kelly 1991a. [67]

These findings may be related to the fact that at final divorce, the mediation group indicated more beneficial effects on their ability to be reasonable with each other and that communication improved somewhat compared to the adversarial respondents. They also perceived their former spouses as less angry, even though objective measures of anger of former spouse did not significantly differ Kelly, 1989. Divorce mediation was not more beneficial than the adversarial process on a number of standardized and objective measures of psychological adjustment. [68] Instead, the passage of time was associated with a reduction of symptoms such as depression, anxiety, and paranoia, for both groups at final divorce, and at one and two years post divorce Kelly, 1990, 1991a. Furthermore no changes in children adjustment were associated with either dispute process. Similar findings were reported elsewhere Emery, 1994 Walker, McCarthy, and Timms, 1994. The claims that mediation would improve psychological adjustment were quite unrealistic, particularly given the specific dispute resolution focus of mediation and the brevity of the intervention. [69]

2. Cost savings. The combined couple costs for the adversarial group were 134 percent higher than for the mediation group, despite comparable hourly fees for both groups. For the mediation group, total costs included all mediation hourly fees the mean was $2,224 and external consulting attorney, accountant, and appraisal fees associated with the divorce for each spouse, for a mean total of $5,234 the median

66 ibid
67 ibid
68 ibid
69 ibid

was $3,428. The mean total costs for couples in the adversarial sample were $12,226 for men, $6,850; for women, $5,376. The two groups did not differ on a divorce issues complexity scale or in the extent of marital conflict, initial level of anger at spouses, cooperation at beginning of divorce, amount of anticipated disagreement about issues to be resolved, or household income Kelly, 1991. [70] Thus there is strong support for assuming that the differential cost of divorce was the result of the mediation process itself. The inclusion of marital and psychological variables in this research provided a unique opportunity to explore divorce costs related to other dimensions. When spouses in mediation reported that they divorced primarily because of a high-conflict or demeaning relationship or because of a substance abusing or emotionally unstable spouse, mediation took longer and therefore cost more sees Gigy and Kelly, 1992, for analyses of reasons for divorce. [71]

Similarly, poorer-quality marital communication, poorer cooperation, and perceptions of the spouse as dishonest or taking advantage of the respondent, or lacking in fair-mindedness were all associated with longer and more costly mediations, although these partners did manage to complete the process. In contrast mediation clients who rated their spouses as good spouses a three-item scale measuring flexibility, fair mindedness, and ability to compromise) had lower mediation costs. Interestingly neither depression nor level of anger toward the spouse correlated with the time required to complete mediation Kelly, 1990. Among the adversarial sample, attorney fees were higher for the men when they rated their spouses as dishonest and felt taken advantage of by them. For women, higher legal fees were associated with being angrier at their spouses, perceiving their spouses to be dishonest, lacking in fair-mindedness, and to have taken advantage of them during the marriage. In the adversarial group, neither level of cooperation nor reason for divorce was related to attorney fees. [72]

3.8.2 Family Mediation in Ontario Canada

This study focused on 361 men and women who were means tested and approved to receive a legal aid certificate for immediate assistance with separation and divorce and who selected either a lawyer negotiation or mediation path for resolution of their

[70] ibid
[71] ibid
[72] ibid

disputed issues. Canadian lawyers are required by law to describe mediation as one option for resolving marital matters. [73]

The Participants in this court-connected mediation study were voluntary and self-selected into either a mediation or adversarial sample on the basis of the information provided by lawyers and on referral from the court. Spouses indicating an interest in using mediation had the opportunity to attend a separate family law information meeting prior to beginning mediation, followed by an individual interview and screening for abuse and large power imbalances to confirm the choice and feasibility of mediation. Some settings used open mediation, involving recommendation to the court, and others were closed mediations that are confidential. Clients who selected lawyer negotiations were seen in the attorney's private practice. Services for both groups were offered free of charge. [74]

The Hamilton Unified Family Court mediation settings offered comprehensive mediation for custody and access, support, and property division. More than two thirds of clients in both samples indicated that access visiting was the major issue to be settled 40 percent wanted the issues of custody and child support settled and 10 percent wanted spousal support settled. The timing of both interventions was from five to twelve months after separation disputes were apparent during which time some participants initiated motions and other legal action. Clients, who chose lawyer negotiations were poorer, less well educated, had been separated for a longer period of time, and had been more recently abused by their partners, compared with those who chose mediation. Women were also more likely to choose lawyer negotiations than were men Ellis 1996. Mediators were trained and experienced in family law mediations. The Outcomes of the Family Mediation Pilot Project studied standard outcomes like settlement rates and satisfaction, but also looked at spousal violence rates. [75]

1. Settlement rates Along the four major issues of access custody, child support and property division, settlement rates in the mediation sample ranged from 40 to 80 percent, with an average rate of 60 percent, compared to approximately 80 percent in

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73 ibid

74 ibid

75 Available on https://www.researchgate.net/publication/227983689_Family_mediation_research_Is_there_empirical_support_for_the_field (last visited on 16.3.21) at 9:00p.m.

the lawyer negotiation group. Settlement rates were higher when mediation occurred prior to parties being involved in any legal proceedings. [76]

2. Satisfaction with process Among the 169 mediation clients 66 percent indicated they participated in a process they judged to be the best way for them, in contrast to 48 percent of the 192 lawyer clients who thought that process was the best way. Far more lawyer than mediation clients indicated they had participated in a process they believed was the worst way for them to settle issues of separation and divorce 28 versus 1 percent. Clients who reached agreement in both processes were more satisfied than those who did not and mediation clients were more satisfied than those participating in adversarial processes Kelly, 1989. On each separate issue in contention, the percentage of satisfied mediation clients was higher than the settlement rate percentage. In contrast in the lawyer negotiation group satisfaction percentages were lower than settlement rates in each area with the exception of custody where women in the lawyer group were more satisfied than the men and the men and women in the mediation group. These women were most likely to petition for and receive sole custody through negotiations, hearings, or trial compared to the mediation group. The least satisfied of all groups were men in the adversarial group, also reported elsewhere Emery 1994 Kelly, 1989. In the Canadian study, when lawyers participated in mediation sessions as co-mediators and gave advice mediation clients were less satisfied than were clients where no lawyers or judges were involved. [77]

3. Spousal violence Three forms of abuse emotional, verbal, and physical were studied pre- and post processing for both groups. On a four-item composite abuse scale also including intentional hurting), a greater number of mediation clients reported being physically, emotionally, and verbally abused prior to the mediation than did lawyer clients. However, the differences were no longer significant post intervention, suggesting that mediation made a greater contribution to reducing the violence than did lawyer processing. The use of affidavits (declarations) in the lawyer process that were personally attacking and hurtful rather than fact based accounted in part for the continuing violence in the lawyer group Ellis and Stuckless 1992. The most important factor responsible for decreases in abuse post intervention was

[76] ibid.
[77] ibid

physical separation, which decreased opportunities for both conflicts instigated and control instigated abuse in both groups. All three forms of abuse decreased over time following the lawyer and mediation processes, with verbal and emotional abuse decreasing more for mediation clients in the first twelve months Ellis and Stuckless, 1996. These researchers 1992 also found more post process violence in a one session coerced mediation provided by Legal Aid when compared to court connected voluntary mediation (publicly funded) averaging six sessions. [78]

The Outcome patterns are that the Women in the mediation sample were more likely to get and be satisfied with the child support amount they wanted compared to the adversarial women. A greater proportion of adversarial group women got the sole custody they wanted compared to the mediation women 85 versus 67 percent. More joint legal custody agreements were reached in the mediation group than in the lawyer negotiation group, similar to Emery 1994 and Kelly 1990, 1993. In the mediation sample abused and non abused wives were equally likely to say that they were equal to or better able than their partners to stand up for themselves and state their positions Ellis and Stuckless, 1996. Differences between husbands and wives in the mediation group in income and various measures of marital power were not significant predictors of custody, access, support, or property division outcomes. [79]

3.8.3 Family mediation in England

Family mediators assist in cases of family breakdown. They help separating or divorcing couples to discuss and, where possible, decide for themselves any issues that arise from the separation or divorce. This may relate to arrangements for children, finances or the legal process itself.

3.8.3.1 Legislative background

In July 1974 the Finer Report from the Committee on One Parent Families identified the destructive nature of conflict in divorce matters, particularly from the point of view of children involved. It recognized that resolution of specific disputes through the legal process often exacerbated or failed to deal with underlying conflict. The report recommended ‘conciliation’ as a process that would assist parents to reach

[78] Available on https://www.researchgate.net/publication/227983689_Family_mediation_research_Is_there_empirical_support_for_the_field (last visited on 20.3.21) at 6:00p.m.

[79] ibid

agreement about matters relating to the breakdown of the marriage and thus reduce the conflict between them for the benefit of all the family members. Court orders at this time specified ‘care and control where a child would live custody who had responsibility for decisions concerning education, religion and health joint custody orders were therefore common and access how the child would keep in touch with the non-resident parent) in every case. Two pieces of subsequent legislation have undoubtedly influenced the development of mediation in divorce matters as well as being in them influenced by what was already taking place in terms of existing practice. [80]

The Children Act of 1989 enshrined the concept of equal parental responsibility for children on the part of both parents after separation. The family court now expects parents to agree arrangements for children, and only intervenes to make a specific order about where children should live or how they should keep in touch with each parent if it is convinced that this is necessary because the parents cannot reach agreement. Thus the Children Act places emphasis on the requirement for parents to negotiate about arrangements for children and to make joint plans. Obviously this negotiation can be very difficult for parents around the time of their separation or divorce. Therefore many parents have been encouraged by solicitors and courts to make use of local mediation services, where they exist. The Family Law Bill received the Royal Assent in 1996 and pilot projects are currently under way May 1999 relating to Section 29 of the Act. This Section makes legal aid available for mediation for the first time. [81] A consequence of this is that people are only eligible for legal aid for their divorce once they have met with a mediator, who assesses their suitability for mediation. These assessments are carried out by (Legal Aid Board) franchised mediators. Most mediation providers are very keen that involvement in the mediation process itself should remain voluntary. Therefore assessment for suitability includes discussing with the client whether having had the process fully explained – they wish to opt for mediation. They are not denied legal aid for the divorce simply because they do not choose mediation. At the time of writing October 1999, the implementation of Part II of the Family Law Act has been delayed due to disappointing results from pilot projects for the Information Meetings at the outset of

[80] Amel Khetani, The model and Techniques used in Family Mediation in England and Wales, Ch 4(Transnational Press London,2022)

[81] ibid

the divorce process where couples are given information on all the options, including marriage counseling and mediation. Part II includes the revision of the whole divorce process from a fault-based system to a system which simply acknowledges the fact of marital breakdown. Now that the future of the Act is unclear, many organizations in the field are lobbying the Lord Chancellor's Department to implement the new Act. [82]

3.8.3.2 The development of mediation services

The first independent conciliation service was set up in Bristol in 1978 and other services soon followed. In 1981 the National Family Conciliation Council (NFCC) was set up to support services, to co-ordinate practice and training, and to provide national publicity and liaison for the movement. At these stage conciliators were solely assisting parents to reach agreements concerning arrangements for children after the separation. In 1990 a pilot project to include the settlement of financial arrangements was initiated, and after this many services undertook training to offer All Issues Mediation (AIM) alongside the child focused work. However AIM still represents a very small proportion of most services work and this chapter therefore deal mainly with mediation concerning children's issues. The process involved in AIM is explained briefly at the end of this chapter. NFCC was renamed National Family Mediation in 1993 when most services also changed their names to include the word 'mediation' instead of conciliation. [83] There are currently 70 NFM affiliated services in England and Wales August 1999 all of which is either independent charitable organizations or are sponsored by other independent charities. In Scotland similar developments took place and Family Mediation Scotland (FMS) was set up in 1992. There are 12 affiliated services 40 A separate national body, the Family Mediators Association, was inaugurated in 1989. Family Mediation Act uses a co-working model with a family mediator working alongside a lawyer mediator. It offers training to individuals who are suitably qualified and who then practice independently and privately in the field. Latterly FMA has trained some practitioners both family and lawyer mediators as 'solo workers. The UK College of Family Mediators came into being in 1996 as a result of the co-operative work of NFM, FMA and FMS. The College has developed national standards for training, selection and accreditation Booth 1997. Principles and assumptions in family mediation Family mediation takes

[82] ibid

[83] Marian Liebmann, Mediation in context 2000, available on file:///F:/stydy%20material%20of%20PHD/Mediation%20in%20context%20(%20PDFDrive%20).pdf (last visited on 22.3.21)

as its starting point the principles that underpin the mediation process in general: the confidentiality of the process the impartiality of the mediators and voluntarism on the part of the parties. Family mediation is also underpinned by current beliefs about people's welfare and development in the circumstances of family breakdown. Over one-third of marriages currently end in divorce. Figures five years ago showed that one-half of 'non-custodial' parents had lost touch with children after two years.

Family mediation bases itself on the following premises: the children, where possible, need a continuing relationship with both parents; that co-operation between parents fosters healthy adjustment in children that continuing conflict between parents is damaging to children that parents can be enabled to make their own joint decisions. Research has supported these premises. Many studies bear witness to the harmful effect of parental conflict, whether within or without a marriage. A study in Cambridge Lund 1984 looked at 30 families with children aged 6 to 9, two years after their parents' separation. The families fell into three groups. Those children who had no contact with the absent parent usually the father appeared to have the highest level of emotional problems and the lowest self-esteem. Those children whose parents had achieved harmonious co-parenting arrangements had the lowest level of emotional problems and the highest self-esteem. [84] Those children whose parents continued in a high level of conflict but who were in contact with both parents were in between. The conclusion was that frequent and conflict-free contact is profoundly helpful to children's adjustment. The aim of family mediation is to help parents manage their negotiations with each other in order to foster continuing parental involvement with children and constructive co-operation between parents.

All issues mediation (AIM)

All Issues Mediation (AIM) assists parents to discuss and decide all relevant issues relating to the divorce, including the finances. Mediation of finances is a longer process, which involves the painstaking gathering of all the financial information with supporting documentation the display of that information and the consideration of the options for settlement. This normally takes between four and six meetings. The mediation model described above applies to AIM, but the stages of clarifying information gathering and exploring the issues and generating options (understanding

[84] Lund, M. (1984) 'Research on divorce and children.' Family Law 14, 198–201 available on Lund, M. (1984) 'Research on divorce and children.' Family Law 14, 198–201. (last visited on 24.3.21)

the information and its implications in terms of possibilities) take several sessions. Mediators recommend to all parents who opt for AIM that they retain their own solicitors, to consult during the process and bring advice back to the mediation and always at the end. Mediators prepare a financial statement and a Memorandum of Understanding which is a legally privileged document outlining the parents proposals for settling the finances. This is then taken to both solicitors for checking before being made the basis of any final settlement either as part of the divorce process or as a Separation Agreement. [85]

Family mediation has significantly influenced the divorce process over the last twenty years. The culture in this country has changed over that time and has moved away from the establishing of fault and blame to an acknowledgement that divorce is a reality and that fostering co-operation between parents is profoundly helpful to children. Mediation is a powerful process which has enabled many parents to continue as effective and supportive parents at a time when their relationship as partners has broken down. What does the future hold? The current picture is complex and uncertain: the pace of change is rapid. It is currently not known, for example whether the main body of the Family Law Act has been shelved temporarily or permanently. [86]

Consequently the nature and extent of the role of mediation in the divorce process is still unclear. All this uncertainty and change of course creates a degree of anxiety. However, nobody can doubt that there has been a sea change concerning dispute resolution in divorce and that mediation as an option is here to stay. The fact that mediation will be a permanent feature of the divorce process is a hugely significant and exciting development. [87]

3.9 International Scenario of mediation in matrimonial disputes[88]

Most countries do not collect robust statistics about the extent to which separating and divorcing couples use dispute resolution services, including mediation. Because take-up of mediation has been lower than anticipated several jurisdictions have taken steps to increase the proportion of couples accessing dispute resolution services and

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85 ibid
86 ibid
87 ibid
88 Professor Janet Walker and Professor Anne Barlow, available on http://www.justice.gov.uk/ downloads/family-mediation-task-force-report.pdf(last visited on 4.4.21)

reduce the numbers going to court. The evidence suggests that the cases going to mediation are becoming more complex and involve higher levels of family dysfunction including domestic violence and mental health issues which have implications for mediation training and practice.

3.9.1 Australia

Australia has developed one of the most comprehensive approaches to family justice and Dispute Resolution processes. Sixty-five Family Relationship Centres FRCs were established as part of a wider body of reforms in 2006 to bring about a cultural shift away from litigation towards cooperative parenting. The FRCs was designed to: strengthen family relationships; help families stay together; and assist families through separation. They provide information and referral services on parenting and relationships to intact families and information referral, advice and dispute resolution services to separating and separated families to help them reach agreement on parenting arrangements without the need to go to court. [89] The FRCs were achieved by creating and expanding community-based services run by not-for-profit, non-governmental organizations. A significant financial investment by the government enabled the collaboration of a raft of services, help lines and specialist programmes. The centres were designed to provide a point of entry, triage and referral to these services and to be a major provider of family mediation. An attempt at mediation is mandatory before filing unless an exemption exists. Mediation is provided free of charge in the FRCs which have become a focal point for the continued development of child-sensitive dispute management services that can be locally tailored and of constructive partnerships with a range of community services, lawyers and the courts, characterized by a high level of trust and cooperation. [90] Two initiatives underpin this: the Better Partnerships program provides access to early and targeted legal information and advice for families attending a Family Relationship Centre and the Coordinated Family Dispute Resolution (CFDR) program involves a multi-disciplinary intensively case-managed process in which parents who report a history of family violence are supported to attempt mediation. This involves partnerships between family mediators, publicly funded legal services, family violence centres and men's support services. Each parent can access legal support and advice as well as a

[89] Available onhttp://www.justice.gov.uk/downloads/family-mediation-task-force-report.pdf(last visited on 15.5.21)

[90] ibid

specialist family violence professional or men's support professional and input from a child consultant where relevant in the provision of child-inclusive mediation. [91]

The cultural shift in Australia sees lawyers and FRC practitioners working together towards a common goal of dispute resolution. Interdisciplinary is a key concept and Australia has established a network of registered family relationship practitioners including mediators, lawyers and others skilled in addressing complex separation-related issues. The entire preliminary intake and assessment work and the child focused information sessions are free of charge and no one can be refused a service on the grounds of cost. As FRCs was rolled out nationally the numbers using Dispute Resolution processes increased significantly and court applications decreased. Outcomes are positive. **Some 60 per cent of divorcing parents self-manage their disputes with minimal intervention, some 20 per cent are likely to benefit from mediation and a further 12 per cent who have serious problems might manage to mediate.** [92] **The estimate is that between 20 and 30 per cent of parents might be able to settle disputes via the FRCs. Many parents continue to access mediation post-divorce when situations change or disputes remain unresolved.**

3.9.2 New Zealand

Mediation has been a central element in family law cases for over 30 years, led primarily by the judiciary and closely linked to the courts. The data indicate that approximately 24–30 per cent of divorce cases have used mediation, with an increasingly upward trend, and a reduction in matters requiring disposal by the court. Family law reforms implemented in 2014 now require parents to attend a Parenting Through Separation course and a new Family Dispute Resolution Service , The Parenting Through Separation Programme is funded by the Ministry of Justice but parties are expected to contribute equally to the cost of the FDR service unless they meet certain financial criteria. [93] Only when the Parenting Programme and attendance at the FDR service have been completed are parties allowed to file in the court, unless there are exemptions such as cases involving domestic violence and urgency e.g imminent relocation by a parent." The reforms are intended to empower people to resolve their own parenting matters outside of the court system. The new FDR service

[91] ibid
[92] ibid
[93] ibid

will be fully funded by government for those who meet the income threshold for civil legal aid and it is estimated that about 60 per cent of people will be eligible. The cost to others is about $897 NZ per case. The FDR service is supported by a free Family Legal Advice Service. A new family justice website has been launched as a first port of call for family issues. The assessment stage of the FDR service will check to ensure that people and their disputes are suitable for mediation and includes screening for domestic violence. From October 2014 there will be new powers to direct people to attend a DV assessment and non-violence programme where appropriate. [94]

In effect the reforms render dispute resolution mandatory in the majority of cases. Three bodies have been approved to provide FDR and practitioners are required to have at least five years of family mediation experience or in an associated profession. If a dispute does proceed to court judges have the option to order fully subsidized counseling if they believe this will help the parties. Improved information services a simplified three track court system and new, simpler forms are expected to reduce the need for lawyer involvement in straightforward matters, although judges will be able to allow lawyers to participate in settlement conferences. [95]

3.9.3 Canada

In Canada, family mediation is mentioned in the Divorce Act of 1985. The Act makes it mandatory for a lawyer to make known to his/ her client the availability of mediation services. Most Canadian provinces provide for a mandatory education, seminars for all those proceeding with divorce but mediation is voluntary in Canada. In provinces like Ontario and Newfoundland the legislation expressly authorizes the court to appoint a mediator to deal with any matter that the court specifies. However, the order appointing the mediator must be made at the request of the parties who also select the mediator. What usually happens is that the judge will strongly recommend that the parties attend mediation and they usually comply.

Provinces in Canada have been offering subsidized mediation and information services for many years. In Ontario for example three hours of free mediation is offered on the day of the court hearing, and attendance at a Mandatory Information Program is required about 75% actually attend.

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94 ibid
95 ibid

In Quebec up to six sessions of mediation are available to first time litigants free of charge. Parties revisiting a settled matter or seeking variation of a court order are entitled to three free mediation sessions.

In British Columbia, free mediation services are provided in Family Justice Centres and Justice Access Centres. [96] The Justice British Columbia website provides comprehensive information on the services available including a free three-hour parenting after Separation Program access to Parenting Coordinators and a Family Maintenance Enforcement Program. The Family Justice Centres in British Columbia provide counseling, mediation, and emergency and community referrals, all free. [97] As of 1 January 2014 all Dispute Resolution professionals lawyers, mediators, parenting coordinators and arbitrators are required to meet high quality training standards set out in new regulations. Mediate British Columbia has set out revised standards of conduct for mediators. In British Columbia, a Notice to Mediate programme permits any party in family law proceedings to compel another party to enter into mediation for at least one session. This Notice can be used at any time between 90 days after the filing of the first response and 90 days before the date of trial. Once the Notice is served the parties must jointly agree on a mediator within two weeks and the mediation session must take place within 60 days of service. [98]

Increasingly attendance at a Parenting after Separation programme is required as the first step in the process, prior to making an application to the court, before information about mediation and dispute resolution services is given. This serves to focus parents minds on the needs and best interests of their children and encourage them to agree arrangements if at all possible. A Road Map for Change was published in 2013 with a view to promoting interdisciplinary cooperation and the increased use of early Dispute Resolution services across Canada by 2018. [99]

3.9.4 The USA

There are numerous initiatives in the USA all of which focus on bringing a range of services together in a single point of entry. For example the Resource Centre for Separating and Divorcing Families in Denver, Colorado provides legal services,

[96] ibid
[97] ibid
[98] ibid
[99] ibid

financial planning services, mediation, therapeutic support, individual counseling, adult support groups, children's support groups, co-parenting courses etc. A visiting judge can approve written agreements to avoid parties having to go to court. Each party completes an intake form and a personalized plan is drawn up, tailored to the unique needs and circumstances of the family. The Resource Centre for Separating and Divorce Families offers its programme on a sliding scale fee. The minimum fee for one hour of services is $15 USD and the maximum is $50 USD. [100]

3.9.5 Europe

Many countries in Europe encourage the use of mediation services wherever appropriate. For example Germany offers publicly funded mediation although take-up is said to be low 3–5% of divorcing couples in Bulgaria, many judges and lawyers train and practice as mediators and mediation is regarded as a cheap and effective means of avoiding litigation. Mediation is also provided free in Ireland. Sweden and Norway have each developed comprehensive approaches to Dispute Resolution. [101]

3.9.6 Norway

Mandatory mediation was introduced here in 1991. Today, the general rule is that all married and cohabiting parents with children under 16 who separate must attend at least one compulsory hour of mediation which is provided free of charge to all. Free mediation can be extended routinely by a further three hours initially where there seems to be prospect of agreement. [102] There is a ceiling of seven hours free mediation provision. A divorce will not normally be granted where there are children under 16 unless mediation has been attempted. Entitlement to an extended child allowance from the state is also conditional upon the parties proving that they have participated in the extra-judicial mediation process. Normally parties must attend together, but the mediator can decide they should attend separately or with a representative and these strategies are used in domestic violence situations. Norwegian research in 2011 shows 75% of all cases settle through mandatory mediation although 50% of these couples had reached agreement prior to attending. Of this last already agreed group 60% reported that mediation had resulted in a more

[100] ibid
[101] ibid
[102] Professor Janet Walker and Professor Anne Barlow, available on http://www.justice.gov.uk/downloads/family-mediation-task-force-report.pdf(last visited 26.4.21)

thought-out and detailed agreement. Means-tested legal aid is also available to couples before and after mediation and is available for representation at court. [103]

Since 2004, the court has had a duty to assess at every stage of the trial process if and to what extent an amicable solution might be achieved and to undertake the necessary measures to achieve it. At a preliminary hearing the parties are informed through an expert in child welfare – of the legal and practical consequences of further legal action. The court can then order a new extra-judicial mediation process it can appoint expert advisors not only to participate in the preliminary discussions but also to conduct separate discussions with the parties and/or the children or to investigate the actual circumstances it can meet with the children separately or where necessary with the assistance of a further expert or another appropriate person it may also have separate communications with the experts involved and finally the court may give the parties the opportunity to test out a preliminary settlement for a specified period of time where necessary with the participation of an advisor having appropriate expertise while at all times granting the parties the right to discontinue the test period and recommence legal proceedings. While the traditional investigative activities performed by expert witnesses in the court process are not publicly funded the state funds intermediary and advisory activities performed by experts in connection with attempts to reach a mediated resolution. [104]

The success of mediation following its initial introduction led to its expansion at the expense of the public purse.

It seems expenditure cuts are in train that will reduce the extent to which mediation and expert advice within it is freely available to all. Mediation is provided by family counseling services. Mediators can be appointed from other professions, including the clergy, lawyers, and school psychologists. Of the 25% of all couples whose cases do not settle through mandatory mediation, two thirds settle through 'post-court proceedings' mediation. The remaining third go forward for judicial disposal. Thus just under 10 per cent of all cases go to court for judicial disposal. [105]

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[103] ibid
[104] ibid
[105] Available on http://www.justice.gov.uk/downloads/family-mediation-task-force-report.pdf(last visited on 28.4.21)

3.9.7 France

In France civil mediation of which family mediation is apart did not achieve statutory recognition until 1995. Under the French system mediation remains independent via the court throughout the mediation service. Although the court may on its own initiative or at the request of the parties appoint a mediator to assist the parties to reach a solution to their dispute, a mediator is not required to submit a report to the court authorities. The French have not set up public mediation service since the voluntary sector has been proven to be best suited for the tasks delegated by the courts. The costs of mediation are normally borne by the users of the service. However, those with limited resource may apply publicly funded legal aid.

3.9.8 Sweden

Mediation in Sweden, known as Cooperation Talks is offered free via social services. Most parents 90% reach agreement either by themselves or with the help of a mediator. Co-mediation is the usual model used but mediation in Sweden does not include public funding for financial matters. [106]

3.9.9 Ireland

In Ireland, family mediation is provided free of charge to all and can be accessed through the Legal Aid Board of which the Family Mediation Service is now a part. There is no recent data as regards the performance of the Family Mediation Service in Ireland available. However, recent qualitative research undertaken in 2010 indicates that although mediation does seem to be used primarily to resolve disputes relating to children, there are issues around the service being overburdened and under resourced. Interestingly Collaborative Law is also available through legal aid in Ireland and a recent qualitative study in 2013 indicates that this is used more for financial issues and is higher cost. However it has achieved a move towards a more general 'collaborative approach' to resolution of family disputes. [107]

[106] ibid
[107] ibid

CHAPTER-4

LEGISLATIVE FRAMEWORK REGARDING MEDIATION AND CONCILIATION AND INSTITUTIONAL SET UP IN RESOLVING MATRIMONIAL DISPUTES IN INDIA

4.1 Introduction

While the most obvious end result to a contest should be a suitable goal, with the progression of time, it has been regularly twisted to demonstrating one is correct and starting a trend. In a perfect world in such respectful and all the more especially business debates the gatherings can endeavor to address their disparities over a table distinguish and convey their center advantages and objectives, and think of their own attainable arrangements. They can feel free to actualize their answer and the dispute will be settled without response to a courtroom. Nevertheless if this was so natural and gatherings could do it all alone they would have never turned to an ill-disposed strategy. All things considered, our answer is this It is essential to comprehend that a dispute additionally has numerous decibels. Past a specific volume, the contest gets hard to determine without outsider intercession or potentially a functioning help.

Adversarial techniques like suit and arbitration, obviously, have colossal advantages with regards to building up a point of reference in law and possibly, improvement of the standards of law. But all the while the gatherings take on a lawful conflict against one another to be announced as a lawful victor, a champ.

The relationship, effectively debilitated by the contention break down strongly as the procedure unfurls. A distinction of conclusion rises to a difference, and with time, a contradiction heightens to a question. To go to an answer a debate should be de heightened back to a distinction of conclusion where entryways of helpful correspondence are opened once more. While adversarial procedures just heighten the contention further and correspondence reaches a dead-conclusion, this is the place intercession comes helpful.

Mediation and Conciliation are out of court question settlement systems that attention on the business interests of the parties instead of what is reasonable and who isn't right. Intercession is a deliberate and non-restricting negotiating process. In

intervention a third unbiased and impartial gathering deals with the cooperation between the questioning parties. This unbiased party is known as a middle person.'

The assistance of negotiation between questioning gatherings by the middle person guarantees useful exchange between the contesting gatherings and causes them concur on a goals that is reasonable, solid, and serviceable. It is simply the disputants and not the go between who make lastly concur on how the debate should be settled. As it were intervention is only the utilization of arrangement to determine a contest outside the conventional dispute resolution framework.

The Arbitration and Conciliation Act 1996 with new part of conciliation is acceptable accomplishment and type of ADR System to conclude the dispute at global and domestic level. There are likewise such a significant number of different sculptures, which accommodate the Mechanism of Mediation and Conciliation Dispute Resolution System in India. These arrangements are examined beneath.

4.2 The Arbitration and Conciliation Act, 1996

The law of arbitration in India till the year 1996 was administered by the Arbitration Act of 1940 which has been replaced by the Arbitration and Conciliation Act 1996 No. 26 of 1996 herein after Act. The law on arbitration in India at the hour of the reception of the new Act was contained in -

i. The Arbitration (Protocol and Convention) Act, 1937.
ii. The Arbitration act, 1940.
iii. The Foreign Awards (Recognition and Enforcement Act), 1961.

It was an inescapable need to change the Arbitration law so as to make monetary and social changes completely powerful and to manage with arrangement of both neighborhood and worldwide business questions in calm manner. It is in the start of the year 1996 when the assignment for presentation of new Act could be cultivated. [1]

4.2.1 Preamble of the Act

An Act to consolidate and modify the law concerning to domestic, arbitration, international commercial arbitration and enforcement of foreign arbitral awards as

[1] Avtar Singh, The Law of Arbitration and Conciliation,2 (Central Law Agency,2002)

also to define the law relating to conciliation and for the matters connected therewith or incidental thereto. [2]

4.2.2 Major highlights of the Act, 1996

1. The Arbitration and Conciliation Act 1996 gives not exclusively to residential arbitration however spread its scope to universal business Arbitration as well. The Indian law identifying with implementation of outside Arbitration grants gives the more prominent self-governance in arbitral procedure and cutoff points' legal intercession to a smaller circuit than under the past law. [3]

2. The name Arbitration and Conciliation Act itself suggest that it assign with two types of proceedings arbitration proceedings and conciliation proceedings. A clear distinction is maintained in the statute between arbitration proceedings and conciliation proceedings. While provision relating to arbitration proceedings are contained in part I in which chapters I to IX the conciliation proceedings are dealt with in part III which includes section 61 to 81. [4]

3. The New Act is a loosely integrated version of the Arbitration Act 1940 the Arbitration Protocol and Convention Act 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. It actually consolidates amends and puts together three different enactments. But having regard to the difference in the object and purpose and the nature of these three enactments the provision relating thereto are kept separate. [5]

4. The Arbitration and Conciliation Act, 1996 is an exceptional law. This is clear from the way that the Arbitration and Conciliation Act 1996 recommends a time of impediment for an application to put aside an award which is not quite the same as what is endorsed under the Limitation Act, 1963. It additionally avoids the use of section 5 of the Limitation Act concerning delay in recording the goals on account of section 29 of the Limitation Act. It is obvious from the language of Section 29 of the Limitation Act which says that when there is an

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2 The Arbitration and Conciliation Act, 1996, the Preamble
3 Konkan Rly Corpn. Ltd v. Mehul Construction Co. A.I.R 2000 SC 2821
4 Haresh Dayaram Thakur v. State of Maharashtra (2000) 2) Arb.LR 401 (SC)
5 Fuerst Day Lawson Ltd v. Jindal Experts Ltd (2011)8 SCC 333

exceptional law and a general law endorsing the impediment, the arrangement of unique law will win. [6]

5. The 1996 Act has presented a few changes of which three are worth note of - (I) Fair goals of a question by a fair-minded court immediately or costs. (ii) party self-governance is central subject just to such protects as are important in broad daylight intrigue. and (iii) the Arbitral Tribunal is ordered with an obligation to act decently and unbiased. [7]

6. A remarkable feature of the new Act of 1996, following the UNCITRAL. Model Law and in the step with other modern arbitration laws is that the concept of party autonomy runs through the entire fabric of the Act. The principle of party autonomy is the central theme of the new Act. The expression unless otherwise agreed by the parties, parties are free to agree with the agreement of parties if the parties have expressly authorized etc giving party autonomy appear throughout the body of the various sections of the Act. The underlying idea throughout is to give freedom to the parties to determine by reference to any existing set of arbitration rules or by an ad hoc agreement, the procedure to the followed, subjects to fundamental requirements of fairness and justice. [8]

7. A very significant feature of the present Act is that intervention of the Court in Arbitral proceedings has been minimized. The current law accommodates just two events where courts mediation can be looked for at the pre-arbitral award stage.[9]

8. The present Act doesn't recommend whenever limit for creation of an arbitral award. Within that respect there is departure from the provisions of Arbitration Act1940 under which a time limit of four months was prescribed for making arbitral award and further there was a provision for extension of time by the court. These provisions in the Act of 1940 led to considerable litigation and umpteen occasions for the court to extend time. The non- prescription of a time limit for making arbitral award in the present Act does not mean that the

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6 Angel Infin (P) Ltd v, Echjay Industries Ltd (2007)3 Bom.Cr.997
7 Centrotrade Minerals & Metals Inc v. Hindustan Copper Ltd (2006)11 SCC 245
8 The Arbitration and Conciliation Act,1996(26 of 1996), s. 18
9 ibid s. 9 and 14(2)

arbitrator will be free to prolong the arbitration as much as he wants. Delay on the part of the arbitrator has been made ground for termination of the mandate of the arbitrator. [10]

9. Under the 1996 Act, the reason on which an award of an arbiter could be tested before the court have been strictly cut down and such challenge is now allowed on the basis of invalidity of the agreement want of jurisdiction on the part of the arbitrator or want of proper notice to a party of appointment of the arbitrator or of arbitral proceedings. [11]

10. A new arrangement has been made in 1996 Act engaging an arbitral court to give a translation of explicit point or part of endless supply of a gathering which can be made just in the event that it was so concurred by the parties. .[12]

11. The arbitral court has likewise been enabled to make an extra arbitral award as to claims introduced in the arbitral procedures yet overlooked from the arbitral award. [13]

12. The Act deals with applicable law or proper law. Under this provision in case of international arbitration where the place of arbitration is situated in India the arbitral tribunal shall decide the dispute in accordance with rules of law designated by the parties as pertinent to the essence of the dispute. In lack of such description the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute. This Act also provides that arbitral tribunal shall give decision in all cases in accordance with terms of the contract and shall also take into account the usages of the trade applicable to the transaction. [14]

13. The 1996 Act provides that an arbitral tribunal shall decide ex aequo et bono or as amiable compositeur only if the parties expressly authorized it to do so. Ex aequo et bono is a phrase derived from civil law meaning in justice and fairness according to what is just and good according to equity and conscience. Amiable Compositeur is a French term. An amiable compositeur

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10 The Arbitration and Conciliation Act,1996 (26 of 1996), s. 14(1) (a)
11 Konkan Railway Corporation. Ltd v. Mehul Construction co. (2000) SC 2821
12 The Arbitration and conciliation Act, 1996 (26 of 1996) s. 33 (1) (b)
13 ibid s. 33(4)
14 ibid s. 28(1) (b) and 28(3)

is said to be a person who adopts a flexible approach reflecting fairness and reality. The above provision permits an arbitral tribunal with certain limits to disregard strict legal or contractual requirements.

14. The 1996 Act permits court's mediation in nine circumstances; capacity to allude the gatherings to arbitration where there is an arbitration agreement section 8 granting of interim measure Section 9 power to decide whether arbitrator who is challenged by the parties is entitled to have any fees section 13 power to decide on termination of the mandate of an arbitrator section 14 for assistance in taking evidence Section 27 setting aside of arbitral award section 34 enforcement of arbitral award section 36 hearing appeals from original decrees of the court passing the order section 37 and cost of arbitration section 39.

15. The Arbitration and Conciliation Act 1996 does not allow a second appeal. This is the unique feature because it reflects the intention of the legislature that they wanted to speed up the award making process so that the time is saved.

16. The 1996 Act empowers an arbitral tribunal to encourage settlement of a dispute through mediation, conciliation, negotiation etc even after arbitration proceeding have been initiated. The Conciliation procedure is different from conciliation referred to in part III of the Act. Whereas conciliation initiated under part III is a separate proceeding in accordance with detailed and structured scheme envisaged under that part this conciliation resorted in the course of an arbitral proceedings will be mere informal and flexible. Any settlement arrived at by the parties during the course of arbitral proceedings will be record by the arbitral tribunal in the form of an arbitral award on agreed terms. Such a settlement will have the same status and effect as any other arbitral award on the substance of dispute. [15]

17. Under the 1996 Act unless the agreement provides otherwise, the arbitrators are required to give the reason for the award. The award itself has now been vested with status of decree, in as much as award itself it is made executable as decree and it will no longer to be necessary to apply to the court for a decree in terms of award. This a major change made by the present Act. The

[15] The Arbitration and Conciliation Act,1996 (26 0f 1996), s.30

law has now been brought on par with English law as well as the UNCITRAL Model Law. The requirement of reasons in an arbitral award, unless so required by arbitration agreement or any statutory provisions were not essential under the old law. [16]

18. The significance of transnational business discretion has been perceived and it has been explicitly given that even where the intervention is held in India the parties to the agreement would be allowed to assign the law material to the substance of dispute.

19. There is no provision in the new Act for referring the matter to an arbitrator by intervention of the court. However, if during the pendency of the proceedings in the court parties enter into an arbitration agreement then they have to proceed in accordance with the provisions of the new Act. When the award is made, it is a decree. It cannot be filed in the High Court. It has to be filed in the court as defined in clause (e) of section 2 of the new Act for its enforcement as a decree under section 36 of the new Act. If there is a challenge to the award recourse has to be under Section 34 of the new Act.

20. The new Act provides a two level system. In two level systems, the first part of the legislative provision grants the parties general freedom in regulating an issue while the second part sets forth the default rules which apply only when no such party stipulation is made. The first choice is given to the parties to agree on various details of arbitral process like number of arbitrators procedure for appointing them procedure for challenging them for terminating their mandate the place of arbitration the commencement of arbitral proceedings language to be used in arbitral proceedings whether there would be oral hearing or not and on diverse other details If that level fails, the act provides for a second level; a default alternative procedure by enacting diverse legal provision. The 1996 Act contains two bizarre highlights that varied from the UNCITRAL Model Law. First while the UNCITRAL Model Law was intended to apply just to global business mediation, the Act 1996 applies both

[16] ibid s. 31(3)

to universal and local discretion. Second the 1996 Act goes past UNCITRAL Model Law in the terms of limiting legal intercession. [17]

4.3 Conciliation and its Mechanism

Before the approach and beginning of the Arbitration and Conciliation Act 1996 there were not many arrangements of appeasement process in India. The component of conciliation process for dispute resolution in Indian statutes was accessible in the authorizations viz. (i) Order XXXI lA Rule 3 of the Civil Procedure Code which makes obligation of the Court to put forth attempts for settlement of each family dispute by method of conciliation. (ii) Section 12 of the Industrial Disputes Act, 1947 requires the Conciliation Official to start and achieve a settlement in a industrial dispute. (iii) The Section 23 of the Hindu Marriage Act 1955. and (iv) the Section 34 of the Special Marriage Act 1954 accommodates compromise of marital disputes before the legal official. However, after establishment of the Act of 1996 sufficient arrangements have been made under Part III of the Act which bargains with the conciliatory provisions.

Part III (Section 61 to 81) of Arbitration and Conciliation Act 1996 comprising of 21 section deals with various aspects of the process of conciliation.

The arrangement under part III of the Arbitration and Conciliation Act 1996 give same status and impact on the settlement agreement as although it is an award on be in accord balance on the substance of questions rendered by an arbitral tribunal under Section 30. There are three primary special cases to the use of this part. **First** in the situations where any law for the present in power gives in any case. **Besides** in the circumstances where the social events make an arrangement to abstain from being controlled by the plans of part III and assent with the effect not to settle questions by pacification. **Thirdly** where any law for time being in power in India restricts certain questions to be submitted to settlement. Subject to these lawful uncommon cases questions developing out of legally binding or tortious relationship may be settled by conciliation according to the framework supported under part III of the Arbitration and Conciliation Act, 1996.

[17] S. K. Dholaka,'Analytical Appraisal of the arbitration and conciliation,3(Amendment) Bill 2003 , (ICA's Arbitration Quarterly, ICA, New Delhi ,2005 vol. XXXIX/No. 4

4.3.1 Application and Scope of Part III of the Act, 1996

It discusses the extension and ambit of part III of the Act. The section gives that the arrangement of part III is pertinent to mollification of questions emerging out of legitimate relationship, regardless of whether legally binding or not and to all procedures relating thereto. Anyway it likewise gives that Part III of the Act will not have any significant bearing to the accompanying cases. [18]

a) Where the arrangement of this part is made inapplicable by any law for the present in power. and

b) Where parties have otherwise agreed to expressly excluded conciliation.

Moreover, Part III will not matter when by uprightness of any law until further notice in power certain debates may not be submitted to pacification. [19]

4.3.2 Conciliation Proceedings

4.3.2.1 Commencement of Conciliation Proceedings

Section 62 prescribes the procedure for the commencement of conciliation proceedings. For settling the disputes through conciliation all that is required is written proposal and acceptance thereof. The other party has an option either to accept the invitation or reject the same. [20] Rejection may be express or implied. If the proposer does not receive a reply within thirty days or other stipulated period it amounts to rejection and rejection will not start the conciliation. [21]

4.3.2.2 Number of Conciliators

After the acceptance of proposal for conciliation then next step is to have a conciliator. It also envisages that there will be only one conciliator. [22] The parties cannot have more than three conciliators that is the maximum limit. Sec 63(2) says that in case more than one conciliator they are required to as a general rule to act together.

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18 The Arbitration and Conciliation Act,1996 (26 of 1996), s.61(1)
19 Ibid s. 61(2)
20 Ibid s. 62(1) and (2)
21 Ibid s. 62(3) and (4)
22 Ibid s. 63

4.3.2.3 Appointment of Conciliators

Two modes are provided for appointment of conciliators. First the parties may appoint the conciliator themselves. [23]

a) A Sole Conciliator The parties may mutually agree on the name of sole conciliator.
b) Two Conciliator
c) Each party may appoint one conciliator.
d) Three Conciliator each party may appoint the name of third conciliator who shall act as presiding authority.

Second the parties may seek the assistance of a suitable institution or person to appoint conciliators. [24]

4.3.2.4 Compliance of statement to conciliator

This section provides for submission to the conciliator. It says that the go-between upon his appointment may request each of the party to tender him a concise written statement relating the common nature of the disputes and the points at concern. Every one shall send a copy of such statement to the other party. The conciliator may further request each party to submit to him a further a written statement of his position and the facts and grounds in support thereof supplement by any documents and the other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party. The conciliator may, at any stage of the proceedings may request a party to submit to him such additional information as he deems appropriate. [25]

The Role of conciliator is of utmost importance because it is he who has to make sincere and honest efforts to assist the parties to reach an amicable settlement of disputes. The role of conciliator is envisaged under section 67.

4.3.2.5 Conciliator not bound by certain enactments

This Section provides that the conciliator is not bound by procedure of Civil Procedure Code or Evidence Act. It does not mean that he is not required to follow

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[23] Ibid s.64 and 64(1)
[24] Ibid s. 64(2)
[25] Ibid s. 65

the principles of natural justice and fair play however it is expected from the conciliator that he will be impartial, efficient and integrated in the conduct of conciliation in most transparent manner. [26]

4.3.2.6 Role of Conciliator [27]

a) The go-between shall aid the parties in an autonomous as well as unbiased mode in their endeavor to accomplish an agreeable conclusion of the disputes.

b) The go-between shall be guide by set of guidelines of neutrality, equality and fairness giving consideration between other things, the rights and obligations of the parties the usages of trade concern and circumstances surrounding the disputes including any previous business practices between parties.

c) The go-between may demeanor the conciliation proceedings in such a manner as he considers appropriate taking into account the incident of the case the requirements of the parties may express including the request by a party that the conciliator hear oral statement, and the need for a speedy settlement of disputes.

d) The conciliator may at any stage of proceedings make proposals for settlement of disputes. Such proposals need not be in writing and need not be accompanied by settlement of reasons therefor.

4.3.2.7 Administrative assistance

In order to make possible the behavior of the conciliation proceedings the parties or the go-between with assent of the parties may assemble for managerial help by a appropriate organization or individual. This section is itself descriptive along with provide for the administrative assistance to the conciliator in conducting the conciliation proceedings expeditiously and effectively. The conciliator may also seek administrative assistance by a suitable institution if the parties to the dispute consent to it. [28]

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[26] The Arbitration and Conciliation Act,1996 (26 of 1996), s.66
[27] ibid s. 67
[28] Ibid s. 68

4.3.2.8 Communication between conciliator and parties [29]

a) The go-between may convince the parties to meet him or may communicate with them orally or in writing. He may meet or converse with the parties together or with each of them separately.

b) Unless the parties have agreed on the place where the meeting with conciliator are to be held such place shall be determined by conciliator after the consultation with the parties having regard to the circumstances of the conciliation proceedings.

The section authorizes the go-between to invite the parties to meet him or communicate him orally or in writing. He may communicate with both the parties together or with each one of them separately. The place of meeting will be decided by the conciliator consultation with the parties having regard to their convenience. However the parties shall have the liberty of agreeing upon the place where the meeting with conciliator is to be held and it is the only when the parties fail to decide themselves about the venue of the meetings that the conciliator shall take the decision in this regard.

4.3.2.9 Disclosure of information [30]

This section provides privilege to conciliator whether to disclose information made known to him by one party to other party. It provides that when the conciliator receives accurate information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate.

Provided, however, that when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliation shall be disclosed that information to the other party.

4.3.2.10 Assistance of parties with conciliator [31]

The parties shall in good faith Co-operate with the conciliator and in particular shall endeavor to comply with requests by the conciliator to submit written materials provide evidence and attend meetings.

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[29] Ibid s. 69
[30] ibid s. 70
[31] Ibid s. 71

Section 71 underlines the need for the parties to co-operate with the conciliator in the conduct of conciliation proceedings. It requires the parties to comply with the request by the conciliator. -

1. To tender pertinent materials.
2. Present evidence. and
3. Be present at meetings when arranged by the conciliator.

It hardly needs to be emphasized that co-operation of parties constitutes the very core of conciliation as a dispute resolution mechanism. Therefore without the active co-operation of the parties the conciliator cannot function effectively and his conciliatory effects would not succeed.

4.3.2.11 Suggestions by parties for settlement of disputes [32]

Each party may, on his own initiative or at the request of the conciliator, submit to the conciliator suggestions for the settlement of the dispute. Section 72 allows the parties that they may at their initiative or at the invitation of the conciliator submits their suggestions to conciliator for speedy settlement of dispute. The suggestion made by the party or parties should, however be reasonable and acceptable to all of them including the conciliator. It is for the conciliator to decide and determine the fairness of the suggestion so advanced by the part or parties.

4.3.2.12 Settlement agreement [33]

1. When it appears to the go-between that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observation. After receiving observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.
2. If parties reach concurrence on conclusion of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties the conciliator may draw up or assist the parties in drawing up the settlement agreement.

[32] Ibid s,72
[33] Ibid s.73

3. Whilst the parties sign the resolution conformity it shall be concluding moreover binding on the parties and person claiming under them respectively.

4. The go-between shall validate the resolution agreement also supply a copy thereof to each of the parties.

4.3.2.13 Status and effect of settlement agreement [34]

This provides that the settlement agreement shall have the same status and effect as if it is arbitral award on agreed terms on the substance of the dispute rendered by the arbitral tribunal under section 30.

The procedure of arriving at the settlement agreement begins with the conciliator who shall formulate a possible settlement and submit it to the parties for their observations. On the receiving of the observations by the parties the conciliator may reformulate the possible settlement with necessary amendments as suggested by the parties through their observations. On reaching the settlement, the parties may draw up the settlement agreement and sign it themselves or may ask for assistance of the conciliator or entrust the conciliator to draw up it himself, and then sign it. After the settlement is signed by both the parties and duly authenticated by the conciliator it becomes final and binding on the parties and parties claiming under them.

4.3.2.14 Confidentiality[35]

Section 75 relates to keeping close to their chest all matters and aspects of conciliation proceedings by the parties concerned and also the conciliator. In other words it prohibits strangers or outsiders to get to know any of the matters or other details under conciliation proceedings. It not only pertains to the conciliation proceedings but also prevents such disclosure is necessary for the purpose of implementation and enforcement of such an agreement. It is obvious that this section meant to pose, repose, and impose confidence between the parties and also the conciliator and in their commercial interests.

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34 Ibid s.74
35 Ibid s.75

4.3.2.15 Termination of conciliation proceedings[36]

The appeasement proceedings shall be terminated'-

1. Through signing of resolution agreement by the parties on the date of the agreement.
2. By a written declaration of conciliator after consultation with parties, to the effect that further efforts at conciliation are no longer justified on the date of declaration.
3. By a written declaration of the parties addressed to conciliator to the effect that conciliation proceedings are terminated, on date of the declaration. or
4. By a written declaration of a party to the other party and the conciliator if appointed to the effect that conciliation proceedings are terminated on the date of declaration.

4.3.2.16 Resort to arbitral judicial proceedings[37]

Section 77 prevents parties not to commence any other arbitral or legal proceedings in respect of a dispute that is the subject matter of conciliation proceedings during ongoing proceedings. It further provides that a party may initiate arbitral proceedings elsewhere if the party realizes that resorting to such proceedings has become inevitable for safeguarding his rights.

4.3.2.17 Costs

This contains the provisions relating to 'costs' in context of conciliation proceedings. The expression cost for the purpose of this section means fee and expenses of the conciliator and witnesses which are summoned with the consent of parties and expenses incurred in seeking expert advice which the conciliator deems necessary with the consent of the parties. The amount of costs shall be borne equally by the parties unless the settlement agreement provides for different apportionment with the consent of the parties. It must, however be stated that neither the UNCITRAL Law nor the rules permit appointment of an expert for seeking expert advice by the conciliator as provided in sub section (2)(b) of this section. [38]

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[36] Ibid s.76
[37] Ibid s.77
[38] Ibid s.78

4.3.2.18 Deposits[39]

Section 79 deals with deposits. Sub –Section (1) provides that conciliator may direct each one party to deposit an equivalent amount as an advance for the costs of conciliation proceedings as mentioned in Section 78(2) of the Act. Section 79(2) further authorizes him to direct supplementary deposits in equal amount from each party, during the conciliation proceedings.

It provides further that in case the deposits requisitioned by the conciliator are not paid in full by the parties within a period of 30 days from the date of demand the conciliator may either suspend the conciliation proceedings or he may even terminate the proceedings by making written declaration to that effect. [40]

It further provides that unexhausted amount if any, shall be returned by the conciliator to the parties in equal amount after the termination of conciliation proceedings. [41]

4.3.2.19 Role of conciliator in other proceedings

This section debars the conciliator to act as an authority or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of conciliatory proceedings furthermore the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.[42]

4.3.2.20 Admissibility of evidence in other proceedings[43]

Section 81 enacts four types of evidence which cannot be relied on or introduced as evidence in arbitral proceedings where subject matter is same as of conciliation proceedings. (a) views expressed or suggestion made by the other party in respect of a possible settlement of the dispute;. (b) Admissions made by the other party in the course of the conciliation proceedings. (c) Proposals made by the conciliator. (d) The fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

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39 Ibid s.79
40 Ibid s.79(3)
41 Ibid s.79(4)
42 Ibid s.80
43 Ibid s.81

4.4 Conciliation under The Constitution of India

The Constitution of India under Article 51 additionally accommodates advancement of universal harmony and security and to empower settlement of global questions by intervention. The Article 51 (a) gives that the State will try to advance worldwide harmony and security. The Article 51(b) requires keeping up just and noteworthy relations between the Nations. The Article 51(c) accentuated that the State will encourage regard for global law and arrangement commitments in the dealings of composed individuals with each other. The Article 51(d) requires the State to energize settlement of global questions by intervention. It very well may be reasoned that the Mechanism of ADR framework isn't new rather the ages are absent of the framework. The Article 51 of the Constitution is a genuine case of ADR System which gives disputes resolution through compromise settlement keeping up harmony and security at universal level. [44]

4.5 Conciliation Under The Civil Procedure Code

4.5.1 Conciliation at Examination Stage

The Civil Procedure Code engages the Court to make assessment of both the parties. The Court at the major becoming aware of the suit will determine from each party or their pleaders whether they concede or prevent such charges from claiming truth as are made in the plaint including composed explanation of the contrary party. The Court will record such affirmations and refusals and other arrangement of protection set forward by the parties. [45] Nevertheless, after the alteration made to the Civil Procedure Code by a correction Act 46 of 1999 has dressed the Court to fall back on the component of ADR for dispute resolution. The Parliament has embedded three extra principles viz. 1A, 1B, 1C, which has made it required with respect to the Judicial Officer to guide the gatherings to decide on any of ADR modes to determine the question by method of reciprocal settlements. The Order X, Rule 1A requires that after the account the confirmations and dissent the Court will guide the parties to the suit to select either method of settlement outside the Court as determined in Sub-Section (1) of Section 89 viz. arbitration, conciliation, legal settlement including settlement through Lok Adalat or Mediation. In the event that the parties acknowledge

[44] The Indian Constitution of India, art. 51

[45] The Code of Civil Procedure, 1908 as amended by [Amendment](Act 46 of 1999 & 22 of 2002), Order X, Rule 1

the alternative the Court will fix the date of appearance before such discussion or position to lead settlement as might be selected by the parties. [46]

Furthermore, gives that where a suit has been eluded under rule 1A, the gatherings will show up before such discussion or authority for conciliation of the suit. [47] On the off chance that, where a suit was alluded under principle 1A and the presiding officer of conciliation forum is satisfied that it would not be appropriate in light of a legitimate concern for equity to continue with the issue what's more, in light of the fact that there is zero chance of settlement or conciliation the conciliation gathering or authority will allude the issue again to the Court alongside headings to the gatherings to show up under the steady gaze of the Court on the date fixed by it for preliminary of the case and decision. [48]

4.5.2 Conciliation in the suit of Government or Public Officer

The Civil Procedure Code under Order XXVII Rule 5B requires the Judicial Officer on obligatory premise to help with showing up at a sensible settlement where the suits have been established against the Government or a Public Officer acting in his official limit. The Rule imagines that in each suit or continuing to which the Government, or an open official acting in his official limit, is a gathering, the Court will make in the main example each try, to help the gatherings in showing up at a settlement in regard of the topic of the suit. The Judicial Officer is to resort for settlement of the suit just where there is plausibility to do so reliably and keeping in see the nature and conditions of the case. [49] The Rule 5B (2) has comforts the Judicial Officer for allowing suspension of the case till conclusive settlement between the gatherings. The Rule further gives that if it appears to the Court and is fulfilled that there is a sensible chance of a settlement between the gatherings the Court may suspend the procedures for such period as it might suspect fit empowering the two gatherings to make an endeavor towards settlement. The Order XXVII Rule 58 (3) clarifies that these powers gave under sub-rule (2) is notwithstanding some other forces of the Court to defer procedures for reason for settlement. [50]

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46 The code of civil Procedure (Act 22 of 2002), Order X Rule1A
47 ibid order X Rule 1 B
48 ibid order X Rule 1C.
49 ibid order X Rule 5B (1)
50 ibid Order X Rule 5B (2) & (3)

4.5.3 Conciliation in Family Suits

The arrangement for compromise between the gatherings to a contest identifying with family matters has likewise been presented in the Civil Procedure Code under Order XXXII A which makes obligation on the Court to put forth attempts for their agreeable settlement. The Order XXXIIA applies just to the suits or procedures relating to matrimonial relief including presentation as to the legitimacy of marriage or their status affirmation with regards to the authenticity of any individual, procedures corresponding to the guardianship of the individual the authority of minor or other individual from the family who is under any sort of inability suits instituted for grant of maintenance and alimony, adoption, procedures identifying with wills, intestacy and progression or some other partnered matter concerning the family in regard of which the parties are dependent upon their own law. [51]

The Order XXXIIA Rule 3 gives that Court on having examined the realities of the case before which the suit or procedures have been initiated and if the legal official keeping in see the nature and conditions of the case is fulfilled that it is steady to settle the topic he will in the primary case make an undertaking and help the parties in showing up at a sensible settlement in regard of the topic of the suit. [52] The principle goal of Order XXXIIA is to bring the parties close for bargain settlement rather than legal preliminary. The settlement of the contest can be influenced at any phase in spite of the way that the legal procedures host been started against the parties.

The Order XXXIIA Rule 3 (2) imagines that on the off chance that there is a sensible chance of settlement between the parties the Court may dismiss the procedures for such period as the Court might suspect fit empowering them to investigate the endeavors to impact right settlement. [53]

The power under sub-rule (2) are notwithstanding and not in disparagement of some other intensity of the Court to suspend the procedures. The Order XXXII A, Rule 4 enables the Court to make sure about the administrations of specialists ideally a lady who is proficient or ace to effectuate bargain and advance the government assistance of the family or as the Court consider proper for motivation behind friendly

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51 Ibid order XXXIIA Rule 1
52 Ibid order XXXIIA Rule 3(1)
53 ibid, Order XXXIIA Rule 3(2)

settlement. [54] The word 'family' for motivation behind Order XXXIIA has been characterized under Rule 6 and nothing past could be applied .[55]

4.5.4 Settlement by an agreement between the parties

The Civil Procedure Code accommodates the gatherings to make alteration of their case in suit either completely or to some degree by legitimate understanding or bargain among them and without response to any Court Authority or Tribunal. In any case the understanding must be communicated recorded in writing and marked by each gathering. In such a circumstance if the Court is fulfilled and it is demonstrated before the legal official that suit has been balanced entirely or on the other hand to some degree by an understanding the Court will request such understanding or bargain to be recorded and pass a declaration to this effect. [56] However litigant needs to fulfill the offended party in regard of the entire or part of the topic which is a basic prerequisite of the Order XXIII. The alteration or fulfillment so claimed by one gathering ought not to be denied by another. The Court will choose the inquiry moving forward without any more suspension except if the Court thinks fit to allow such dismissal and for doing so the reasons must be recorded in writing. [57]

4.5.5 Settlement of dispute under Section 89 CPC

The Section 89 has been reinserted to the Civil Procedure Code alteration[58] Act 46 of 1999. The section accommodates settlement of dispute outside the Court. The agreement of this provision under Section 89 depends on the proposals made by the Law Commission of India and the Malimath Committee. The Law Commission has underlined the attractive quality of the Courts being enabled to force parties to a private prosecution to turn to arbitration, conciliation or mediation. [59]

The Section 89 to Civil Procedure Code requires for settlement of questions outside the Court where it appears to the Court that there exists a component of a settlement to the procedures before him and that might be admissible to the parties. The Section 89 gives that the Court will define the terms of settlement and offers them to the

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54 ibid order XXXIIA Rule 4
55 ibid Order XXXIIA Rule 6
56 ibid Order XXIII Rule 3
57 The code of Civil Procedure Code (22 of 2002), Proviso, Order XXIII Rule 3
58 The Section was repealed by Act 10 of 1940 and has been again inserted by Act 46 of 1999 and came into force w.e.f. 1 July, 2002
59 The Law Commission of India, 129th Report (on Urban Litigation)

parties for their perceptions. In the wake of accepting the perceptions from the concerned parties the Court may reformulate the conditions of a potential settlement and elude the suit or procedures for arbitration, conciliation and legal settlement including through Lok Adalat or mediation. [60]

The Section 89 further gives that in case of reference under this section for arbitration or conciliation, the arrangements of the Arbitration and Conciliation Act 1996 will be relevant in a similar way as though the procedures for arbitration or conciliation were eluded under the arrangements of Arbitration and Conciliation Act, 1996. In the event that the settlement of question has been turn through Lok Adalat the Court will elude as per the arrangements of Section 20(1) of Legal Services Authority Act 1987 and every single other arrangement of Legal Services Authority Act, 1987 will apply to the procedures. Where the question has been eluded for legal agreement the Court will elude the corresponding to a practical basis or individual, which will be considered to be a Lok Adalat and all arrangements of the Legal Services Authority Act 1987, will apply as per requirements. In case of intervention the Court will impact a compromise between the gatherings and will follow such strategy as might be prescribed. [61]

4.5.6 Conciliation Under Hindu Marriage Act,1955

There is likewise arrangement for compromise of family disputes and matrimonial causes under Section 23 sub-clause (2) of the Hindu Marriage Act, 1955. The Act makes bounden obligation on the legal official and requires that before the inception of the procedures so as to concede any help to the party under the Hindu Marriage Act 1955 it will be the responsibility of the Court in the main occasion to make each try to realize a compromise between the parties. The undertaking will be made where there is probability to arrive at a friendly settlement. The Court will offer compromise to the gatherings where it is conceivable to do so reliably furthermore, without bias to any gathering keeping in see the nature and conditions of the case. [62] This Act forces an obligation on the court to impact conciliation between parties. This is an obligation on the court and it must be released judicially. Still, simply in light of the fact that

[60] Section 89(1) of Civil Procedure Code
[61] Ibid s.89(2)
[62] The Hindu Marriage Act,1955, s. 23(2)

court didn't perform its responsibility; a declaration in a matrimonial cause can't be tested or held in nullity. [63]

4.5.7 Conciliation Under Special Marriage Act,1954

The arrangement for agreeable settlements of debate relating to the wedding alleviation additionally exists under the Special Marriage Act 1954. Section 34 Sub-clause (2) of the Special Marriage Act, 1954 provides reason to feel ambiguous about an obligation the Court to make each try to achieve a compromise between the parties. The settlement or compromise between the parties [mate] must be started before starting lawful continuing and allowing some other help under the Act. [64] These sections under Marriages Act force an obligation on the Court to effectuate compromise between the parties and the obligation is of most extreme consideration, which is required to be released judicially and judiciously. [65] Since where the parties to the contest are not intrigued to bring bargain or settlement through compromise, the Court cannot avoid on conciliation or force any of the life partner to live with another without wanting to his/her will and in desertion. [66] There are suits or procedures to which legal official cannot turn to compromise viz. where the gathering has stopped to be a Hindu by change to another religion seriously of unsound mind experiencing ceaselessly or irregularly mental turmoil of such a sort and to such a degree that the solicitor can't sensibly be required to live with the respondent experiencing a virulent and incurable type of leprosy or experiencing venereal sickness in a transmittable structure; or the mate has disavowed the world by entering any religious order.[67]

4.6 The Legal Services Authority Act,1987

4.6.1 General

The Legal Services Authorities Act, 1987 [68] is an Act to encompass lawful service authorities to give free and able rightful administration to the additional weak sections of the common public to assurance that open doors for making sure about equity are not denied to any resident by reason of monetary or different in capacities and to sort out Lok Adalats to guarantee that the activity of the lawful framework advances

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63 ibid s 23(3)
64 The Special Marriage Act,1954, s. 34(2)
65 Raghu Nath V Urmila A.I.R 1973 All. 20
66 Bejoy V. Aloka, A.I.R. 1969 Gal. [HC], p 77
67 The Hindu Marriage Act,1955, Proviso of s.23(2)
68 Compendium of Legal Services Authority Act 1987, 1-19 published by (Haryana State Legal Services Authority, Edition March, 2003,)

equity on a premise of equivalent chance. The Legal Services Authorities Act, 1987 No. 39 of 1987 has been corrected by The Legal Services Authorities Amendment Act, 1994 No. 59 of 1994 and Legal Services Authorities Amendment) Act, 2002 No. 37 of 2002. It contains VII Chapters managed in 30 Sections.

4.6.2 Background

42nd Constitutional Amendment Act of 1976 consolidated Article 39A in the Constitution for giving free legitimate guide which Article peruses as here under, The State will make sure about that the activity of the lawful framework advances equity on a premise of equivalent chance and will specifically give free lawful guide by appropriate enactment or plans or in some other manner, to guarantee that open doors for making sure about impartiality are not denied to any resident by reason of financial or different inabilities. In the light of the above said revision the Government of India had, by a resolution dated 26th September 1980 comprised a Committee known as Advisory group for Actualizing Legal Aid Schemes under the Chairmanship of Mr. Justice P.N. Bhagwati to screen and execute legal aid programs consistently in all the States and Union Territories of India and which council developed a model plan for lawful guide programs pertinent all through the nation and compatible there to, a few Legal Aid and Advice Boards were set up in all the States and Union Territories of India.

4.6.3 Establishment of Lok Adalat

4.6.3.1. Institution of Lok Adalat [69]

Every State Authority or District Authority or the Supreme Court Services Committee or each High Court Legal Services Committee or, as the case be Taluk Legal Administrations Committee may compose Lok Adalats at such interim places and for practicing such purview said for such regions as it might suspect fit. Each Lok Adalat sorted out for a region will comprise of such number of.

(a) Serving or retired legal officials. and

(b) different people of the region as might be determined by the State Authority or the District Authority or Supreme Court Legal Services Committee or the High Court

[69] The Legal Services Authority Act,1987, s.19

Legal Services Committee or by and large, the Taluk Legal Services Committee, arranging such Lok Adalat. [70]

The experience and capabilities of different people for Lok Adalats composed by the Supreme Court Legal Service Committee will be, for example perhaps endorsed by the Central Government in discussion with the Chief Justice of India. The experience and capabilities of different people alluded to in (b) of sub-section (2) for Lok Adalats other than alluded to in sub-section (3) will, for example, might be endorsed by the State Government in consultation with the Chief Justice of the High Court. [71] A Lok Adalat will have ward to decide and to show up at a compromise or settlement between the gatherings to a contest in regard of - (i) any case pending previously or (ii) any issue which is falling inside the locale of and isn't brought under the steady gaze of any court for which the Lok Adalat is composed Provided that the Lok Adalat will have no purview in regard of any case or matter identifying with an offence not compoundable under any law.

4.6.3.2 Cognizance of cases by Lok Adalat [72]

Section 20 gives where in the event that alluded to in provision (I) of sub-section (5) of section 19. (i) (a) the parties thereof concur. or (b) one of the party there of makes an application to the court, for alluding the case to the Lok Adalat for settlement and if such court is prima facie fulfilled that there are odds of such settlement. or (ii) the court is fulfilled that the issue is a proper one to be taken cognizance of by the Lok Adalat, the court will allude the case to the Lok Adalat.

Given that no case will be eluded to the Lok Adalat under sub-clause (b) of condition (I) or clause (ii) by such court with the exception of in the wake of giving a sensible chance of being heard to the parties. Notwithstanding anything contained in some other law for time being in force, the Authority or Committee arranging the Lok Adalat under sub-section (1) of section 19 may, on receipt of an application from any of the gatherings to any issue alluded to in proviso (ii) of sub-section (5) of section 19 that such issue should be controlled by a Lok Adalat, allude such issue to the Lok Adalat, for assurance: Provided that regardless of will be alluded to the Lok Adalat aside from after giving a chance of being heard to the next party.

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70 ibid s. 19(1) & (2)
71 ibid s.19(3) & (4)
72 ibid s. 20

Where any case is eluded to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2) the Lok Adalat will continue to discard the case or matter and show up at a trade off or settlement between the parties. Each Lok Adalat will, while deciding any reference before it under this Act demonstration with most extreme undertaking to show up at a trade off or settlement between the parties and will be guided by the standards of justice, equity reasonable play and other lawful standards. Where no award is made by the Lok Adalat the ground that no compromise or settlement could be shown up at between the parties, the record of the case will be returned by it to the court, from which the reference has been received under subsection (1) for disposal as per law.

Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be shown up at between the gatherings in an issue eluded to in sub-section (2) that Lok Adalat shall, advice the gatherings to look for cure in a court. Where the record of the case is returned under sub-section (5) to the court, such court will continue to manage such case from the phase which was reached before such reference under sub-section (1).

4.6.3.3 Award of Lok Adalat

Every award of the Lok Adalat will be esteemed to be a pronouncement of a common court or, as he case might be, a request for some other court and where a compromise or settlement has been shown up at by a Lok Adalat for a situation alluded to it under sub-section (1) of section 20, the. Court-fee paid in such case will be discounted in the way 7 of 1870. Given under the Court-fees Act, 1870. Every award made by a Lok Adalat will be conclusive and authoritative on all the gatherings to the dispute, and no appeal shall lie to any court against the award. [73]

4.6.3.4 Powers of Lok Adalat

The Lok Adalat will for reasons for holding any assurance under this Act have indistinguishable forces from are vested in a Civil Court under the Code of Civil Procedure, 1908 in the issues.

(i) Summoning and upholding the participation of any witnesses and inspecting him on vow.

[73] The Legal Services Authority Act,1987, s.21

(ii) The discovery and production of any document.

(iii) The assembly of proof on testimonies.

(iv) The ordering of any open record or archive or duplicate of such record or report from any Court or office. and

(v) Such different issues as might be endorsed by guidelines. The Section 22 (2) conceives that without preference to the simplification of the power contained in 22 (1), each Lok Adalat or Permanent Lok Adalat will have the essential forces to indicate its own technique for the assurance of any question preceding it.

The Section 22(3) gives that all procedures before a Lok Adalat will be esteemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code (45 of 1860). Each Lok Adalat or Permanent Lok Adalat will be regarded to be a Civil Court with the end goal of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974). [74]

4.7 Pre-Litigation Conciliation and settlement

Chapter IV A (22A-22E) deals with pre –litigation conciliation and settlement Section 22 A involves different definitions. It says in this Chapter and for the purpose of section 22 also 23 unless the context otherwise requires (a) "Perpetual Lok Adalat" signifies a Permanent Lok Adalat built up under sub-section (1) of section 22 B (b) "public utility service" signifies any. -

(i) Transport administration for the carriage of passengers or goods by road or water. or

(ii) Postal, transmit or telephone utility. or

(iii) Supply of power, light or water to people in general by any foundation or system of public conservancy or sanitation or administration in clinic or dispensary; or insurance service, and incorporates any assistance which the Central Government or the State Government the case may be, may, in the public interest, by notice announce to be a public utility service for the reasons for this part. [75]

[74] Ibid s.22

[75] ibid s.22 A

4.8 Constitution of Permanent Lok Adalat , Chairman and other Member

The Section says that the Central Authority and the State Authority will set up the Permanent Lok Adalats. These Authorities may give notice with this impact and make Permanent Lok Adalats at such places where they believe it to be proper and only for exercising jurisdiction in regard of Public Utility Services. There will be a chairman to direct the Permanent Lok Adalat. He will be designated among the people who are or has been, a District Judge or Additional District Judge or has held legal office which is higher in rank than that of a District Judge. The Central Government or the State Government will choose by designation two different people to help the Chairman having satisfactory involvement with Public Utility Service to the Permanent Lok Adalat. The nomination can be made on the proposal of the Central Authority or the State Authority and these Authorities may fix different terms and conditions for the arrangement of the Chairman and other individual and as are endorsed by the Central Government. [76]

4.8.1 Cognizance of cases by permanent Lok Adalat [77]

This section provides that any party to a debate may, before the contest is brought under the watchful eye of any court, make an application to the Permanent Lok Adalat for the settlement of question Provided that the Permanent Lok Adalat will not have purview in regard of any issue identifying with an offense not compoundable under any law provided further that the Permanent Lok Adalat will not have jurisdiction in the issue where the estimation of the property in contest exceeds ten lakh rupees Provided likewise that the Central Government, may by warning increases the limit often lakh rupees determined in the second stipulation in discussion with the Central Authority. After an application is made under sub-section (1) to the Permanent Lok Adalat, no party to that application will conjure purview of any court in a similar contest.

Where an application is made to a Permanent Lok Adalat under subsection (1) it (a) will guide each party to the application to record before it a composed articulation expressing in that the realities and nature of question under the application focuses or issues in such contest and grounds depended on the side of or contrary to such focuses

[76] ibid s.22 B
[77] ibid 22C

or issues by and large and such gathering may enhance such proclamation with any archive and other proof which such gathering considers proper in verification of such realities and grounds and will send a duplicate of such explanation along with a duplicate of such report and other proof, assuming any, to every one of the gatherings to the application. (b) may require any gathering to the application to document extra proclamation before it at any phase of the conciliation procedures (c) will convey any report or articulation got by it from any gathering to the application to the next gathering, to empower such other gathering to introduce answer thereto.

At the point when proclamation extra explanation and answer, assuming any have been recorded under sub-section (3) as per the general inclination of the Permanent Lok Adalat it will lead conciliation procedures between the gatherings to the application in such way as it might suspect fitting considering the conditions of the contest.

The Permanent Lok Adalat will, during conduct of appeasement procedures under sub-section (4) assist the gatherings in their endeavor to arrive at a genial settlement of the dispute in an autonomous and unprejudiced way.

It will be the obligation of each gathering to the application to collaborate in accordance with some basic honesty with the Permanent Lok Adalat in conciliation of the question identifying with the application and to comply with the direction of the Permanent Lok Adalat to deliver proof and other related archives before it. At the point when a Permanent Lok Adalat in the previously mentioned conciliation procedures is of supposition that there exist components of settlement in such procedures which might be adequate to the parties it might plan the details of a potential settlement of the question and provide for the parties worried for their perceptions and on the off chance that the gatherings agree on the settlement of the contest they will consent to the settlement arrangement and the Permanent Lok Adalat will pass an award in wording thereof and outfit a duplicate of the equivalent to every one of the parties concerned. Where the gatherings neglect to agree under Sub-section (7) the Permanent Lok Adalat will if the contest doesn't identify with any offence choose the contest.

4.8.2 Procedure of Permanent Lok Adalat

This section says that the Permanent Lok Adalat will, while directing pacification procedures or choosing a question on merit under this Act be guided by the principles of natural justice, objectivity, fair play, value and different standards of equity, and will not be limited by the Code of Civil Procedure 1908 and the Indian Evidence Act, 1872. [78]

4.8.3 Finality of Award

The section provides that every award of the Permanent Lok Adalat under this Act made on merit or regarding a settlement agreement will be conclusive and authoritative on all the gatherings thereto and on people asserting under them. Every award of the Permanent Lok Adalat under this Act will be to be a declaration of a common court. The award made by the Permanent Lok Adalat under this Act wills a majority share of the people comprising the Permanent Lok Adalat. Every award made by the Permanent Lok Adalat under this Act will be conclusive and will not be brought being referred to in any unique suit application or execution continuing. The Permanent Lok Adalat may transmit any award made by it to a court having local jurisdiction and such civil court will execute the request as though it order made by that court. [79]

4.9 Conciliation Under Industrial Dispute Act,1947

The Industrial Dispute Act makes arrangements for conciliation and a friendly settlement of Industrial disputes between the employers and employees. The word Conciliation has not been characterized under the Industrial Dispute Act. Yet in Industrial phraseology it implies the friendly settlement by intercession of outsider which might be a private body or a legislative agent to realize arrangements. The Conciliator is required to explore the dispute and advance a formula for settlement. He doesn't release legal capacity in achieving settlement on the grounds that the parties to an industrial dispute are not the normal prosecutors. The conciliation guarantees industrial harmony. The parties after dispute resolution return and draw in themselves under a typical rooftop in the business' production. [80] The conciliation is a

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78 ibid s.22 D

79 ibid s.22 E

80 Vish S. Suba Rao, Conciliation under the Industrial Disputes Act, 1947 : Should It Necessarily Remain a Fifth Wheel to the Coach, 236-237 (J.I.L.I. Vol. 29 1987)

'assisted bargaining process', which includes the intercession Conciliator for influence defense recommendations and intimidation effectively. [81]

Procedure

The Act provides that a Conciliation Officer to hold conciliation procedures in the endorsed way where a industrial dispute exists or is captured. The Conciliation Officer isn't skilled to mediate upon the disputes between the administration and its laborers. He is relied upon to help them to show up at a reasonable and just settlement. He is to assume the job of a guide and companion of both the parties and to see that neither one of the parties exploits the circumstance. [82] It further visualizes that the Conciliation Officer shall for purpose of achieve a settlement of the dispute investigate the question and all issues influencing the benefits and the correct settlement immediately. He may do every single such thing as he considers qualified to initiate the parties to go to a reasonable and friendly settlement of the dispute. [83]

The Act requires that if the settlement of the contest or of any of the issues in dispute is shown up at over the span of the conciliation proceedings, the Conciliation Officer will send a report to the proper government or an official approved for this benefit along with memorandum of the settlement marked by the parties. [84] The Section 12(4) gives that if no such settlement is arrived at, the Conciliation Officer on finish of the examination will send to the suitable Government a full report presenting the means taken by him for determining the realities and conditions identifying with the dispute and for realizing a settlement thereof along with a full proclamation of such realities and conditions and the reasons that a settlement couldn't be arrived at between the parties.

It requires that if on a consideration of the report alluded to in Sub-Section (4) the proper Government is fulfilled that there is a case for reference to a Board, Labor Court, Tribunal or National Tribunal it might make such reference. Where the Government doesn't make such a reference, it will record and impart to the parties concerned its reasons therefor. [85] Section 12(6) conceives that a report under this

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81 V.P. Gupta Law and Practice of Industrial Disputes with Central, Punjab and Haryana Rules, 19 (1984)
82 The Industrial Dispute Act,1947, s. 12 (1)
83 Ibid s 12 (2)
84 Ibid s. 12 (3)
85 ibid, s.12 (5)

section will be submitted within fourteen days of the beginning of the conciliation procedures. The Government can fix this period, which may not be beyond fourteen days. The legislature under Section 12(5) has carefulness either to allude or deny reference based on report put together by the Conciliation Officer under Sub-Section (4). But in case the administration lessens to make a reference the reasons must be recorded for such an activity .[86]

4.10 Mediation Process and its Techniques

Intercession is a procedure where the parties to a contest, with the help of an impartial outsider distinguish the contested issues, think about other options and attempt to reach an agreement. The go between has no advisory or determinative work with respect to the substance of the dispute or the result of its resolution, so far may inform on or decide the procedure regarding intervention whereby resolutions is endeavored. Mediation can either be private or mandated by court. In the two kinds, the underlying stage or pre-intercession stage, may include go between illuminating parties about the intervention process. This may likewise include mediator managing inquiries of disputants causing them to comprehend in relation to the precise model plus approach inspection the reasonableness of intervention and helping parties arrive at the stage of availability to commit themselves to signing up to the procedure.

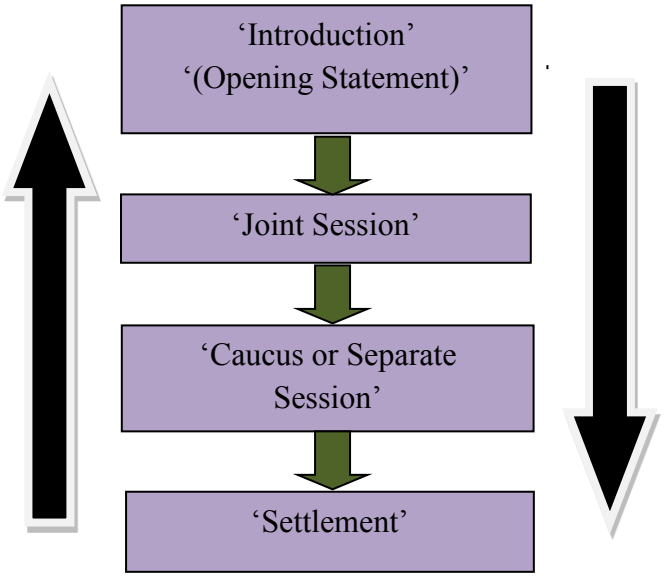
Intervention is depicted as an organized procedure of consensual dispute resolution. Customarily the intercession procedure includes various stages viz. introduction, joint meeting, caucus, agreement and so on. [87] Most definitely there is no legal order to follow a specific methodology; anyway it is the experience for quite a long time together which has been crystallized into conventions, which require the middle person to ideally follow an organized procedure. The phases of a traditional intervention process are, accordingly neither unbending nor unyielding and can be regulated to accomplish the desired result. [88] Procedural adaptability is an inbuilt advantage in intercession which is unencumbered by any basic particulars and the go between may devise a customized technique to suit the prerequisites of the gatherings and the attending circumstances, with the need of finding a consensual resolution

[86] C. Munichowdappa vs. State of Karnataka, 356. (I LU Karnataka HC, 1985)

[87] Delhi High Court Mediation and Conciliation Centre, Mediator's Tool Box (Volume I); and Jeff & Hesha Abrams, Anatomy of a Mediation: What to Expect, How to Prepare & How to Win, 2(3) The Indian Arbitrator (March 2010)

[88] Dhananjaya Y. Chandrachud, Mediation – Realizing the Potential and Designing Implementation Strategies, available at: http://lawcommissionofindia.nic.in (last visited on 25.5.2020)

being the essential managing factor. Mediation typically involves four stages, which are diagrammatically presented as follows. -



Introduction

The intercession procedure begins with an initial proclamation wherein the go between briefs the parties about the reason and advantages of intervention, the job of the middle person and the general insights concerning the intervention procedure. It is a kind of an acquaintance or a preface with the intercession procedure. The initial explanation along these lines establishes the pace for intercession. [89]

The middle person gives an overview to the parties regarding how intervention and the intercession procedure work, emphasizing the voluntary fabric of intercession and clarifying that the parties in intervention control the procedure as well as the result of the procedure. He further clarifies the standard procedures and eventually creates momentum towards open conversations. [90] The initial explanation likewise offers the parties a chance to acclimate themselves with the go between, comprehend the nature and demeanor of the middle person and guarantees the parties of a private secure and amiable ambiance for a positive discourse.

The object of the initial proclamation of the middle person is additionally to begin to create validity and trust relationship with the parties and a bonding between the

[89] Delhi High Court Mediation and Conciliation Centre, Mediator's Tool Box (Volume I)

[90] Bombay High Court, Mediation at a Glance available at http://bombayhighcourt.nic.in/mediation/MediationConcept_and_Articles/at_a_glance.pdf (last visited on 25.5.2020)

mediator and the parties. [91] It is along these lines essential to clarify the components of willfulness privacy and party self-sufficiency related with the intercession procedure and to extend the go between as a companion, thinker and guide of the parties who is there to assist the parties with helping themselves. The mediator should in this way square the circle and makes an inoffensive presence. [92]

Joint Session

The joint meeting centers focuses on contribution from the parties and their lawyers on the nature of the dispute and endeavors to investigate any early roads for settlement. Parties usually tell their stories (and might be tuning in to each other just because since the contention ejected. The legal counselors may talk about how they see the case from a positional perspective. The go between may utilize a few correspondence methods reframing, motivation setting to affirm cognizance of the accurate and legitimate foundation and the enthusiastic stances of the parties.

Except if the case can be settled in the joint meeting, the go between will ask the parties whether they would go into private assemblies. Throughout or on conclude of the joint meeting, the go between may autonomously assemble each party with his recommendation generally creation with the affronted party/applicant. The setting up of holding the separate meeting might be chosen by the go between at his caution having respect to the efficiency of the on-going joint meeting, stillness of the parties loss of control, parties getting dull or on the other hand demand by any of the parties. There can be a few separate meetings. The go between could return to a joint meeting at any phase of the procedure if he wants to do as such. [93]

Separate Meeting

The following stage in the intercession procedure is the caucus. Caucus is a private meeting which is led by the middle person with each party independently over the span of intervention. The parties are allowed to talk about their perspectives openly, sharing information they would not pass on to the next party, recognizing shortcomings in their legitimate positions, distinguishing and organizing their

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91 Tom Arnold, Mediation Outline: A Practical How-to Guide for Mediators and Attorneys in P.C. Rao and William Sheffield (Eds.), Alternative Dispute Resolution 210 (Universal Law Publishing Company Pvt. Ltd., Delhi, 1997)

92 Alexander Bevan, Alternative Dispute Resolution 18 (Sweet and Maxwell, London, 1992)

93 Mediation Training Manual, Supreme Court of India, p. 29

inclinations and investigating settlement alternatives that would be hard to examine straightforwardly with the other party. [94] One of the fundamental grounds behind caucus is assembling additional information which one gathering may not at first need to reveal in nearness of the other party. The middle person in this way independently causes an undertaking to permit gatherings to secretly open up so as to further to investigate the issues and learn additional information which however pertinent to the contest was kept out of the domain of the joint meeting. He may put inquiries to the gatherings and advise them in order to concentrate such pertinent data.

A party in a private meeting may explicitly require the middle person not to reveal to the next gathering data which has been given over the span of assembly. [95] Such data is considered as private and it is compulsory for the go between not to reveal such data to the next gathering since secrecy and confidence structure the building of intervention. Anyway, the middle person may keenly use this extra data for facilitating a settlement and a progressively viable way without really revealing the equivalent to the next party.

Caucus additionally permits ventilation of sentiments and feelings secretly in a protected way as the nonattendance of the other party at such a phase blocks the chance of interruption of the intervention procedure and without bringing about decay of the relations between the gatherings. Caucus additionally bears chilling period to the gatherings and empowers them to assess the circumstance and acknowledge options in a superior viewpoint. It likewise allows the go between to sincerely impart his perspectives and recognition to the gatherings. The go between may likewise endeavor to get hold of a practical offer which might be examined with the opposite side to produce conceivable arrangements. It is in this way the private meeting or the gathering that is the engine room of the intervention procedure the phase that builds up the second which ideally transforms into fast arrangement and much of the time, settlement. [96]

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94 Hiram E. Chodosh, Mediating Mediation in India, available at: http://lawcommissionofindia. nic.in (last visited on 26.5.2020)

95 Dhananjaya Y. Chandrachud, Mediation Realizing the Potential and Designing Implementation Strategies, available at: http://lawcommissionofindia.nic.in (last visited on 26.5.2020)

96 Alexander Bevan, Alternative Dispute Resolution 19 (Sweet and Maxwell, London, 1992)

Repeated Joint and Caucus Sessions

The middle person may lead numerous irregular joint meetings and caucuses relying on the realities and conditions and prerequisites and objectives. [97] The go between meets the parties successively, enjoys diplomatic negotiations conveying offers counter offers and contentions to and fro. [98] The aim is to lessen acting, break the impasse, permit the parties to impart openly, investigate their inclinations and needs conceptualize every conceivable choice and investigate and produce conceivable results and arrangements. The middle person may utilize a few correspondence methods reframing, plan setting, and so forth. To affirm understanding of the authentic and lawful background and the passionate stances of the parties. [99] Truth be told go between are ceaselessly looking for new devices and methods to beat obstructions in settlement. [100] The mediator additionally determines and empowers the gatherings to comprehend their Best Alternative to a Negotiated Agreement (BATNA) Worst Alternative to a Negotiated Agreement (WATNA) and Most Likely Alternative to a Negotiated Agreement (MLATNA).

It ought to be the undertaking of the mediator to adequately screen and smooth out the intercession procedure with the goal that every single part of the question is thought of and the gatherings team up with one another in a critical thinking way and move towards a commonly adequate self-decided arrangement subsequent to valuing their inclinations and needs. The mediator needs to utilize his aptitude and ability to reasonably control and shape the technique in order to show up at an all-encompassing answer for the issue. [101] As the negotiations progress, the middle

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97 Karl Mackie and Edward Lightburn, International Mediation the U.K. Experience, in P.C. Rao and William Sheffield (Eds.), Alternative Dispute Resolution 137 (Universal Law Publishing Company Pvt. Ltd., Delhi, 1997)

98 Tom Arnold, Mediation Outline: A Practical How-to Guide for Mediators and Attorneys in P.C. Rao and William Sheffield (Eds.), Alternative Dispute Resolution 210 (Universal Law Publishing Company Pvt. Ltd., Delhi, 1997)

99 Hiram E. Chodosh, Mediating Mediation in India , available at: http://lawcommissionofindia. nic.in (last visited on 27.5.2020)

100 One such technique is Decision Analysis which is also becoming a popular with mediators. David P. Hoffer, Decision Analysis as a Mediator's Tool , 1 Harv. Negot. L. Rev. 113 (Spring 1996). Another such technique is Transactional Analysis. Tony Whatling, Transactional Analysis Matters- The Potential Application of Transactional Analysis to Mediation , 1(7) the Indian Arbitrator 2 (August 2009)

101 Jeff & Hesha Abrams, Anatomy of a Mediation: What to Expect, How to Prepare & How to Win, 2(3) The Indian Arbitrator 2 (March 2010)

person sums up the regions of consent to persuade the parties towards a final settlement. [102]

Settlement'

The last phase of the intervention procedure includes the go between working with the gatherings to absorb the commonly worthy offers and counter offers to produce an extreme arrangement which is pleasing to the parties. The last stride is that of genuine readiness of the settlement agreement once the parties are ad idem. The mediator additionally helps the parties to draft the last settlement agreement. The settlement agreement should include extensive expansive based answers for take into account the requirements and goals of the gatherings and should explicitly give answers to every single aspect of the contest abandoning no degree for additional situation either as for the question itself or as for authorization of the settlement. The terms of settlement might be elucidated and explained to hinder the chance of any ambiguities. In any case if complete settlement is beyond the realm of imagination the go between may enable the parties to look for incomplete agreements or consider their next steps. [103] The settlement agreement ought to be signed by the gatherings. [104]

4.11 Techniques

4.11.1 Negotiation Techniques: The Intellectual Technology

(i) Position-Based Bargaining

Numerous intercession specialists' stress the negative outcomes of position-based bargaining and urge that interventions should concentrate principally if not only on an assurance, prioritization, and expansion of the parties' advantages. Undoubtedly, the primary part in the fundamental book, getting to yes, and starts with the order Don't Bargain over Positions. [105] For reasons progressed here, especially in the beginning periods of creating intervention practice, such exhortation might be lost. Position based bargaining can assist the parties with reaching an increasingly sensible perspective on the settlement estimation of their cases and barriers subsequently

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[102] Stephen B. Goldberg, Frank EA Sander, Nancy H. Rogers & S.R. Cole, Dispute Resolution: Negotiation, Mediation and other Processes 131 (Aspen Law & Business, New York, 3rd Edition.)

[103] Elizabeth Plapinger & Donna Stienstra, ADR and Settlement in the Federal District Courts: A Sourcebook for Judges and Lawyers available at: http://www.fjc.gov (last visited on 27.5.2020)

[104] Rule 24 of Mediation and Conciliation Rules 2004 (Delhi)

[105] Roger Fisher and William Ury, Getting to Yes 3-8 (1983)

narrowing their disparities and to consider that settlement valuation as one of their numerous advantages.

(ii) Interest –Based Bargaining

The previous conversation made a humble stride past the clashing perspectives on the parties on the legitimate benefits of their positions. Progressively practical repayment esteem dependent on shortcomings in their positions vulnerability, shrouded costs, and the time estimation of cash might be useful in uniting the parties, if not in settling the issue by and large. Without a doubt a few cases will settle with the assistance of these devices, alone; others won't.

(iii) Integrated Bargaining

In the event that the parties can't concur on the most proficient method to share or coordinate, a powerful mediator may investigate. Integrative bargaining techniques. Integrative bargaining investigates the venture of assets outside those in question in the contention. Instances of integrative bargaining applied to lawful clash are many persuading a bank not involved with the question to back another business course of action framed from a break of contention guarantee an affluent negligence petitioner promising to give cash to the retraining of specialists in the significant territory of training a landowner occupant family repossession situation where the proprietor gets a contractual worker to thump down the structure and fabricate more units for a developing family and gives another level to the obstinate inhabitant or an unenforceable support grant in a separation continuing where the more extensive network pays the upkeep (along these lines reducing the hidden source of contention e.g. budgetary weight and in the end uniting the couple back.

4.11.2 The Value of Neutralizing Communication Skills

Beyond the negotiation methods utilized by a compelling middle person, a few correspondence strategies are valuable apparatuses of assistance. As in negotiation techniques, none is a certain fire approach to settle a question; in any case, each one can unite the parties further together by neutralizing the sincerely brutal and unreasonably overstated conduct and points of view of the parties and to change the every now and again foolish parts of their contention especially where they have an

enthusiasm for protecting or improving a relationship into a commonly valuable settlement.

(i) 'Establishing Joint Communication'

Intercession restores joint correspondence between the parties in three huge manners. To begin with, especially in private intervention the gatherings may need to convey about coordination for the intercession itself e.g, timing, trade of reports, secrecy understandings, and so forth. Second, the middle person unites the parties and in the principal joint meeting, they get notification from each other their shifted perspectives and regularly those of their lawyers. Third as the middle person moves from private caucusing into the settlement or understanding stage the parties every now and again start to talk straightforwardly to each other. Joint correspondence of each differed kind is clearly no assurance to settlement; in any case, this one factor might be critical to uniting parties where protection from speaking with each other further heightens the contention.

(ii) 'Establishing Tone'

A successful go between sets up a positive tone and condition helpful for settlement by carrying on in an expert, sure, deliberate, open, valuable, and socially captivating way. By setting a model, the middle person may empower through non-verbal communication and passionate tones the sort of conduct expected in the meeting. Once more, this can have a killing effect on the more negative, uncertain, shut disapproved, ruinous, and safe conduct much of the time experienced in enemies.

(iii) Active Listening

Both as a fundamental instrument for powerful assistance and as a method of recognizing the perspectives of each side, active listening is a basic nature of a decent go between. It takes into consideration an increasingly exact cognizance of the question, the capacity to recognize dispositive or supportive from unessential or unhelpful remarks positions from interests, less significant interests from higher need ones. Once more undivided attention additionally motions toward the gatherings that what they need to state is significant and that can urge the gatherings to listen effectively to each other also.

(iv) Acknowledgement

Acknowledgment is one of the most significant correspondence aptitudes in viable mediation. [106] As underscored by Albie Sachs of the Constitutional Court of South Africa and an engineer of the Truth and Reconciliation Commission[107] affirmation might be the most basic intends to break the endless loop of human clash. To recognize the perspectives on some gathering isn't to communicate any judgment either positive or negative yet to enroll that the view has been heard and comprehended. Affirmation of one gathering by another without conciliatory sentiment frequently defuses a contention by permitting the battling parties to feel that their voice has been heard.

(v) Neutral Restatements, Summaries and Word Changes

Go between tune in to and use language viably to bring some relief from unpredictable explanations and words. [108] They may reframe an announcement as impartially as conceivable without trivializing the perspective of the speaker. Parties frequently portray the real foundation in an untidy manner, and a go between job is to carry some request to confounding articulations. At long last a powerful go between will be cautious in the selection of words. Damages may become bills or costs. "Risk may become responsibility." "Your side of the story might be rehashed as factual background again here by rethinking all the more impartially the go between defuses the language of its touchy effect without changing the center importance and thus may energize the parties by example to talk with less hostile or conflictual expressions and words that put the opposite side on edge.

(vi) Sequencing: Agenda Setting; Deferring; Redirecting

Efficacious go between control the sequencing of what is examined by setting the agenda, deferring, and redirecting. They may delay the conversation of positions until they investigate premiums. They may propel those subjects they accept are bound to unite the parties. For instance rather than concentrating an isolated couple on what prompted their contention a mediator may request that the parties give a portrayal of

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106 William Ury, Getting Past NO 40 (1991) (Every human being, no matter how impossible, has a deep need for recognition)

107 E.g., Albie Sachs, Soft Vengeance of Freedom Fighter (2000)

108 Gregg. F. Relyea, the Critical Impact of Word Choice in Mediation, 16 Alternatives No. 9, 1 (Oct. 1998). The author is particularly grateful to Mr. Relyea for sharing his mediation materials prepared for Indian audiences

their young people. A go between who is approached at an early stage for an untimely assessment of a case may answer that it is too soon to do as such at that specific time. The capacity to alter the succession furnishes the middle person with huge adaptability to move in productive ways dependent on contribution from the parties.

(vii) Changing Messenger

In conflictual connections, really close ones, recommendations by one party are naturally limited by the other. Exactly the same recommendation may originate from an outsider and be unquestionably more promptly acknowledged. Middle people can gracefully that job. They can request thoughts from one side and impart those recommendations to the next without attribution and in this way with no receptive limiting by the beneficiary. Changing the emissary subsequently can propel acknowledgment of the message, and secret private caucusing permits the go between to assume this significant job of a go between.

4.12 Styles of Mediation

Facilitative Mediation

In days of yore there was just a single sort of intercession being drilled, which is currently known as Facilitative intervention. In this style of intercession a plan to complete the procedure of intervention is organized to arrive at the commonly valuable understanding. The work of middle person is to pose inquiries standardize the situation of parties scan for the basic intrigue and help the parties in arriving at commonly friendly arrangement. All through the intercession procedures the go between will go about as a responsible for the procedure while gatherings will be accountable for the result. The most significant part of facilitative intercession is that, the middle person doesn't suggest any arrangement rather the whole procedures depend on certainty and examination given by the parties. In this way the result came to is consistently the consequence of data and comprehension of the parties. Both joint meeting and caucus are held by the middle person according to the prerequisites of the case and to comprehend the purpose of perspectives on the gatherings so that commonly advantageous arrangement is accomplished. The procedure of facilitative intervention is casual in nature and go between are not required to posse’s substantive expertise, concerning the area of dispute. Hence there are no limitations with respect to the capabilities and background of the individual to act as a go between.

Evaluative Mediation

This procedure of intervention depends on the normal court results. The job of go between is to help the parties in arriving at goals by calling attention to the shortcomings of the case, and anticipating what an adjudicator would probably do. The mediator in this procedure of intervention gives his proposals to the parties in regards to the result of the case. The exhortation given by the go between is totally founded on the legitimate rights and liabilities of the gathering instead of necessities and interests and this assessment depends on lawful ideas and standards. The go between under this procedure of intervention inclines toward isolated meetings with the parties and their legal counselors and along these lines rehearses strategy in settling the dispute. An examination is made among lawful and intercession result and in like manner parties are exhorted. Consequently the work of middle person in this procedure of intervention is broad and isn't just restricted to process, however he likewise influences the result of the procedure.

For the most part, this style of intercession is court-referred intervention. The mediator associated with the evaluative intervention has meaningful skill or lawful ability in the area of the question because there is association between evaluative intercession and courts legal advisors normally act as middle people.

Transformative Mediation

This procedure of intervention is a semi religious undertaking wherein members are changed by showing them the estimation of human connections through double procedure. The procedure of acknowledgment, whereby every one of the gatherings comprehend the other gatherings needs, interests, qualities and perspectives and the procedure of strengthening whereby every one of the gatherings are engaged intellectually however much as could reasonably be expected. The potential for transformative intercession is that any or all parties or their connections might be changed during the intervention. The go between under this procedure of intervention by and large lean toward joint meetings of the parties, since no one but they can give one another acknowledgment.

4.13 Mediation in various Subjects

4.13.1 Mediation in Commercial disputes

Intercession is a decent instrument which could be used in the realm of trade. As the procedure of intervention is more affordable, fast and adaptable a custom fitted agreement could be reached. Continuously in corporate world enormous cash is in question and more often than not correspondence from both the sides is prevented which brings forth a debate. In this way, in business cases intercession could surge such correspondence hole and could take both the parties on pleasant standing. Likewise individuals engaged with business gives part of significance to time, cost cash and connections and for them intercession could be demonstrated as a boom.

Many driving organizations in the west have taken a vow to think about the utilization of intervention before suit. They presently call upon their areas of expertise to fulfill top administration that such strategies have been investigated before prosecution is propelled. Some have acquainted standard intercession plans with manage clients and providers so contrasts don't become disputes prompting loss of relationships. [109]

4.13.2 Mediation in Government cases

The quantity of cases where state is a party is enormous and dockets of courts are stacked distinctly because of such cases. If these cases go to intercession at that point parcel of weight will be soothed from legal executive. In Government cases stakes are in every case enormous on the grounds that generally these cases are identified with charges, property, licenses and so on. Along these lines so as to manage the strategy loss of motion which is typically seen in Government cases prompt goals could be reached through intercessions. Likewise a considerable lot of Government questions are not identified with law however they are basically about regulatory activity, inaction or wrong activity. There is no compelling reason to spend the valuable long stretches of better courts than resolve matters which could be sorted through by intercession.

4.13.3 Mediation in Immovable Property Cases

These days the costs of properties have gone high and because of ascend in the value, the parties commit breach of the agreement. A long time go in prosecution. The

[109] Sriram Panchu, Mediation: Practice and Law: The Path to Successful Dispute Resolution, 2011(LexisNexis, Butterworths Wadhwa, and Nagpur, Reprint 2012))

charges and counter claims are made because of higher monetary stakes the losing party most likely documents request which will additionally squander in any event 5 to 10 years. Because of value rise, the purchaser will be set up to pay minimal more to the Vendor. The Vendor likewise comprehends the estimation of time. Therefore the intervention delivers great outcome in resolution of the issue of immovable properties.

4.13.4 Mediation in Torts

The legitimate part of laws of Torts has stayed immature in India because of nature of individuals of India. They have tremendous resilience power. They believe in their destiny. They were overlooking the torts feeling that it God's want. But now they comprehended the distinction between demonstration of God and human torts. E.g., during seismic tremor of 2001 in Gujarat province of India, numerous structures fallen and demolished causing passing of many. To start with individuals were accepting it as demonstration of God yet then they understood that it was because of poor development expertise, and they have documented suits for getting harms. Torts of vehicular mishaps because of careless driving torts of irritation torts of maligning and defamation are paid attention to. The casualties face weakness due to deferring removal of legal disputes. They need expedient equity. Intervention must be pursued for helping their tears.

4.13.5 Mediation in Environmental Cases

Ecological and natural resource clashes are ubiquitous. Everywhere and consistently, individuals go after rare assets, including access to clean air and water oil and gas minerals timber, farmland, or to save living space for plants and animals. In rivalry for these assets, individuals battle to determine issues for example how to offset asset abuse with the need to safeguard air and water quality, how to gracefully water to dry areas while securing surface and groundwater supplies, or step by step instructions to allow hereditary alteration of plants and creatures while saving the uprightness of normally developed species and biological systems. Every one of these issues includes an unmistakable how question that all things considered characterizes the center test of environmentalism how would we be able to advance the utilization of

our common assets and innovation, while protecting the drawn out quality and trustworthiness of those assets on which present and people in the future depend? [110]

The prosecution has been expensive and tedious. The ecological case involves an enormous lawful exertion in light of the fact that these cases regularly require broad true examinations various observers, and extensive legitimate research and information on the territory in dispute because of the complex and advancing nature of ecological lawful point of reference. Intercession has likewise been utilized to assist individuals with tending to issues that are not ready for suit, for example, what data an office will draw on when building up another guideline.

4.13.6 Mediation in Criminal Cases

Applying intervention to a wide range of criminal issues may not be an attainable alternative considering the gravity and earnestness of the topic which is ordinarily associated with criminal cases. In any case, the utilization of intercession to criminal issues isn't by and large avoided. Criminal issues are sorted into two general classifications viz. compoundable and non-compoundable. [111] Mediation is for the most part depended on account of compoundable offenses.

In the current Indian lawful system, intervention in criminal issues supposedly is applied in compoundable offenses as supplication haggling, in objections under Section 138 of the Negotiable Instruments Act 1881 and according to the ongoing decision of the apex court in issues of offenses identifying with dowry demand and cruelty under Section 406 and 498A of Indian Penal Code. [112]

4.13.7 Mediation in Company Law

One of the numerous recent enactments that maybe cover an enormous number of commercial disputes is the Companies Act, 2013 Companies Act. Section 442 of the Companies Act curiously gives the ADR component versus Mediation and Conciliation as potential choices for parties required at any phase of the procedures.

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[110] The Potential for Mediation to Resolve Environmental and Natural Resources Disputes, by Stephen Higgs, Michigan Law School available at http://www.acctm.org (last visited on 28.5.2020)

[111] The list of offences categorized as compoundable are provided in Section 320 of Criminal Procedure Code, 1973

[112] Available on http://www.delhimediationcentre.gov.in/case suitable.htm (last visited on 28.5.2020)

The Companies (Mediation and Conciliation Rules, 2016 M & C Rules have been informed by the Government under the forces presented by Section 442 read with Section 469 of the Companies Act. The Mediation &Conciliation Rules set out the technique for removal of issues by embracing Alternative Dispute Resolution instruments by parties at any phase of the procedure before the Central Government Court or Appellate Tribunal. The National Company Law Tribunal NCLT" is a Tribunal established under Section 408 of the Companies Act and correspondingly the Appellate Tribunal is the National Company Law Appellate Tribunal NCLAT comprised under Section 410 of the Companies Act.

4.13.8 Intercession in Family & Martial Disputes

Intercession is emphatically suggested for family disputes where relationships are in question. Intermittently the questions are between close relationships and if that are not dealt with appropriately, at that point it could influence everyone associated with the dispute. With its focus on the future, and its capacity to rescue and better connections, intercession is a proper strategy for these debates. Prosecution has gigantic damaging limit exactly due to the high voltage feelings released during family dispute. Another valid justification for family intercessions is the consistence rates-a lot more agreements reached by intervention are agreed to, when contrasted with different procedures. Studies done on issues for example child support payments, visitation rights and child custody showed more noteworthy fulfillment with results and better recognition rates with the utilization of intervention. Similar holds useful for the separating from process and monetary courses of action emerging from it and for disputes of property and cash emerging inside a family. [113] It has been discovered exceptionally valuable in the issues of giving maintenance to old parents by their young people. The disputes about partition of familial properties between family individuals can be easily settled through intercession. The laws of progression in all networks are confused and if the intercession procedure is applied for arrangement of family disputes the resolutions will look after relationship. So as to ensure the establishment of family, disputes in the family or a martial relationship which can be fixed must be interceded and settled by sewing and interwoven as opposed to just slicing off ties by heading off to the official courtroom and isolating from one

[113] Sriram Panchu, Mediation: Practice and Law: The Path to Successful Dispute Resolution, 2011 (LexisNexis, Butterworths Wadhwa, and Nagpur, Reprint 2012)

another. In the present time the idea of family units wins and such families in India are tormented by shades of malice like constrained relationships, respect killings and some more.

4.14 Matrimonial Reliefs

Keeping in view the high pace of marital discord, a few matrimonial reliefs have been given in the Hindu Marriage Act, 1955. Some of them are the restitution of conjugal rights under Section 9; Judicial separation to help chill off tempers under Section 10 classification of marriages into void under Section 11 and voidable under Section 12 for nullity of lawfully irregular marriages lastly divorce under Section 13 of the Act. Arrangement has likewise been made to help the casualty life partner for maintenance pendent lite and expenses of procedures under Section 24 permanent alimony and maintenance under Section 25.

4.14.1 ‘Divorce’

The term divorce originates from Latin word divortium which intends to turn aside to isolate. Separation is the legitimate end of a wedding bond. All the personal laws in India accommodate divorce under explicit grounds and conditions. Though there are various acts overseeing individuals having a place with various religions, the grounds accommodated divorce is pretty much the equivalent, with minor varieties however. The term Divorce defines as "the legitimate separation of man and spouse." The New Brittanica Webster Dictionary characterizes divorce as "a total lawful disintegration of marriage. Curiously in any case, marriage has a lot more extensive definition. Brittanica Webster characterizes marriage as "the establishment whereby a man and a lady are participated in an uncommon social and lawful relationship to make a home and raising a family." Thus it is intriguing to see that marriage is seen as a lawful and social association of two individuals notwithstanding, divorce is just considered as the lawful end of the said marriage. These definitions all by themselves feature one of the hidden issues that happen when a couple decides to separate. In particular in spite of the fact that the legitimate framework is outfitted to manage the lawful issues that the couple faces while separating, it doesn't address nor is it furnished to manage the social and intense subject matters that stand up to the couple. When the enthusiastic or social issues are managed, it settles the legitimate issues that are a lot simpler. Making it a stride further, what the vast majority are contending about isn't lawful or money

related issues but instead contentions powered by their craving to get some type of retribution for an apparent wrong by the other life partner. When every one of the members is caused and upheld to determine the enthusiastic and social issues, they are in a vastly improved situation to effectively manage the lawful and money related issues.

4.14.2 Judicial Separation

It was included by the Marriage Laws Amendment Act of 1976. It only suggests legitimate detachment without separate. It is a kind of a last resort before the lawful separation of the marriage, i.e., divorce. The purpose behind the provision of such an arrangement under Hindu Marriage Act is that the pressures, strain, and tension of regular day to day existence ought not to bring about the sudden separation of a conjugal relationship. There is no impact of a decree of judicial separation on the resource and continuation of marriage the impact be that as it may is on their co-habitation. When a pronouncement for judicial separation is passed a husband or a wife, whosoever has moved toward the court, is under no impulse to live with his/her mate. The wronged party to the marriage may introduce a request on any of the grounds expressed in the provisions for divorce under section 13 of the Hindu Marriage Act 1955 praying for a decree of judicial separation. In the event that there is no resumption of living together between the gatherings to the marriage for one year or upwards after the passing of the request for judicial separation, the couple may apply for divorce.

4.14.3 Restitution of Conjugal Rights

The privilege or qualification to consortium is the most huge part of marital bond. At the point when one life partner leaves the other or pulls back or abandon the company of the other with no sensible reason, the abused life partner may look for court intervention. The thought behind help by method of compensation of marital rights is to expect to reestablish a relationship which has irritated for whatever reasons. This cure has been legally given under every single personal law viz. Section 9 of Hindu Marriage Act, Section 32-33 Divorce Act, Section 36 Parsi Marriage, and Divorce Act and Section 22 of the Special Marriage Act. While the Muslim law has no legal arrangement be that as it may, from writings and standards of Mullah it implies option to remain together. If either the spouse or the wife, without sensible reasons

withdraws from the society of the other party the distressed party may move toward the Court for restitution of conjugal rights.

4.15 Institutional set up in resolving matrimonial disputes in India

4.15.1 The Family Courts Act, 1954

The task of Family Courts Act is to obtain a cordial conciliatory and informal dispute resolution feeling which would empower parties to agreeably settle the contrasts without the shackles of the specialized guidelines of law of methodology and evidence. It is a basically a procedural resolution. It didn't abrogate personal laws yet just gave an option adjudicatory discussion of alternative dispute resolution. A cognizant exertion was made to move marital and family questions from civil courts common and officers' courts criminal to unique courts that had skill in marital and maintenance suit. There was a fundamental' move in accentuation from standard attorneys to advisors to help the parties to the contest particularly to improve women negotiating power to arrive at commonly friendly arrangements.

The Act was authorized to accommodate the foundation of Family Courts with a view to advance conciliation and secure expedient settlement of questions identifying with marriage also family undertakings and for issues associated therewith by receiving a methodology fundamentally not quite the same as that of conventional court procedures. [114]

Objectives

An Act to accommodate establishment of family Courts so as to advance conciliation and secure quick settlement of questions identifying with marriage and family procedures and for issues associated therewith. [115]

'Functions'

The Family Courts are allowed to develop their own guidelines of methodology and once a Family Court does as such, the principles so encircled supersede the standards contemplated under the Code of Civil Procedure. Actually, the Code of Civil Procedure was corrected so as to satisfy the reason behind setting up of the Family Courts.

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[114] K.A. Abdul.Jakes v. T.A. Sahida, (2003) 4 SCC 166)
[115] Preamble of the Act,1984

Special emphasis is put on settling the disputes by mediation and conciliation. This ensures that the matter is solved by an agreement between both the parties and reduces the chances of any further conflict. The aim is to give priority to mutual agreement over the usual process of adjudication. In short, the aim of these courts is to form a congenial atmosphere where family disputes are resolved amicably. The cases are kept away from the trappings of a formal legal system.

The Act specifies that a gathering isn't entitled to be represented by a legal advisor without the express authorization of the Court. Be that as it may constantly the court allows this consent and normally it is a legal advisor which speaks to the gatherings. The most one of a kind angle in regards to the procedures under the steady gaze of the Family Court are that they are first alluded to pacification and just when the conciliation procedures neglect to determine the issue effectively, the issue taken up for preliminary by the Court. The Conciliators are experts who are designated by the Court. When a last request is passed the bothered party has a choice of documenting an intrigue under the steady gaze of the High Court. Such intrigue is to be heard by a seat comprising of two appointed authorities.

'Establishment of Family Courts'[116]

1. For the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government, after consultation with High Court and by notification. -

    a) Shall as soon as may be after the commencement of this Act establish for every area in the State comprising a city or town whose population exceeds one million, a Family Court.

    b) May establish Family Courts for such other areas in the State as it deem necessary.

2. The state Government shall, after consultation with High Court specify by notification the local limits of the area to which the jurisdiction of a Family Court shall extend and may at any time increase reduce or after such limits.

[116] The Family Courts Act,1984, s.3

Appointment of Judges'[117]

1. The State Government may, with the concurrence of the High Court, appoint one or more persons to be judge or judges of Family Court.
2. When a Family Court consists of more than one judge. -
    a) Every judge may exercise all or any of the powers conferred on the court by this Act or any other law for the time being in force.
    b) The State Government may, with the concurrence of the High Court, appoint any of the judges to be the Principal Judge and any other Judge to be the Additional Principal Judge.
    c) The Principal Judge may; from time to time, make such arrangements as he may deem fit for the distribution of the business of the Court among the various judges thereof.
    d) The Additional Principal Judge may exercise the powers of the Principal Judge in the event of any vacancy in the office of the principal judge or when the Principal Judge is unable to discharge his function owing to absence, illness or any other cause.
3. A person shall not be qualified for appointment as a judge unless he. -
    a) Has for at least seven years held a judicial officer in India or the office of a member of a Tribunal or any post under the Union or a State requiring special knowledge in law. or
    b) 'Has for at least seven years been an advocate of a high court or of two or more such courts in succession. or
    c) Possesses such other qualification as the Central Government may with the concurrence of the Chief Justice of India prescribe.
4. In selecting persons for appointment as Judges.
    a) Every endeavor shall be made to ensure that persons committed to the need to protect and preserve the institution of marriage and to promote the welfare of children and qualified by reason of their experience and

[117] ibid S. 4

expertise to promote the settlement of disputes by conciliation and counseling are selected. and

b) Preference shall be given to women.

5. No person shall be appointed as, or hold the officer of, a judge of a Family Court after he has attained the age of sixty- two years.

6. The salary and honorarium and other allowance payable to and the other terms and conditions of service of a judge shall be such as the State Government may, in consultation with High court prescribe.

'Association of Social welfare agencies etc.'[118]

The State Government may, in consultation with the High Court provide, by rules for the association in such manner and for such purposes and subject to such conditions as may be specified in the rules with the Family Court of.

a) Institutions or organization engaged in social welfare or the representatives thereof.
b) Persons professionally engaged in promoting the welfare of the family.
c) Persons working in the field of social welfare. and
d) Any other person whose association with a Family court would enable it to exercise its jurisdiction more effectively in accordance with the purposes of this Act.

'Counselors, officers and other employees of Family Courts'[119]

1. The State Government shall, in the consultation with the High Courts determine the number and categories of counselors' officers and other employees require assisting a Family Court in the discharge of its functions and providing the Family court with such counselors, officers and other employees as it may think fit.

2. The terms and condition of association of the counselors and the terms and conditions of service of the officers and other employees referred to in sub section (1) shall be in such as may be specified by the rules made by the state government.

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[118] ibid, s.5
[119] ibid s. 6

Jurisdiction[120]

1. Subject to the other provisions of this Act, a Family Court Shall -

    a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law from time being in force in respect of suits and proceedings of the nature referred to in the Explanation. and

    b) Be deemed, for purpose of exercising such Jurisdiction under such law, to be district court or, as the case may be such subordinate civil court for the area to which the jurisdiction of the Family courts extends.

The suits and proceedings referred to in sub section are suits and proceedings referred to in this sub section are suits and proceedings of the following nature namely -

a) suits or proceedings between the parties to a marriage for a decree of nullity of marriage declaring the marriage to be null and void or, as the case may be, annulling the marriage or restitution of conjugal rights or judicial separation or dissolution of marriage.

b) A suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person.

c) A suit or proceeding between the parties to a marriage with respect of the property of the parties or of either of them.

d) A suit or proceeding for an order or injunction in circumstances arising out of a marital relationship.

e) A suit or proceeding for a declaration as to the legitimacy of any person.

f) A suit or proceedings for maintenance.

g) A suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

2. Subject to the other provisions of the Act, the family court shall also have and exercise -

[120] ibid s. 7

(a) The jurisdiction exercisable by a magistrate of the First Class under Chapter IX (relating to the order for maintenance of wife, children and parents) of the code of criminal procedure, 1973. and

(b) Such other jurisdiction as may be conferred on it by any other enactment.

'Exclusion of Jurisdiction and pending proceedings'[121]

Where a family court has been established for any area. -

a) No district court or any subordinate civil court referred to in sub section(1) of section 7 shall in relation to such area have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub section.

b) No Magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure 1973.

c) Every suit or proceeding of the nature referred to in the Explanation to sub section (1) of 7 and every proceeding under Chapter IX of the Code of Criminal procedure 1973.

   (i) Which is pending immediately before the establishment of such family court before any district court or subordinate Court referred to in that sub section or, as the case may be before any Magistrate under the said code. and

   (ii) Which would have been required to be instituted or taken before or by such Family court if before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established.

Shall stand transferred, to such Family Court on the date on which it is established.

Duty of Family Court to make efforts for settlement [122]

1. In each suit or proceeding, attempt shall be made by the Family Court in the first instance where it is possible to do so consistent with the nature and circumstance of the case to assist and persuade the parties in arriving at a

[121] ibid s.8
[122] ibid, s.9

settlement in respect of the subject matter of the suit or proceedings and for this purpose a Family Court may, subject to any rules made by High Court, follow such procedure as it may deem fit.

2. If in any suit or proceeding, at any stage it appears to the Family Court that there is reasonable possibility of a settlement between the parties the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such settlement.

3. The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn proceedings.

'Procedure'[123]

1. Subject to the other provision of this Act and rules, the provisions of the Code of Civil Procedure, 1908 and of other law for the time being in force shall apply to suits and proceedings other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all powers of such court.

2. Subject to the other provisions of this Act and the rules, the provisions of the Code Criminal Procedure, 1973 or the rules made there under, shall apply to the proceedings under Chapter IX of that code before a Family Court.

3. Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a resolution in respect of the subject- matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.

'Proceeding to be held in camera'[124]

In every suit or proceedings to which this Act applies, the proceedings may be held in camera if the Family Court so desires and shall be so held if either party so desires.

[123] ibid,s.10
[124] ibid s. 11

'Assistance of medical and welfare experts'[125]

In every suit or proceedings, it shall be open to Family Court to secure the services of a medical expert or such person preferably a woman where available whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the Court may think fit for the purpose of assisting the family court in discharging the functions imposed by this Act.

'Right to legal representation'[126]

Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner.

Provided that if the Family Court considers it necessary in the interest of justice it may seek the assistance of a legal expert as amicus curiae.

'Application of Indian Evidence Act, 1872'[127]

A Family Court may receive as evidence any report, statement. Documents, information or matter that may in its opinion, assist it to deal effectual with a dispute whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act 1872.

'Record of oral evidence'[128]

In suits or proceedings before a Family Court, it shall not be necessary to record the evidence of witnesses at length but the judge as the examination of each witness proceeds shall record or cause to the recorded a memorandum shall be signed by the witness and the judge and shall form part of the record.

'Evidence on formal character on affidavit'[129]

1. The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit or proceeding before a family court.

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125 ibid s. 12
126 ibid s. 13
127 ibid s.14
128 ibid s. 15
129 ibid s.16

2. The Family Court may, if think fit and shall, on the application of any of the parties to the suit or proceeding summon and examine any such persons as to the facts contained in his affidavit.

'Judgment'[130]

Judgment of a family Court shall contain in a concise statement of the case the point for determination, the decision thereon and the reasons for such decision.

'Execution of decree and orders'[131]

1. A decree or an order [other than an order under Chapter IX of the Code of Criminal Procedure, 1973 passed by a Family Court shall have the same force and effect as a decree or order of a Civil Court and shall be exercised in the same manner as is prescribed by the Code of Civil Procedure, 1908 for the execution of decree and orders.
2. An order passed by a Family court under Chapter IX of the Code of Criminal Procedure, 1973 shall be exercised in the manner prescribed for execution of such order by that code.
3. A decree or order may be executed either by Family Court which passed it or by the other Family Court or ordinary Civil Court to which it is sent for execution.

'Appeals'[132]

1. Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 or in the Code of Criminal procedure, 1973, or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on the facts and on law.
2. No appeal shall lie from the decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure 1973.

130 ibid s. 17
131 ibid, s.18
132 ibid s. 19

Provided that nothing in this sub-section shall apply to any appeal pending before High Court or any order passed under Chapter IX of the Code of Criminal Procedure 1973 before the commencement of the Family Courts Amendment Act, 1991.

Every appeal under this section shall be preferred within a period of thirty days from the date of judgment or order of family Court.

3. The High Court may, of its own motion or otherwise call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 for the purpose of satisfying itself as to the correctness legality or propriety of the order not being an interlocutory order, and as to the regularity of such proceeding.

4. Except as aforesaid, no appeal or revision shall lie to any court from any Judgment, order or decree of Family Court.

5. An appeal preferred under sub section (1) shall be heard by a bench consisting of two or more judges.

Miscellaneous provisions'

Act to have overriding effect [133]

The provisions of this Act shall have effect in spite of anything inconsistent therewith contained in any other law for the time being force or in any instrument having effect by virtue of any law other than this Act.

'Power of High Court to make rules'[134]

1. The High Court may by notification in the official Gazette, make such rules as it may deem necessary for carrying out the purpose of this Act.

2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters.

    a) Normal working hours of Family Court and holding of sittings of Family Courts on holidays and outside normal working hours.

[133] ibid, s.20
[134] ibid s.21

b) Holding of sittings of Family Courts at places other than their ordinary places of sitting ;

c) Efforts which may be made by, and the procedure which may be allowed by, a Family Court for assisting and persuading parties to arrive at a settlement .

'Power of Central Government to make rules'[135]

1. The Central Government may, with the concurrence of Chief Justice of India, by notification make rules prescribing the other qualification for appointment of a judge to in clause (c) of sub- section (3) of section 4.

2. Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament while it is in the session for a total period of thirty days which may be comprised in one session or in two or more successive session, and if before the expiry of session immediately following the session or the successive session aforesaid both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Act.

'Power of the State Government to make rules'[136]

1. The State may, after consultation with the High Court, by notification, make rules for carrying out the purpose of this Act.

2. In particular and without prejudice to the majority of the provisions of sub-section (1), such rules may provide for all or any of the following matters, namely :-

   a) The salary or honorarium and other allowances payable to, and the other terms and conditions of judges under sub section (6) of section4.

[135] ibid s.22
[136] ibid s.23

b) The terms and conditions of association of counselors and the terms and conditions of service of the officers and other employees referred to in section 6.

c) Payment of fees and expenses including travelling expenses of medical and other experts and other persons referred to in section 12 out of the revenues of the State Government and the scales of such fees and expenses.

d) Payment of fees and expenses to legal practitioners appointed under section 13 as amicus curiae out of the revenues of the State Government and the scales of such fees and expenses.

e) Any other matter which is required to be, or may be, prescribed or provided for by rules.

3. Every rule made by a State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

4.15.2 Mediation Rules 2015

For the achievement of equity and without any resolution in regards to the intervention, the intercession rules were framed by the Supreme Court. Later on, the comparable footing the Punjab and Haryana High Court confined the principles and built up the intervention places at the High Court of Chandigarh and at all the area levels of Punjab. These principles are known as the Mediation Rules, 2015. [137] These standards wrapped practically all the important elements of intercession process settled by the Honorable Supreme Court. Let us examine the arrangements it given.

1. Appointment of mediator and conciliator

The controller of the intercession community is engaged to name the mediator. The specialists may likewise select any individual as mediator out of the board of go between/conciliator alluded in Rule 4 so far depending on the prerequisite that the individual named ought to not preclude the standards settled in rule 6. [138]

[137] Mediation Rules, 2015, available at: http://pulsa.gov.in/?q=mediatio (last visited on 28.7.2020)
[138] Mediation and Conciliation Rules Act, 2015, R.3

2. Panel of Mediator

The board of go between/conciliators containing the names of promoters who were discovered qualified under guideline 5 for the undertaking was set up subsequent to taking their assent. Under principle 3 these go between are to be named for a long time and may give the augmentation now and again. The inclination can be given to that names that are having any uncommon capability or involvement with intercession or conciliation. [139]

3. Qualification of person to be Empaneled

At present, the accompanying people are viewed as able to be selected as middle person

a. Retired Judges of the Supreme Court of India
b. Retired Judges of the High Court's
c. Retired District and Session Judge/Additional District and Sessions Judges
d. Legal practitioners with at least ten years standing at the Bar in the Supreme Court, High Court or District Court
e. Experts or other professionals with at least fifteen years standing or retired senior bureaucrats or retired senior executives
f. Institutions which are themselves experts in mediation/conciliation and have been recognized as such by the High Court. [140]

4. Disqualification

Rule 6 provides the disqualification to remove the name from the panel which is as follows -

a. any person who has been adjudged insolvent

b. any person against whom criminal charges involving moral turpitude have been framed by a criminal court and are pending

c. any persons who has been convicted by a criminal court for any offence involving moral turpitude

[139] ibid R. 6
[140] Mediation and Conciliation Rules Act,2015, R.5

d. any person against whom disciplinary proceedings have been initiated by the competent authority or who has been punished in such proceedings

e. Such other categories of persons as may be notified by the High Court

5. Duties of mediator and conciliator

On the condition that the mediator selected is associated with the issue in contest or he is identified with the gatherings in any way then it is the obligation of the go between to educate the gatherings this necessary data in highly contrasting at the most punctual as this reality may raise a sensible uncertainty on the respectability of a middle person. In any case, the parties may permit him to be delegated as a middle person in the issue according to their unrestrained choice. [141] It is additionally the obligation of a middle person to advise the court about the resolved nonattendance of the party from the intervention meeting with the goal that the court may pass a fitting request with respect to or disdain to guarantee the nearness of the party in the intercession meeting. [142]

6. Cancellation of Appointment

As long as the court finds any legitimate reason in the explanation given by the go between it may drop the arrangement of the middle person and can designate some other mediator in such a case. [143]

7. Procedure of Mediation and Conciliation

The common and compoundable offenses of criminal cases may allude to the intervention focuses. The cases will be appointed to the middle people according to their skill where the bit by bit intervention between the parties will be led. The inability to arrive at a settlement in the intervention reference will not block the courts to again elude the case to the intervention communities. [144] The go between isn't limited by the guidelines of Indian Evidence Act 1872 or by the code of Civil Procedure, 1908 however needs to keep up the rule of characteristic equity decency and equity. [145]

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[141] ibid R. 9
[142] ibid, R.14
[143] ibid R. 10
[144] ibid R. 11
[145] ibid R. 12

8. Role of Mediator/ conciliator

The go between is endowed with the work to help the parties to recognize their main problems by lessening their false impressions and explain their needs. A go between needs to build their correspondence level and to investigate more alternative to resolve their debate. Middle person is depended with the undertaking to determine the debate between the gatherings voluntarily. [146] It is just the parties who need to take the choice to determine an issue. A go between can't force his choice rather he is to just help the gatherings to reach to an agreeable decision. [147]

9. Time Bound Process

The procedures stand ended after the time of ninety days with the exception of in the event that the court gives the augmentation of time suo motu or on the solicitation of any of the parties or of the go between. [148]

10. Confidentiality

The classification is most significant element of the procedure of intercession. The guideline of classification was received in the intercession procedure so that on the off chance that in the event that the procedure comes up short, at that point the exchanges may not influence the suit in the suit under the watchful eye of the appointed authority. Normally the go between needs to pass the data to the other party so the other party may give appropriate clarification yet on the off chance that the gathering guides the arbiter to keep it classified then the middle person can't pass on it to the opposite side. The data assembled by the go between throughout intercession or after the scrutiny of any archives will be left well enough alone by him. The different improvements during intervention like recommendations, affirmations or reasons not to acknowledge the proposition are additionally required keep secret by the middle person. The principles likewise restricted the sound or video recording of the intervention procedure. [149]

Just the brought or fundamental people like concerned gatherings, their lawyers can go to the meetings. These measures guarantee the protection privileges of the

[146] Ibid R. 16
[147] Ibid R.17
[148] ibid R. 18
[149] ibid R. 20

gatherings. [150] There will be no correspondence between the mediator and the court to keep up the classification yet this standard is dependent upon just special cases like about the nonappearance of the gathering about the assent of gatherings, about the appraisal of the go between with respect to the unsatisfactory quality of the case alluded to intervention for settlement and these correspondences are required to be clearly and the duplicate of which is given to the gatherings. [151]

11. Immunity

Anything done in bonafide by the go between during the intervention/conciliation procedures secured under the in susceptibility awards to him fair and square. Neither one of the parties can bring the go between in proof to demonstrate any reality. [152]

12. Settlement Agreement

On the condition that any accord about the goals of debates through arrangement in the intervention procedure accomplished between the gatherings it will be diminished recorded as a hard copy and the concerned parties need to sign and their particular advice will bear witness to the marks of their customers. The middle person will send it to the referral court alongside his covering letter. if no agreement accomplished and it seen by the go between that the settlement is beyond the realm of imagination between the gatherings it will answer to the court. [153] Thereafter, the court inside seven days will fix a date for appearance of the gatherings not past than fourteen days to record the settlement and pass an announcement as needs be. In any case that the settlement doesn't cover all the gives then the court will grasp the terms of understanding in the judgment while choosing the other issues. [154]

13. Fee of Mediator / Conciliator and Costs

The compensations have been fixed to ten thousand for a fruitful intervention and 3,000 for a bombed intercession however the court may likewise fix the higher expense on the off chance that it considers fit. On the off chance that there are two mediators at that point the court may fix the charge what's more, the portion of parties to be borne by them. Different costs like authoritative help and so forth are to be

[150] ibid R. 21
[151] Ibid R.23
[152] ibid R. 22
[153] ibid R. 24
[154] ibid R. 25

borne similarly by the concerned parties. The parties need to carry the expense of specialists or different people or archives themselves on the off chance that they need to deliver them as witnesses. Middle person can ask the gatherings to store ahead of time most extreme 50% of consumption including his own expense and the receipts of the consumption are to be produce in the court by the middle person. In the event that any defaulting party doesn't pay the consumption as coordinated the court may recoup it as announcement cash by orders. [155]

14. Ethics of mediator / Conciliator"

The fundamental ethic which is to be trailed by a middle person is to follow the standards and show a not too bad direct in the process to maintain the uprightness and reasonableness. Middle person is required to uncover the significant realities which may influence unbiased of him. Middle person is resolved to keep up classification of the realities uncovered during the procedure. Go between can't give any assurance of act and direct of some other gathering and should halt himself from making any such kind of guarantees. [156]

[155] Ibid R.26
[156] ibid R. 27

CHAPTER 5

ROLE OF JUDICIARY IN RESOLVING MATRIMONIAL DISPUTES THROUGH MEDIATION AND CONCILIATION PROCESS

5.1 Introduction

The Judiciary is right now inclined more towards intervention as the most reasonable alternative for dispute settlement. Recently Apex court [1] feel that however offence punishable under Section 498A of the IPC isn't compoundable, in suitable cases if the parties are willing and in the event that it appear to the criminal court that here exist components of settlement, it should guide the parties to investigate the probability of resolution during intercession. This is, undoubtedly, not to deteriorate the perfectionism, feasibility along with imply of Section 498A[2] of the IPC yet to find situations where the marital issue can be nipped in bud in a reasonable way. The appointed authorities, with their aptitude, must guarantee that this activity doesn't prompt the failing life partner utilizing intervention procedure to flee grips of the law.

The learned members from the Bar have gigantic social duty and commitment to guarantee that the social fiber of family life isn't destroyed or annihilated. They should guarantee that overstated variants of little episodes ought not to be reflected in the criminal complaints. Dominant part of the protests is recorded either on their recommendation or with their multifariousness. The learned members from the Bar who have a place with an noble profession must keep up its respectable conventions and should treat each protest under 498 A of Indian Penal Code as a fundamental human issue and should make genuine attempt to help the gatherings in showing up at a amicable resolution of that human issue. They should release their obligations as well as could be expected to guarantee that social fiber harmony and serenity of the general public stays flawless. The individuals from the Bar ought to likewise guarantee that one grumbling ought not prompt numerous cases. [3]

Lamentably, at the time of documenting of the grievance the suggestions and results are not appropriately envisioned by the complainant that such grumbling can prompt

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1 Ram Gopal v. State of M.P, (2010) SCALE 711

2 Available at https://indiankanoon.org/doc/171370472 (last visited on 12.6.2020)

3 Preethi Gupta v. State of Jharkhand, AIR 2010 SC 3363

unfavorable harassment, misery and torment to the complainant, charged and his close relations .[4]

A definitive object of justice is to discover reality and punish the liable and secure the honest. To discover the fact of the matter is a Herculean assignment in larger part of these protests. The propensity of ensnaring spouse and all his close relations is additionally normal. On occasion, much after the finish of criminal preliminary it is hard to find out the genuine truth. The courts must be incredibly cautious and mindful in managing these grievances and must contemplate down to earth real factors while managing wedding cases. The claims of provocation of spouse's nearby relations who had been living in various urban areas and never visited or once in a while visited where the complainant dwelled would have an altogether extraordinary composition. The claims of the protest are required to be examined with extraordinary consideration and carefulness.

Experience uncovers that long and extended criminal preliminaries lead to animosity, rancor and sharpness in the relationship among the parties. It is additionally a matter of basic information that in cases recorded by the complainant if the spouse or the husband's relations needed to stay in prison in any event for a couple of days it would destroy the odds of amicable settlement through and through. The way toward enduring is incredibly long and difficult. There is a developing need of intervention for matrimonial disputes in India.

There has been an upheaval of marital disputes as of late. The marriage is a sacrosanct service, the principle motivation behind which is to empower the youthful couple to settle down throughout everyday life and live calmly. Yet minimal martial engagements out of nowhere emit which regularly accept genuine extents bringing about commission of grievous wrongdoings in which older folks of the family are additionally associated with the outcome that the individuals who could have directed and realized rapprochement are rendered powerless on their being exhibited as blamed in the criminal case. There are numerous different reasons which need not be referenced here for not empowering matrimonial suit with the goal that the gatherings may contemplate over their defaults and end their disputes genially by shared understanding as opposed to battling it out in a Court of law where it takes a long time

[4] Satish Sahni & Others v. State of Punjab & Another dated 31.05.2012

to close and in that procedure the parties lose their young" days in pursuing their cases in various courts.

The point of law is to accommodate or improve the hopelessness however much as could be expected. As indicated by Bentham the point of law, similar to life itself, is to advance the greatest good of the greatest numbers. [5] It is a crying need that there ought to be redressal of family law issues in a appropriate legitimate structure. Arrest brings embarrassment, diminishes opportunity and throws scars until the end of time. There is a need to build up a contest goals system, which can secure relationship. [6] The discussions for settlement of matrimonial disputes can be customary or present day legal or non legal, legislative or nongovernmental. [7]

The Court[8] is an essential and an extra-common viable instrument to keep up and control social request. The Courts assume job of principal significance in accomplishing harmony, congruity and never-ending congeniality in the public arena and resolutions of a dispute by method of a compromise between two warring gatherings, along these lines, ought to pull in the quick and brief consideration of a Court which should try to give full impact to the equivalent, except if such compromise is despicable to legitimate piece of the general public or would advance viciousness if the announcement is reasonable being liberated from under tension. Which means in this way the High Court has boundless capacity to subdue the criminal procedures, relatable to such cross battles, based on legitimate settlement? The law set down in the aforementioned decisions mutatis mutandis is completely material in the current case and is the finished response to the problem in hand.

5.2 Role of Referral Judge

The panels of judges who submit the cases for resolution all the way through any of the Alternative Dispute Resolution techniques are known as referral judges. The work of a Referral Judge is of barely credible noteworthiness in court-referred intervention. All cases are not appropriate for intervention. The same as it were proper cases which are appropriate for intervention ought to be alluded for Intervention. The accomplishment of mediation will rely upon the exact determination and reference of

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5 A.V. Dicey, Law & Public Opinion in England, 414 (Universal Law Publishing Co. Delhi, 3rd Indian Reprint, 2003)

6 Madabhushi Sridhar Alternative Dispute Resolution, Lexis Nexis .79

7 Prof. Kusum Family Law Lectures Family Law, 251(Lexis Nexis, third edition)

8 Sanjeev Kumar & Others v. State of U.P & Others Dated. 29.03.2011

just apt cases by referral judges. The reference to alternative dispute resolution and lawful requirement of Section 89 and Order X Rule 1A of Code of Civil Procedure, 1908 require the court to guide the parties to decide on any of the five methods of alternative dispute resolution and to elude the case for Arbitration, Conciliation, Legal Settlement, Lok Adalat or intercession. Although making such reference the court will consider the alternative if any practiced by the parties and the equanimity of the case for the explicit alternative dispute resolution technique. In the light of legal proclamation, a referral judge isn't required to define the terms of settlement or to make them accessible to the parties for their perception. The referral judge is required to familiarize himself with the realities of the case and the nature of the dispute between the gatherings. [9] And to make a target evaluation to the appropriateness of the case for reference to alternative dispute resolution.

5.3 Stage of Reference

The appropriate phase for in view of reference to alternative dispute resolution forms in ordinary suit is after the conclusion of pleadings and before confine the issue. If for any reason, the court didn't refer the case to alternative dispute resolution process before framing issues, nothing keeps the court from considering reference even at a later stage. On the other hand, view in relation to claim and counter charges vitiating the manner and bringing on additional tension on the relationship of the parties in family disputes and matrimonial cases the perfect stage for intercession is right away after assistance of notice on the respondent and before the documenting of complaints/composed articulations by the respondent. A request referring the case to alternation dispute resolution form may be conceded exceptionally within the prospect of the parties and in addition their standard agent.

Under Section 89 Civil Procedure Code, acquiesce of the substantial numeral of parties to the suit is elementary for referring the suit for adjudication where there is no previous arbitration agreement between the parties. Moreover the court can refer the case for conciliation under section 89 Civil Procedure Code now with the consent of all the Mediation Training Manual of India parties. Notwithstanding, as far as Section 89 CPC and the legal professions, assent of the parties isn't necessary for referring a case for Mediation Lok Adalat or Judicial Settlement. The non manifestation of

[9] Available at https://indiankanoon.org/doc/171370472 (last visited on 12.6.2020)

consent for reference doesn't impact the deliberate idea of the intercession procedure as the parties despite all grasp the opportunity to coincide or not to coincide for conclusion throughout intercession.

5.4 Circumvent impediment in trial

In position of any exploitation of the deal for mediation by causing delay in the first round of the case the referral judge while avoid the case for negotiation will send the case for supplementary trial on a meticulous date permit occasion to end the mediation procedure as gave under the Rules or such reasonable time as revealed original.

Selection of Cases for reference as held by the Supreme Court of India in **Afcons Infrastructure Ltd. also, Anr. V. Cherian Varkey Construction Co. Pvt. Ltd. also, Ors.**[10] having admiration to their preference, the subsequent module of cases are usually view as unacceptable for alternative dispute resolution process.

i. Envoy suit under Order I Rule 8 Civil Procedure Code which incorporates common scheme or keenness of different nation who are not parties under the observant eye of the court. [11]

ii. Disagreement connecting to voting to public offices. [12]

iii. Cases concerning grant of ability by the court after enquiry, as for example, suits for grant of probate or letters of administration. [13]

iv. Cases relating grave and explicit allegation of deception, falsehood of documents, counterfeit, impression, compulsion, etc. [14]

v. Cases require shield of courts, as for example, claims against minor, deity and emotionally challenge and suits for assertion of label against the administration. [15]

vi. Cases concerning action for unlawful offences. [16]

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10 (2010) 8 SCC24
11 ibid
12 ibid
13 ibid
14 ibid
15 ibid
16 ibid

Every other suit and instances of civil nature specifically the accompanying classes of cases in the case of pending in civil courts or other special tribunals/forums are typically reasonable for alternative dispute resolution forms.

i. Every case involving to trade, commerce and contracts, including
   - Disputes arise out of contract including all money suits
   - Disputes relating to specific performance
   - Disputes between suppliers and customers
   - Disputes between bankers and customers
   - Disputes between developers/builders and customers
   - Disputes between landlords and tenants/licensor and licensee's
   - Disputes between insurer and insured

ii. Every case arising from strained or soured relationships, including [17]
   - Disputes relating to matrimonial causes, maintenance, custody of children.[18]
   - Disputes relating to partition/division among family members/Coparceners/ co-owners [19] and
   - Disputes relating to joint venture among partners. [20]

iii. All cases where there is a need for continuation of the pre-existing relationship in spite of the disputes. Including -
   - Disputes between neighbors (relating to easementary rights, encroachments, nuisance, etc.
   - Disputes between employers and employees.
   - Disputes among members of societies/associations/apartment owners' associations.

iv. All cases relating to tortuous liability, including - claims for compensation in motor accidents/other accidents. and

v. All consumer disputes, including disputes where a trader/supplier/manufacturer/service provider is keen to keep his business/professional status and reliability or product popularity.

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17 Available on https://indiankanoon.org/doc/168349686/ (last visited on 22.6.2020)
18 ibid
19 ibid
20 ibid

5.5 Encouraging along with preparing parties for Mediation

The referral judge assumes the most significant job in spurring the gatherings to resolve their questions through intervention. Regardless of whether the gatherings are not slanted to concur for intercession, the referral judge may attempt to determine the purpose behind such unwillingness so as to convince and propel them for intervention.

The referral judge ought to clarify the idea and procedure of intervention and its preferences and how settlement to intervention can fulfill fundamental enthusiasm of the parties. In any event when the case completely isn't appropriate for intercession a referral judge may consider whether any of the issues associated with the fight can be alluded for intervention.

5.6 Recommendation order

The intercession procedure is in progress through a referral request. The referral judge ought to know the importance of a referral request in the intercession process and ought not to have an relaxed method in passing the request. The referral request is the institution of a court-referred mediation. A perfect referral request ought to contain in addition to other things detail like name of the referral judge case number name of the parties, date and year of foundation of the case, stage preliminary, nature of the problem, the legal agreement under which the reference is made, next date of hearing under the steady gaze of the referral court, apart from whether the parties have agreed for intercession, name of the organization/middle person to whom the case is alluded for intervention the date and time for the gatherings to report before the foundation/middle person, as far as possible for finishing the intercession, quantum of charge/ compensation if payable and contact address and phone quantities of the gatherings and their counsels.

5.7 Position after the termination of Mediation

The referral judge assumes a urgent work significantly subsequent to the conclusion of intercession. Despite the fact that the difference was refer for mediation the court hold its control and purview over the issue and the consequence of intercession should be put under the steady gaze of the court for passing important requests.

Before considering the information of the go between the recommendation judge will guarantee the proximity of the parties or their agreed mediator in the court. In the incident that there is no settlement between the parties, the court procedures will proceed as per law. So as to make sure that the confidentiality of the mediation process isn't breach, the referral judge ought not to request the explanations behind disappointment of the parties to explain at a settlement. Nor should the referral judge authorize the parties otherwise their direction to disclose such motivation to the court. In any case, it is open to the referral judge to inspect the probability of a settlement between the parties. To make sure privacy of the intervention method, there ought not to be any communication between the referral judge and the middle person with respect to the intervention during or after the procedure of intercession.' On the top the dispute has been settled in intervention, the referral judge has to look at whether the agreement between the parties is legal and enforceable.

On the other hand that the agreement is seen as unlawful or unenforceable it will be bringing to the notice of the parties and the referral judge should cease from subsequently on such conformity. In the event that the accord is found to be reasonable and enforceable the referral judge should follow up on the terms and state of the agreement and pass substantial requirements. To conquer any specific or practical dilemma in executing the settlement between the parties, it is available to the referral judge to adjust or correct the terms of settlement with the acquiesce of the parties.

Domestic Violence unfortunately, is uncontrolled and basic in Indian families. Section 3 of Protection of Women from Domestic Violence Act, 2005 characterizes Domestic Violence in an exhaustive way, containing physical, mental, verbal, passionate, sexual and financial maltreatment, harassment for dowry, and demonstrations of taking steps to mishandle the person in question or some other individual identified with her. [21] To put it into point of view a monstrous 31 percent of married women have been exposed to physical, sexual, or enthusiastic viciousness by their mates. As per the National Family Health Survey (NHFS-4) report delivered by the Union health ministry, 27% women have encountered physical violence. [22] As the measurements bring up, in the male centric Indian culture, it has nearly become a standard.

[21] Act number 43 0f 2005

[22] International Institute for Population Sciences and ICF, 2017, National Family Health Survey (NFHS-$),2015-16: India Mumbai, IPS.

Mediation is a type of dispute resolution where in with the assent of the parties, a nonpartisan outsider called the go between helps them in going to a very much educated, non-authoritative understanding, as right on time as could reasonably be expected. Mediation is an option to the conventional antagonistic arrangement of dispute resolution. It is time and practical, willful, less formal and secret and one of the basic preferences of intervention is that it is greatly improved ready to safeguard present and future connections than the conventional antagonistic framework. Intervention is frequently observed as a supportive helpful cycle and it empowers direct correspondence between parties. This is the explanation of its notoriety in marital disputes and other family matters. Intervention referred by the court under Section 89 of Civil Procedure Code, 1908 and the Legal Services Authorities Act, 1987 is called Court referred mediation and is habitually done in India.

Mediation is a pre-litigation or a court mandated process for family law disputes which is filling in ubiquity and utilization. In a developing number of cases there is an obligatory arrangement as for family issues, for example, custody and divorce proceeding court intervention.

Today there is a rising pattern of referring cases identified with domestic violence for family mediation. Section 498A of the Penal Code 1860 manages the offence of domestic violence, where cruelty to a woman by her better half or any relative of her husband is culpable for with imprisonment for a term of three years and furthermore fine.

The utilization of intercession in domestic violence welcomes contrasting perspectives. One group of individuals accept that intervention has a place in settling domestic violence would be valuable to the parties and to the family structure while the other group accepts that intercession isn't the suitable strategy for managing the instances of domestic violence. The two ways of thinking legitimize their perspectives with the assistance of different contentions.

When dealing with disputes related to families, one of the key contemplations is that the dispute resolution process ought not to be hurtful to the family. In this way, a push to make the process cost and time effective is made and the process isn't as formal as the conventional court proceeding.

The absence of convention of the entire process makes it simpler for the children of such families to adapt to conditions when contrasted with the court procedures which regularly contrarily influence a youngster's enthusiastic and physical health. Intervention fills these needs notwithstanding being intentional and non official who guarantees that a choice which is unreasonable to either party isn't passed or acknowledged and the last capacity to acknowledge or dismiss the result rests with the parties. It is because of these reasons that it tends to be said that embracing intercession will help in protecting the family connections and would be ideal for cases including domestic violence.

The Indian courts have on many occasions referred parties to mediation in resolving matrimonial disputes irrespective of the nature of the offence in India. The Supreme Court in 2013 sanctioned all criminal courts to adopt mediation, with specific regard to cases under Section 498A Indian penal Code. V

5.8 Various Case Laws

Aabha Sahu v. Ashok Sahu on 13 October, 2020[23] Mr. Ashok Sahu, Sia Shri J.P. Sahu, Rio H.no.31, Anand Vihar, P.S. Telibanclha, Raipur, and Chhattisgarh (hereinafter referred as Respondent Husband. The marriage between the petitioner and respondent was solemnized as per Hindu rites and customs on 18.04.2008 at Bhilai, Chhattisgarh. Both the parties resided together as husband and wife till 23.01.2015. Thereafter, the disputes and differences arose between the parties hereto and they started living separately. There is no issue from this wedlock. Justice Chandrachud and Hon'ble Mr. Justice Ajay Rastogi referred this matter to Supreme Court Mediation Centre. During the course of the proceedings, the parties were referred to mediation before the Mediation Center of the Supreme Court. A settlement agreement has been arrived at between the parties on 2 March 2020. Both the parties hereto confirm and declare that they have, voluntarily and of their own free will have decided not to live together as husband and wife and have arrived at this Settlement in the presence of the Mediator. The settlement agreement is accordingly taken on the record and the appeal is accordingly disposed of. The parties shall abide by the terms of the settlement.

[23] Criminal Appeal No 672 of 2020 (Arising out of SLP (Crl) No 6507 of 2019)

In the recent case of **Praveen Singh Ramakant Bhadauriya v. Neelam Praveen Singh Bhadauriya**[24] decided in May 2019 where due to a strained marriage, the parties were living separately. They had filed for a divorce along with a case for domestic violence. When the matter was pending before the Supreme Court, the parties were referred to mediation and the parties settled the matter amicably and filed a separate application agreeing for dissolution of marriage by mutual consent invoking the powers under Article 142 of Constitution of India. In accordance of the compromise the husband agreed to pay a sum of Rs ten Lakh to his wife and three lakhs to their daughter. It also settled that he would contribute another one lakh at the time of her marriage of the daughter. Both of them agreed that all the pending cases between the parties shall be withdrawn. The apex court allowed for quashing the cases including the one filed under the Domestic Violence Act after granting them divorce. This case is in continuation of judicial precedent of not hesitating in utilizing the tool of mediation to resolve family disputes.

In the case, **Mohd Mushtaq Ahmad v. State**[25] the Karnataka High court matrimonial disputes arose between the couple after the birth of a girl child. The wife filed a divorce petition along with an FIR against the husband under Section 498A IPC. The Karnataka High Court directed the parties to mediation under Section 89 of Civil Procedure Code. The wife then filed for quashing the criminal case against the husband under Section 498A of IPC 1860 and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The Court allowed this stating the court in exercise of its inherent powers can quash the criminal proceedings or FIR or complaint in appropriate cases in order to meet the ends of justice. [26]

Appellants: **Bikramjit Singh v.** Respondent: **Daljit Kaur**[27] Challenge in the present appeal is to the judgment and decree of the learned court below whereby petition filed by the Appellant under Section 13 of the Hindu Marriage Act, 1955, for dissolution of marriage was dismissed. During the pendency of the appeal, the same was amended and converted into a petition under Section 13B of the Act for divorce by mutual

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24 Civil Appeal No. 4541 of 2019 (Arising out of Special Leave Petition (Civil) No. 30555 of 2013) and available on https://indiankanoon.org/doc/147273211/(last visited on 20.06.2020)

25 (2015) 3 AIR Kant R 363, available on https://indiankanoon.org/doc/48924752/(last visited on 20.06.2020)

26 ibid

27 Decided on 10.11.2010, in the High Court of Punjab and Haryana at Chandigarh

consent. Briefly, the facts of the case are that the marriage of the parties was solemnized as per Sikh rites on 18.4.1999 at Amritsar. Out of the wedlock three children were born. Due to temperamental differences, the parties could not pull on together. They are living separate since July 2004. Petition filed by the husband for dissolution of marriage was dismissed by the learned Additional District Judge, Jalandhar, on 3.5.2010. Thereafter he filed appeal before this Court. During the pendency of the appeal before this Court to explore possibility of reconciliation, the matter was referred to the Mediation and Conciliation Centre in the High Court where the same was compromised on 30.8.2010.

In **Gurudath K. v. State of Karnataka**[28] the facts are identical to the case above. Here the court stated even if the offences are non-compoundable if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably. Section 320 CrPC would not be a bar to the exercise of power of quashing of FIR or criminal complaint in respect of such offences. Thus, the court allowed for the offences to be compounded on coming to the conclusion that the wife was under no threat or coercion for the same.

In Pepsi Food Ltd & Another vs. Special Judicial Magistrate & Ors[29]

Where the court will practice purview under Section 482 of the Criminal Procedure Code couldn't be unyielding or laying inflexible formulae to be trailed by the courts. Exercise of such force would rely on the realities and conditions of each case yet with the sole reason to forestall maltreatment of the procedure of any court or in any case to make sure about the finishes of equity. It is very much settled that these forces have no restrictions. Obviously where there is more force, it gets important to practice most extreme consideration and alert while summoning such powers.

The circular[30] further notices that the new arrangement was invited by the social request yet it was likewise discovered that it was being distorted. Criminal indictment under this arrangement were utilized for settling individual plans which emerged out of flashing questions between mates, without looking to the drawn out results. Whole families including minor school going sibling and sisters, grand kids, unmarried and married sisters-in law were roped in and confronted prospect of captures. In the

[28] Criminal Petition No. 7258 of 2014, order dated 20-11-2014
[29] (1998) 5 SCC 749
[30] ibid

inevitability of a capture, the chance of future compromise between the gatherings was decreased and family life was upset. Thus, the Apex Court, the High Courts and the Government of India had been giving headings occasionally for checking the abuse of Section 498 A. [31] If there should be an occurrence of capture of the denounced should possibly be influenced when it was basic and unavoidable as saw by the Hon'ble Supreme Court. [32] The procedure for arrest should just be offered impact to after endeavors for realizing intercession; counseling or conciliation between the parties had fizzled.

In such issues, before commencement of proceeding under cruelty, an exertion should initially be made for achieving compromise between the gatherings by conciliation; counseling or intercession ought to be completed by proficient instructed counsels in the women's crime cells.

The Apex Court has recommended to the Central Government and to the Law Commission to consider making offenses under area 498A IPC compoundable and bailable. [33] Similar suggestions were given by a division bench of this Court in Rajeev Verma v. State of U.P[34] that the said offence could be made compoundable with the permission of the Court. [35]

Full Bench of Court[36] **in Amravati and another v. Province of U. P**[37] and a division bench of this Court **in Sheoraj Singh & Chuttan v. State of U.P.** furthermore others[38]from that point the Magistrate concerned may attempt furthermore, achieve compromise between the gatherings either by himself, or in locale where some

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31 Husband or relative of husband of a woman subjecting her to cruelty. —Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. For the purpose of this section, cruelty means
(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

32 D.K. Basu v. State of W.B., decided on 18.2.1996

33 Ramgopal v. State of M.P, 2010 (7) SCALE 711

34 2004 Cri.L. J 2956

35 The Criminal Procedure Code, s.320

36 Allahabad High Court

37 2005 Criminal Law. Journal. 755

38 2009(65) ACC 781

organization exists for bringing about intervention, conciliation or counseling, through the said office.

In situations where the Magistrate isn't himself occupied with attempting to realize compromise between the parties, where Mediation/Conciliation or guiding of the couples and their relatives has been embraced by some other office, the said office must report the reality of disappointment or achievement of the intervention/conciliation and so forth within seven days of the conclusion of the activity.

At the point when marital issues were settled agreeably, as held by the Apex Court[39] it isn't in light of a legitimate concern for equity to proceed with the arrangement. The affirmation recorded by the main respondent spouse builds up that in this way because of the intercession of arbiters whole wedding questions were settled agreeably between the a couple and ensuing to the settlement, she has no complaint against the applicant and has no protest for suppress the procedures. In such conditions, it isn't in light of a legitimate concern for equity to remain on details and continue with the prosecution.

The Courts[40] in India are currently typically taking the view that try ought to be taken to proceed conciliation and secure fast settlement of disputes identify with marriage and family issues, for example, marital disputes between the couple or/and between the spouse and her parents in law. India being an immense nation normally has enormous number of wedded people coming about into high quantities of marital disputes because of contrasts in disposition ways of life, feelings, considerations and so on between such couples, because of which majority is going to the Court to get redressal.

In its **59th report** the Law Commission of India had stressed that while managing issues concerning the family the Court should receive a methodology profoundly not quite the same as that embraced in standard common procedures and that it should put forth sensible attempts at settlement before the beginning of the preliminary. Further it is additionally the established order for expedient removal of such disputes and to give speedy equity to the disputants. In any case, Courts are now over troubled

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39 B.S. Joshi and others v. State of Haryana and another (2003) 4 SCC 675

40 Orissa High Court in Anita Agrawala v. Santhosh Kumar Mohanty 1997(1) OLR 487 & Karnataka High Court H.S. Uma v. G.K. Samanth Arya 1993(2) Kar LJ 529

because of pendency of enormous number of cases in light of which it gets hard for rapid removal of matrimonial disputes alone.

As the matrimonial disputes are for the most part between the spouse and the wife and individual issues are associated with such questions, along these lines, it requires conciliatory method to bring a settlement between them. These days, intervention has assumed a significant job in settling the disputes, particularly, marital disputes and has yielded great outcomes. The Court[41] must exercise its characteristic force under section 482 of Criminal Procedure Code[42] to stop the marital suits at the soonest so the gatherings can live calmly.

It is an all around settled law that where the High Court[43] is persuaded that the offenses are completely close to home in nature and along these lines don't influence open harmony or serenity and where it feels that suppress of such procedures because of bargain would realize harmony and would make sure about closures of equity it ought not stop for a second to quash them. In such cases, pursuing prosecution would be exercise in futility and energy.

In K. Srinivas Rao v. D. A. Deepa[44], the Apex Court gave directions to all courts managing marital disputes to settle every single matrimonial dispute from the outset occasion through the procedure of Mediation. The Supreme Court guided Family Courts and Criminal courts to refer parties to Mediation Centers to settle disputes through settlement under intercession. Intervention is an alternative procedure of resolution of disputes via trained mediators. The Supreme Court of India coordinated Family Courts taking into account[45] to put forth all potential attempts to settle matrimonial disputes particularly in relation to maintenance, child custody and so on through the procedure of intervention and to allude parties to intercession focuses with the assent of parties. The apex court saw that the family courts should attempt settlement of questions through the procedure of intercession considerably after the recording of disappointment reports by advocates.

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41 Raghunath Prasad v. Urmila Devi & Another, AIR 1973 All 203

42 Section 482 0f Criminal Procedure Code, 1973, Saving of inherent power of High Court-Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice

43 Wasi Haider & Others v. State (Govt of NCT of Delhi) & Another dated.08.04.2016

44 (2013) 5 SCC 226

45 Section 9 of Family Court Act, 1984

The Family Courts take the assistance of Counselors in settling matrimonial disputes over the span of preliminary. [46] The Court additionally saw that family court should set sensible time limit for the completion of the mediation procedure by the intervention focus to not cause any further delay in resolutions of disputes by the family courts and saw that they may broaden as far as possible for mediation procedures.

The Courts in India are presently regularly taking the view that try ought to be taken to move forward appeasement along with secure rapid settlement of dispute identify with marriage and family issues for example, marital disputes between the couple or/and between the spouse and her parents in law. India being a huge nation normally has enormous number of married people coming about into high quantities of marital disputes because of contrasts in demeanor ways of life, feelings, considerations and so forth between such couples because of which larger part is going to the Court to get redressal. Nevertheless, Courts are as of now over troubled because of pendency of enormous number of cases in view of which it gets hard for quick removal of marital disputes alone.

B.S. Joshi & Ors v. State of Haryana & Anr[47] The Supreme Court held that complaint involving offence under section 498 A of the Indian Penal Code can be quashed by the High Court in exercise of its powers under section 482 of the Code if the parties settle their dispute.

Gian Singh v. State of Punjab & Anr[48] The Supreme Court expressed that certain offences which overwhelmingly and predominantly bear civil flavor like those arising out of matrimony, particularly relating dowry, etc. or the Family dispute and where the offender and the victim had settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, and the High Court may quash the criminal proceedings if it feels that by not quashing the same the ends of justice shall be defeated.

In Balwinder Kaur v. Hardeep Singh[49] Apex Court has held as follows A duty is also cast on the court in the first occasion in every case where it is likely to do

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46 ibid s.6
47 (2003) 4SCC 675
48 (2012) 10SCC 303
49 (1997) 11 SCC 701

constantly by means of the nature and circumstance of the case, to build every endeavour to bring on reconciliation between the parties.

Under sub-section (3) of Section 23 of the Act the court can even refer the affair to any person named by the parties for the purpose of reconciliation and to adjourn the matter for that purpose. These objectives and principles govern all courts trying matrimonial matters. [50]

In Jagraj Singh v. Birpal Kaur[51] Apex Court has held that as of the above case-law, in our judgment, it is apparent that a court is predictable, any bound, to construct all attempt and endeavors of reconciliation.

Section 23(2) of Hindu Marriage Act is a useful provision exhibiting the aim of Parliament requiring the Court in the first instance to make every effort to bring about a reconciliation between the parties.

But in the light of the above intent and supreme concern of the parliament in enacting such provision, an order is passed by a matrimonial court asking a party to the proceeding husband or wife to remain personally present it cannot successfully be contended that the court has no such power and in case a party to a proceeding does not remain present, at the most, the court can make a decision in case and order ex parte against him/her. Keeping of such dispute would almost make the liberal terms nugatory, unsuccessful and not viable defeat the commendable entity of reconciliation in matrimonial disputes. The controversy of the learned counsel for the appellant, therefore, cannot be upheld. [52]

In the case of *G.V. Rao v. L.H.V. Prasad*[53] the court held that marriage is a child centric heterosexual institution in our society. However, if marriage as a unit breaks down, the adjustments of various relations are required rupturing the usual structure and peace of the family. So the family laws and courts mostly encourage in matrimonial disputes for reconciliation and settlement by amicable agreement instead of litigation.

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50 Available on https://indiankanoon.org/doc/168349686/(last visited on 26.6.2020)
51 (2007) 2 SCC 564
52 ibid
53 *(2000)3 SCC 693*

In Gaurav Nagpal v. Sumedha Nagpal[54] with regard to the duty of Court to bring about conciliation in divorce and judicial separation proceedings. Apex Court made the following observations:

It is a disturbing phenomenon that large number of cases is flooding the courts concerning to divorce or judicial separation. An apprehension is in advance position that the provisions relating to divorce in the Hindu Marriage Act, 1950 have led to such a situation. In other words the reaction is that the statute is making possible breaking of homes rather than saving them. This may be too wide a view because actions are suspect. But that does not make the section invalid. Actions may be bad, but not the section.

The requirements concerning to divorce sort out situation in which a decree for divorce can be sought for. Simply for the reason that such a course is available to be adopted should not normally provide incentive to persons to seek divorce, unless the marriage has irretrievably broken. Effort should be to bring about conciliation to bridge the communication gap which leads to such adverse proceedings. People rushing to courts for breaking up of marriage should come as a last resort and unless it has an inevitable result court should try to bring about conciliation. The emphasis should be on saving marriage and not breaking it. [55]

B.S Krishna Murthy v. B.S Nagaraj and Ors[56] In this case Justice Markandey Katju held that lawyers should advise their clients for mediation, especially where the dispute is family in nature. Otherwise, the litigation goes on for years and decades which is detrimental to both parties.

In H.S. Uma v. G.K. Sumanth Arya[57] with regard to the duty of the Family Court, with reference to Section 9(1) of the Act and Section 23(2) of the H.M. Act to make every effort for reconciliation, with reference to the word every endeavour it was held as follows:

It may be noticed that in contra distinction to just the word "endeavour" mentioned in Section 9(1) of the Family Courts Act in Section 23(2) a duty is cast on the Court in the first instance to make every endeavour. The use of the word ever before the word

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54 (2009) 1 SCC 42
55 Available on https://indiankanoon.org/doc/168349686/ (last visited on 30.6.2020)
56 S.L.P. (Civil) No(s) 2896 of 2010
57 Indian Law Reports 1993 Karnataka 1774

endeavour in this Section assumes great importance in respect of the duty cast on the Court dealing with a proceeding under the Hindu Marriage Act to bring about reconciliation. [58]

Smt. Padmavati v. Sri M. Suresh Ballal[59] it was emphasized as follows: Matrimonial matters must be considered by Courts with human angle and sensitivity. The fragile issues affecting conjugal rights have to be handled carefully. Section 23 Of Hindu Marriage Act is a useful provision exhibit the meaning of Parliament require court 'in the first instance' to make every endeavour to bring about a reconciliation between the parties. [60] Where the estrangement between the parties to the marriage might seem to be acute, it is the obligation of the court to make every endeavour to bring the parties to reconciliation. [61]

The failure to make such an endeavour deprives the court of the jurisdiction to try and decide the case. If no endeavour had been made by the court, it will undoubtedly be a serious omission which has to be taken into account. Then it should further indicate that he made efforts to bring about further settlement. It is only when his efforts to reconcile between the husband and wife fails, he gets jurisdiction to proceed to pass an order of divorce.

A report has been received from the Patna High Court Mediation and Conciliation Centre and it has been reported that the disputed between the parties has been resolved through the process of the mediation and the parties mutually agreed upon to compromise in terms and conditions mentioned in the compromise petition and, according to the term of the compromise the husband is required to hand over a draft of Rs.6,50,000/- to the wife and both the parties will withdraw the cases filed one against other, during the matrimonial disputes. [62]

Salem Advocates Bar Association, T.N. v. Union of India [63] The challenge made to the constitutional validity of amendments made to the Code of Civil Procedure by Amendment Acts of 1999 and 2002 was rejected by this Court. But it was noticed in the judgment that modalities have to be formulated for the manner in which Section

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58 Available on https://indiankanoon.org/doc/168349686/ (last visited on 30.6.2020)
59 Indian Law Reports 2012 Karnataka 3926
60 Available on https://www.iafl.com/media/1129/alternative_dispute_resolution_in_indian_family_law.pdf (last visited on 2.7.2020)
61 ibid
62 Ajay Kumar vs. State Of Bihar & Anr Criminal Misc.No.35393 of 2012
63 (2003) 1 SCC 49

89[64] of the Code and for that matter, the other provisions which have been introduced by way of amendments, may have to be operated.

For this purpose a Committee headed by a former Judge of this Court and Chairman Law Commission of India Justice M. Jagannadha Rao was constituted so as to ensure that the amendments become effective and result in quicker dispensation of justice. [65] It was further observed that the Committee may consider devising a model case management formula as well as rules and regulations which should be followed while taking recourse to the Alternate Disputes Resolution referred to in Section 89.

It was also observed that the model rules with or without modification which are formulated may be adopted by the High Court concerned for giving effect to Section 89(2) (d) of the Code. Further it was observed that if any difficulties are felt in the working of the amendments the same can be placed before the Committee which would consider the same and make necessary suggestions in its report.

Ramgopal v. State of M. P[66] In this case certain cases which were non compoundable in Indian Penal Code like Section 498A were to be made compoundable for the easy settlement of parties themselves and which would also shed some burden from the shoulders of judiciary.

Afcons Infrastructure Ltd. v. Varkey Construction Pvt. Ltd.[67] This is the one most famous case relating to mediation. It is a landmark judgment in which the court stated that results of the mediation should be showcased to the court and when court refers the party for mediation then the reason for giving the choice of mediation shall be recorded.

Dr Jaya Sagade v. The State of Maharashtra[68] Here the circular which was passed by Maharashtra Government stating that the party can opt for mediation without going to the court and the only case related to domestic violence should be first filed and then the parties can go to mediation.

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64 Available on https://indiankanoon.org/doc/171370472/ (last visited on 4.7.2020)
65 ibid
66 (2010)13 SCC 540
67 (2010)8 SCC 24
68 SOM.PIL 104/2015-DB

Manas Acharya v. State of Anr[69] In this case the court issued an even more pro mediation approach wherein highlighted that the settlement obtained through mediation is legal and valid and the decision taken in the mediation process is binding on both the parties.

Bhavana Ramaprasad v. Yadunandan Parthasarathy[70] In the instant case the Family Court has not acted in a manner which is required of it, having regard to the jurisdiction vested on it, under the Act particularly S.9 which casts a duty to assist and persuade the parties to arrive at a settlement by referring them to alternative dispute resolution processes of conciliation and or mediation. [71]

The Family Court Judge has not shown a human approach which he is expected to have while dealing with the matrimonial dispute since the marriage is an institution of great social relevance. The impugned order is against the spirit of the Act and also settled position of law. The number of litigations being on rise, for small and trivial matters, people approach the Courts. The judicial system is overburdened causing delay in adjudication of the disputes. Mediation Centres, Arbitration and Conciliation Centres, were opened, by keeping in view S.89 of CPC to ease the burden of the Courts. Earnest efforts have to be made to resolve the disputes amongst the litigants by having recourse to alternative dispute resolution processes more particularly the matrimonial dispute by referring them to Mediation Centre. In view of the previous Family Court having committed the breach the impugned order being illegal is quashed. The Family Court shall refer to the Bangalore Mediation Centre and take up the case for consideration, after receiving report from the Mediation Centre ordered accordingly. [72]

Rajeev Ranjan v. The State Of Bihar & Ors[73] The court dealing with matrimonial disputes matters can issue the directions as follow.

In expressions of Section 9 of the Family Courts Act, the Family Courts shall formulate all efforts to patch up the matrimonial disputes through mediation. [74] Still if the counselor submits a failure report the Family Court shall with the consent of the

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69 CRL M.C. 2090/ 2012 & CRL.M. A 7236/2012, 14412/2012
70 Writ Petition No.40037/2014
71 Available on https://indiankanoon.org/doc/168349686/ (last visited on 10.7.2020)
72 Available on https://indiankanoon.org/doc/168349686/ (last visited on 10.7.2020)
73 Criminal Miscellaneous No.5336 of 2017
74 Available on https://indiankanoon.org/doc/168349686/ (last visited on 10.7.2020)

parties refer the matter to the mediation centre. In such a case however the Family Courts shall set a reasonable time limit for mediation centres to complete the process of mediation because otherwise the resolution of the disputes by the Family Court may get delayed. In a given case, if there is good chance of settlement, the Family Court in its discretion, can always extend the time limit.

Raghubar Rai v. The State Of Bihar[75] On 5.3.2020 the learned counsel for the petitioner and the opposite party submit that in case the matter is referred to the Patna High Court Mediation Cell Patna and the possibility of settlement of the matrimonial disputes amicably can be explored. It is expected that the learned Mediator shall make all efforts to amicably settle the matrimonial disputes amongst the parties.

Sunil Kumar Yadav and Others v. State of Haryana and Another [76] in the instant case, the parties have amicably settled their matrimonial disputes before the Mediation and Conciliation Centre of this Court by virtue of agreement/compromise. The divorce petition moved by them by way of mutual consent under Section 13B of The Hindu Marriage Act has already been allowed. Moreover, the complainant has received the amount as per terms & conditions of the settlement between them. Thus it would be seen that since the compromise is in their welfare and interest so there is no impediment in translating the wishes of the parties into reality and to quash the criminal prosecution to set the matter at rest to enable them to live in peace and to enjoy the life and liberty in a dignified manner.

Jaideep Singh Taneja v. State of Punjab[77] Taking into consideration the matrimonial disputes, the parties are directed to appear before the Mediation and Conciliation center of this satisfaction. During the pendency of the petition, the case was referred to Mediation and conciliation center. Parties have amicably settled.

Vinod M v. Namitha[78] In matrimonial dispute, petitioners and first respondent requested to refer the matter for mediation. Consequently as agreed case was sent submitted by Kerala Mediation Centre to the effect that the disputes were settled in the mediation. The agreement signed.

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75 Criminal Miscellaneous No.71686 of 2019
76 Criminal Miscellaneous. No M-28551 of 2011
77 Criminal Miscellaneous No M-4676 of 2015
78 Criminal Misc. No. 1620 of 2008

Sri Bhaskar D Gowda v. State by Vijayanagara Police[79] The Court has referred the parties to mediation before the Mediation Centre, Bangalore. The parties have entered into compromise and settled their entire conflict in this regard. It is stated in the compromise petition at Paragraph V that the petitioners approached this Hon'ble Court under Section 482 of Code of Criminal Procedure1908 seeking for quashing of the proceedings. They said case is referred to Mediation. In Clause VII of the compromise petition the parties have agreed in the following manner in view of the said settlement the petitioners and 2nd respondent pray that the proceedings pending be quashed in terms of the above agreement.

In view of the settlement the petitioners and respondent No.2 pray that the proceedings in C.C.No.17685/12 pending on the file of the I Additional Chief Metropolitan Magistrate[80]Bangalore be quashed in terms of the compromise agreement. The agreement between the parties is taken on record and the parties have agreed to the contents of the said agreement. There is no illegality in compromising the matter between the parties. In view of the above said circumstances and the parties having settled their conflict in its entirety and entered into compromise, they have no objection to quash these proceedings.

Jitendra Raghuvanshi and others v. Babita Raghuvanshi and another[81] wherein it has held that in matrimonial disputes if it is settled, proceedings in the criminal case can be quashed. The Supreme Court held as the inherent powers of the High Court under Section 482 Criminal Procedure Code are wide and unfettered. It is trite to state that the power under Section 482 should be exercised sparingly and with circumspection only when the Court is convinced on the basis of material on record, that allowing the proceedings to continue would be an abuse of process of Court or that the ends of justice require that the proceedings ought to be quashed.

Exercise of such power would depend upon the facts and circumstances of each case and it has to be exercised in appropriate cases in order to do real and substantial justice for the administration of which alone the Courts exist. Thus the High Court in exercise of its inherent powers can quash the criminal proceedings or FIR or complaint in appropriate cases in order to meet the ends of justice and Section 320 of

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79 Criminal Petition No.238 OF 2013

80 Available on https://498amisuse.wordpress.com/category/resource/crpc-125/ (last visited on 14.7.2020)

81 (2013) 4 SCC 58

Criminal procedure Code does not limit or affect the powers of the High Court under Section 482 Criminal Procedure Code.

Section 23 of the Hindu Marriage Act 1955 and Order XXXIIA of the Code of Civil Procedure 1908 and the duty enjoined upon the court came up for interpretation before the Supreme Court recently in the case **Jagraj Singh v. Bir Pal Kaur**[82] The Indian Apex Court, in its landmark judgment in that case, held as follows -

It is predictable the court is apparent that any bound to make all actions and section (2) of section 23 is an accommodating agreement display the aim of the parliament requiring the court 'in the main occasion' to make each try to achieve a compromise between the parties. As long as that in the light of the previously mentioned expectation and foremost thought of the governing body in authorizing such arrangement, a request is passed by a Matrimonial Court asking involved with the procedure spouse or wife to remain actually present it can't effectively be placated that the court has such force and on the off chance that involved with a procedure doesn't stay present probably the court can continue to choose the body of evidence ex parte against him/her. Maintain of such contention would for all intents and purposes make the big hearted arrangement insignificant, incapable and unfeasible, overcoming the commendable object of compromise in matrimonial disputes. The dispute of the intellectual advice for the appealing party hence can't be maintained .[83]

Kerala in Bini v. K.V. Sundaran[84] Despite the consequence whether appeasement is required after the presentation of the Family Courts Act, 1984 even on the excepted grounds of transformation to another religion renunciation of the world mental disorder venereal sicknesses and disease. Calling the Family Courts Act 1984 an uncommon resolution and its arrangements to take a stab at compromise obligatory at the main occasion.

The High Court held that the parties can differ on issues of confidence and still lead an upbeat conjugal life on the off chance that they could be persuaded that is important of confidence should not stand in the way of association of hearts. In this way however under the Hindu Marriage Act 1955 no undertaking for compromise need be made in a request for separate on the ground of change to another religion or

[82] JT 2007 (3) SC 389
[83] Available on https://indiankanoon.org/doc/168349686/ l(ast visited on 20.7.2020)
[84] AIR 2008 Kerala 84

different grounds excepted under Section 13 (1) of the Hindu Marriage Act 1955 or on comparable or different grounds accessible under some other law likewise, after the presentation of the Family Courts Act, 1984, the Family Court will undoubtedly make an undertaking for compromise and settlement. The necessity is obligatory. That is the reasonable change brought out by the Family Courts Act, 1984 which is a unique resolution. [85]

The Court additionally said that the essential aim is to advance and protect the consecrated association of parties to marriage. Just if the endeavors for compromise are not productive, the further endeavor on concession to difference might be made by method of settlement. [86]

Accordingly from a scrutinize of the above judgment indisputably the committed commitment cast upon the matrimonial courts to endeavor compulsory compromise can't be kept away from what's more can't be bypassed in any event when separation is looked for on certain uncommon grounds which under the Hindu Marriage Act and Special Marriage Act don't give mandatory settlement activity. [87] Considerably more, centering on the need to treat the cases identify with family matters in a charitable manner.

The Supreme Court of India in case **Baljinder Kaur v. Hardeep Singh**[88] laid down that stress ought to consistently be on the protecting the basis of marriage. With the aim of the requirement of law. One can allude to the matter as well as reason which lead to position of Family Courts under the Family Courts Act 1984. For the inducement behind arrangement of family disputes prominence is laid on conciliation and accomplishes openly attractive outcome and providing with adherence to inflexible standards of system and evidence. [89]

The Supreme Court in addition apprehended that it is currently essential with respect to the Family Court to try in the main incidence to impact a conciliation or agreement among the parties to a family dispute. Even where the Family Courts are not working, the aim and ordinary obligatory the constitution of these courts can be kept in view by

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85 Available on https://www.iafl.com/media/1129/alternative_dispute_resolution_in_indian_family_law.pdf (last visited on 19.7.2020)

86 ibid

87 ibid

88 AIR 1998 SC 764

89 Available on https://www.iafl.com/media/1129/alternative_dispute_resolution_in_indian_family_law.pdf (last visited on 19.7.2020)

the Civil Courts attempt matrimonial causes. The Supreme Court held that the purpose and standard of section 23 of the Hindu Marriage Act 1955 oversee all courts attempting marital issues. [90]

Settling on the implication of eye-catching an endeavour at compromise at the main occasion a Division Bench of the Calcutta High Court in **Shiv Kumar Gupta v. Lakshmi Devi Gupta**[91] originate that the consistence with section 23(2) of the Hindu Marriage Act, 1955 is a legal obligation of the appointed authority to challenge matrimonial cases. [92]

The court for this situation depended upon the judgement of the Supreme Court **in Balwinder Kaur v. Hardeep Singh** and held that on a perusing of Section 23(2) of the Act and on the examination of the judgment in Balwinder Kaur on the change of Section 23(2) this Court held that the declaration, which was passed without conforming to Section 23(2) of the said Act can't be supported. [93]

Love Kumar v. Sunita Puri[94] it was held that the marital court had acted in scramble to pass a assertion of separation against the spouse for his non-appearance at the hour of compromise procedures. The High Court as needs be put aside the separation order and remanded the issue back to the matrimonial court to be settled on merits. [95]

The purpose of Section 23(2) of the Hindu Marriage Act was clarified in the associated terms in Para 19 and 21 of this judgment as follows Under S. 23(2) of the Act it is bureaucrat of the matrimonial Court to try to achieve compromise between the parties an extraordinary obligation is expected on the Court. A Hindu marriage isn't authoritative so far righteous, it is difficult to make such ties so far harder to break them once abrogated, it can't be reestablished. A Judge ought to efficiently conscious rapprochement measure. It is innermost that compromise of a burst marriage is the primary obligation of the Judge. The sacredness of marriage is the foundation of progress. The commentary and reason for this arrangement is self evident. The State is keen on the security and protection of the foundation of marriage

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90 ibid
91 2005(1) HLR 483
92 Available on https://www.iafl.com/media/1129/alternative_dispute_resolution_in_indian_family_law.pdf(last visited on 20.7.2020)
93 ibid
94 AIR 1997 Punjab and Haryana 189: 1997(1) HLR 179
95 Available on https://www.iafl.com/media/1129/alternative_dispute_resolution_in_indian_family_law.pdf (last visited on 20.7.2020)

and for this the Court is needed to make endeavor to achieve compromise between the parties. Nevertheless, omission to make endeavors at compromise won't remove the ward of the Court to pass any announcement under the Act. This is not right to state that in a separation case compromise endeavors must be coordinated promptly going before the award of pronouncement and not at some other phase of the procedures of the preliminary. Such an endeavor can be and ought to be made at any stage. The marital Court is needed to consider parties and put forth a confirmable attempt for their compromise, there is not so much as a whisper in this arrangement that the marriage Court has the ability to strike off the protection of that mate who subsequent to being given open doors for compromise fails to appear. [96]

However, under S. 23(2) of the Act neither such a risk is projected on the one companion nor is such a right given to the next life partner. [97] Negotiation is a shared exchange to cover their disparities. An obligation is projected on the Court to call the parties at the underlying stage for compromise. Indeed, even before conveying judgment and pronouncement the Court can put forth attempt for compromise. Accordingly, the phase of preliminary for calling the parties for compromise is left to the choice of the Court. [98]

From perusing of the above decisions, plainly however compromise is an obligatory process the circumstance and stage at which it is to be actualized may differ contingent upon the realities and conditions of each case. Simultaneously making bias the privileges of one party by striking off the safeguard or excusing the request may really work bad form to the privileges of such party. Subsequently, the marital court in its intelligence may mold and plan the phase of endeavoring marriage compromise contingent upon the realities of each case without making prejudice the meaningful privileges of the parties. In any case, simultaneously the marital court should not to give the required settlement methodology a go by. [99]

Rajesh Kumar Saxena v. Nidhi Saxena[100] The High Court of Allahabad considered it the limited obligation of the Family Court for making an endeavor for appeasement before continuing with the preliminary of the case. [101]

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96 ibid
97 ibid
98 ibid
99 ibid
100 1995(1) HLR 472

In a very recent case **Aviral Bhatla v. Bhavana Bhatla**[102] The Supreme Court has maintained the settlement of the case through the Delhi intervention center value the successful way in which the intercession center point of the Delhi High Court helped the parties to show up at a settlement. [103]

Bini v. Sundaran[104] The requirement for and function of conciliation for compromise and settlement in disputes identifying with marriage and family issues forthcoming under the watchful eye of the Family Courts is the essence of the topic emerging in this allure. All the while, a new inquiry to be chosen is, regardless of whether conciliation is obligatory after the presentation of the Family Courts Act[105] in a request under Section 13 of the Hindu Marriage Act even on the excepted grounds of transformation to another religion, renunciation of the world mental turmoil, venereal ailments and disease. [106]

The Supreme Court in *State of Madhya Pradesh v Madan Lal* [107]decided on 01.07.2015 held that there could be no mediation between the accused and the victim in cases of rape.

Gurudath K. v. State of Karnataka[108] the facts are identical to the case above. Here the court stated even if the offences are non-compoundable if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably. Section 320 of Criminal Procedure Code would not be a bar to the activity of intensity of quashing of FIR or criminal complaint in respect of such offences. Thus the court allowed for the offences to be compounded on coming to the conclusion that the wife was under no threat or coercion for the same.

In Santhini v. Vijaya Venketesh[109] Hon'ble Mr. Justice Kurian Joseph has said that the Family Courts Act expects the obligation holders like the court, instructors,

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101 Available on https://www.iafl.com/media/1129/alternative_dispute_resolution_in_indian_family_law.pdf (last visited at 22.7.2020)
102 2009 SCC (3) 448
103 Available on https://www.iafl.com/media/1129/alternative_dispute_resolution_in_indian_family_law.pdf (last visited at 22.7.2020)
104 AIR 2008 Ker 84, 2008 (1) KLJ 162, 2008 (1) KLT 331
105 Available on https://www.iafl.com/media/1129/alternative_dispute_resolution_in_indian_family_law.pdf(last visited at 22.7.2020)
106 ibid
107 (2015) SCC Online SC 579
108 Criminal Petition No. 7258 of 2014, order dated 20-11-2014
109 Transfer Petition (Civil) NO.1278 OF 2016

government assistance specialists and some other associates to put forth attempts for compromise.

Currently we may summarize how this Court has managed the obligation and duty of the Family Court or a Family Court Judge **Bhuwan Mohan Singh v. Meena and others**; the three-Judge Bench alluded to the choice in **K.A. Abdul Jaleel v. T.A. Shahida** and lay weight on making sure about expedient settlement of disputes identifying with marriage and family undertakings. Underscoring on the part of the Family Court Judge the Court in Bhuwan Mohan Singh communicated its agony as the procedures under the steady gaze of the family court had proceeded for an impressive period of time in regard of utilization recorded under Section 125 of the Code of Criminal Procedure.

The Court observed it has gone to the notification of the Court that on specific events the Family Courts have been giving dismissals in a normal way as an outcome of which both the parties endure or on specific events the spouse turns into the most exceedingly awful casualty. At the point when such a circumstance happens, the motivation behind the law gets completely decayed. The Family Judge is relied upon to be touchy to the issues for he is managing amazingly fragile and delicate issues relating to the marriage and issues subordinate thereto.

The Delhi High Court in the case of Division Bench of Delhi High Court in *Turning Point v. Turning Point Pvt. Ltd FAO (OS) 263/2017 & CM Nos. 35553-54/2017* [110] pronounced on August 2, 2018 expressed its view that the Appellant and the Respondent ideally should negotiate their differences by mediation.

Daggupati Jayalakshmi v. The State [111] A careful analysis if all the above decisions would indicate that particularly in **matrimoni**al **cases** when they end in divorce or re-union by mutual consent in pursuance of a **compromise**, the court is competent to permit the parties to compound a non-compoundable offence. No doubt some observations in general have been made but it cannot be said in all the offences arising under the Penal Code which are non-compoundable offences arising under the Penal Code which are non-compoundable offences simply because the parties have **compromised** the matter the court has to exercise its inherent power and allow

[110] Available on https://indiankanoon.org/doc/21158031/(last visited on 25.6.2020)
[111] Cri LJ 3162, II (1993) DMC 581

the non-compoundable offence to be compounded. The relationship between the parties, the background of the **case**, the effect of the couple being re-united and their effect on their children are all matters which have to be taken into consideration while exercising the power under section 482 Criminal Procedure Code. If the power has not been exercised under section 482 Criminal Procedure Code and if the parties are not allowed to compound a particular non-compoundable offence after compromise it will amount to dragging the couple to the state of their past events mentioned in the compliant even though they are living happily forgetting their differences and the cruelty that has been caused by one against the other, it will be a futile attempt on the part of the court to continue the proceedings. When in pursuance of the compromise if maintenance proceedings initiated by the wife under section 125 Criminal Procedure Code have been withdrawn and other compoundable offences are permitted to be withdrawn, it cannot be said that the courts withdrawn it cannot be said that the courts while exercising inherent power should take too technical view of the matter. Otherwise it may again lead to creating a storm in the calm waters of domestic felicity between husband and wife. As already observed above a Hindu marriage like any other marriages are a union between two spouses but when we link to the Hindu society it is a union between two families. Matrimonial differences some time arise and the matrimonial courts as a measure of public policy are trying for reconciliation between the parties so that the disputes are settled and a happy matrimonial life begins.

In exceptional circumstances where it is proved beyond doubt that the compromise is to the benefit of the couple and by allowing the parties to compound the offences would restore the normalcy between the parties the courts must come to their rescue exercising the power under section 482 Criminal Procedure Code ends of justice require while exercising inherent power under section 482 Criminal Procedure Code that the courts must rise to the occasion of creating a healthy atmosphere between the couple. When the wife and husband want to forget their past misdeeds or differences and when they want to live together and a pursuance of their compromise all the matrimonial cases are settled it is a futile attempt on the part of the courts to still continue the non-compoundable offence. When it is proved that the compromise is effected voluntarily and they are living peacefully forgetting their past events in the **case** or re-union or in the case of divorce they are at liberty to live separately in

either way we feel that it is the duty of the court not to disturb the calm atmosphere that has been created in their matrimonial life by not exercising the power under section 482 Criminal Procedure Code on the ground that the offence is non-compoundable.

In exceptional circumstances like the one on hand the High Court has got the power to exercise the power vested in it under section 482 Criminal Procedure Code and permit the parties in matrimonial cases to compound the offence or direct the Magistrates to make an enquiry if enquiry is required and permit them to compound the non-compoundable offence.

Another line of approach on the subject is that the parties are not allowed to compound a non-compoundable offence the other course open to the parties is to resile from their previous statements by giving false evidence in court. That means it amounts to encouraging perjury. The court is not expected to allow the parties to give false statements on oath merely on the ground that the offence is a non-compoundable offence. The decision rendered in exceptional cases under exceptional circumstances cannot be used as a matter of course in all cases. At certain times the allegations made by either of the couple in the complaint may be so serious and even after their compromise if they are allowed to give evidence regarding those facts in court it will create misunderstandings between the couple even after their re-union and it will again create a storm in the calm waters of domestic felicity. If the parties resile from their previous statements it will amount to perjury and if the court has not taken any steps for prosecution of those witnesses who are guilty of perjury it will create an impression in the minds of the like-minded people that in the event of their giving false evidence in court no action will be taken. The object of criminal law is to punish the person who is found guilty of the offence which has been alleged against him. So the object of imposing a particular sentence is not only punishing an erring accused but it should act as a lesson to the other like-minded persons. In matrimonial cases if the parties are made to give evidence in court even after the compromise making known their past events to one and all in the court either of the couple may take it as an insult to their career and may resile from the compromise and consequently the compromise may fail. The proceedings initiated by the wife under section 498A I.P.C in particular are legal in the beginning but by virtue of the process of compromise during the course of investigation or trail the further continuation of

the proceedings if allowed would be prejudicial to the interests of both the parties and the court must come to their rescue exercising the inherent powers vested in it in the interest of justice and in the interest of future life of the couple.

As already under the Hindu **Marriage Act** reconciliation is provided for their settlement. We feel that in exceptional **cases** if the High Court is satisfied in matrimonial cases the parties can be permitted to compound a non-compoundable offence like the one under section 498-A I.P.C. if it is proved to be in their interest. It must be remembered the object of introducing Chapter XX-A in the Penal Code. The Legislature has introduced this special chapter bringing a new Section 498A considering the plight of women in the society at the hands of their husband and in-laws. However when under the **Hindu Marriage Act r**econciliation proceedings are there in spite of serious allegations we feel that in case of genuine compromise effected between the parties husband and wife and if an application has been filed voluntarily by the two parties and if the court satisfies that any special circumstances exist warranting granting of permission to compound a non compoundable offence and if it is in the interests of both the parties the High Court under special circumstances exercising the inherent power under section 482 Criminal. Procedure Code may allow the parties to compound such offences. We are not here to lay down a general proposition that the court is competent to permit the parties in all the cases to compound a non-compoundable offence. The law with regard to exercising of the inherent power under section 482 Criminal Procedure Code is very clear. To prevent violence of the procedure of any court or otherwise to secure the ends of justice[112] the High Court has got inherent power under section 482 Criminal Procedure Code to pass such order as is necessary in the facts and circumstances of the case.

In the case of **Sadhana Patra v. Subrat Pradhan**[113] it was held that however Section 13 of the Act, placed bar to connect with advocates by parties in a family court, as an issue of right the rule 27 of Orissa Family Court Rules of 1990 grants involved with take lawful counsel at any phase of the procedures whether at the hour of conciliation or under the watchful eye of the court. On the condition that Sec 13 of the Act and Rule 27 of the standards are perused together it will be evident that however the party

[112] Available on https://indiankanoon.org/doc/171370472/(last visited on 26.7.2020)
[113] AIR 2006 Orissa 105: 11 (2006) DMC 316

to the procedures under the watchful eye of a family court as an issue of right can't be spoken to by a lawful professional he/she will be qualified for take lawful exhortation even under the steady gaze of the court. Nonetheless, while applying to the court for consent to draw in a lawful professional, the gathering looking for such help may dole out reasons with respect to why the help of lawful specialist is required and just if the court is fulfilled that for the reasons expressed in the appeal, the lawful help is required. It might permit involved with take lawful guidance while the issue is forthcoming under the steady gaze of the court. There can't be any uncertainty that an amicus curiae named by the adjudicator of the family court, under Sec 13 of the Act is just a companion of the court and is needed to help the court in issues to certainty and law as and when required by the court and can't go about as a legal advisor or supporter connected with by a party to shield the case. [114]

Prabhat Narain Tickoo v. Mamatma Tockoo[115] It is the choice of the family court Judge to allow or not to allow representation by the attorney.

Venkataraman v. Vijaya Saratha[116] the parties under the watchful eye of family court may make a composed solicitation or an oral supplication for authorization to engage a counsel.

In case of **Leela Mahadeo Joshi v. Mahadeo Sitaram Joshi**[117] to the extent issues, for example, custody of children, visiting rights, upkeep, divorce settlement arrangement of concierge to a marriage and so on are worried that the parties may not be in a situation to secure their own advantage or that they may not be in a situation to imagine future issues or prerequisites and would hence, either surrender their privileges or not be in a situation to disturb or shield them. The inescapable outcome would be either under difficulty or future suit, the two of which have the right to be maintained a strategic distance from. The court in this manner slanted to concur with the complaint made before it is that the family court should give due confidence to the craving of suits where lawful portrayal is concerned.

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114 K. Pandu Ranga Rao, Commentary on the Family Court Act,71,(Gogia Law publications, Hyderabad, 2010)
115 1998(2) HCR 652
116 1996(2) HLR 450
117 AIR 1991 Bom 105: (1991) 3 Bom CR 130

In **Kailashi Bhansali v. Surender Kumar**[118] it was held that under Sections 13 of the Act a court is engaged to look for the help of a legal expert as amicus curiae, in the event that it considers, it fundamental in light of a legitimate concern for equity. [119]

Anyhow the need must be felt by the court and no by the parties; in any case, there would be no distinction between a standard suit and procedures in the family court. In spite of the fact that representation by a legal counsel isn't permitted as an issue of right under the Family Court Act there is no bar to the documenting of the appeal by an operator. [120] But the court ought to permit a counsel just in unusual conditions. [121]

In **Jayraj Singh v. Bripaul Kaur**[122] it was held that the court has capacity to guide parties to stay present face to face. Marital disputes require thought from the human edge. The court needs to take a more certifiable and profitable methodology.

The Bombay High Court saw as follows it would in this way be a sound practice for the family court at the examination stage itself to determine with regards to whether the parties want to be spoken to by their legal counselor and on the condition that such want is communicated on any ensuing phase of the procedures, at that point the authorization be in truth if the court is fulfilled that the prosecutor needs such help and would be impaired if the case isn't allowed.

In a family court appeal before the Bombay High Court the inquiry wanted thought whether the family court ought to consider the requirement for portrayal by a legal counselor and whether the family court can allow a party to be spoken to by a legitimate specialist and decline authorization to the next party. The learned adjudicator of the Division Bench felt that it is practical to set out certain wide standards which the family court ought to continue in specific circumstances on the grounds that marital procedures regularly included certain humiliating subtleties which would make it very hard for the defendants to deal with their case in person.

Ms. Komal S. Padukone v. The principal Judge and others,[123] held that the family court ought to embrace a useful and human approach and show certain modalities for leading the procedures in the family court and held that it is the major standard of

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118 AIR 2000 Rajasthan 390.
119 Available on https://www.wipo.int/edocs/lexdocs/laws/en/gh/gh032en.pdf (last visited on 29.7.2020)
120 K.B Agarwal, Family Law in India,66(Kluwer Law international, Netherlands, 2010)
121 Sarta Sharma v. State of Rajasthan, AIR 2002 Raj 30
122 AIR 2007 SC 2083
123 II (1999) DMC 301, ILR 1999 KAR 2811, 1999 (5) KarLJ 667

equity that where one of the parties to the case is allowed to the spoke to by an advice, the other party ought to likewise be allowed to be spoken to by a guidance. The dismissal of application of one of the parties just while allowing to the next party for connecting with a counsel is an ill-advised exercise of purview restricted to the principle of justice.

In **R. Durga Prasad v. Union of India**[124] the judgment of the Justice B.S. Reddy and T. R. Rao of Andhra Pradesh High Court concluded that the primary arrangements of Section 13 of the Family Courts Act, grant the parties to draw in legitimate portrayal however past the phase of difficulty of compromise practiced under Section 9 of the Act the court will be qualified for name amicus curiae to help the said court notwithstanding the lawful experts delegated by the parties.

In **Romila Jaidev Shroff v. Jaidev Rajnikath Sharoff**[125] it was held that in the event that one goes to Section 5 subject to the standards outlined there under, the family court is allowed to take help of and permit the relationship of foundation or associations occupied with social government assistance or the people expertly occupied with social government assistance or the individual expertly occupied with advancing the government assistance of the family etc.

The Kerala High Court while choosing a marital dispute saw that one of the significant points of setting of the family court is to achieve compromise between the companions if conceivable and to allow them to isolate with respect just if all endeavors of conciliation fail. The court additionally saw that there can't be any uncertainty that extraordinary machinery has been established by the Family Court Act for directing and for achieving conciliation between the prosecutor mates. Hence, relationship of social government assistance offices and expert ability are of prime significance for compelling goal of matrimonial disputes by conciliation through the family courts. [126]

Assuming by one way or another, this prudence isn't practiced or relationship of such organizations is unimaginable, at that point the powerful working of the family court is absurd, and there can be no single nonpartisan middle person, albeit one such working could sign the papers and archives. Mental methodology, coordinated effort,

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[124] 1988 (2) ALD 25
[125] AIR 2000 Bom 316; II (2000) DMC 600
[126] Shyni v. George and others, II (19097) DMC 676

collaboration, long range interpersonal communication, home visit and follow ups, family network treatment, joint and various meetings and party are the sign of conservation of marriage and family. Such undertakings could be gone to just by qualify and experienced experts with help gave by Para - lawful experts. Furthermore, if their help isn't looked for as a basic aspect of the whole process, the court won't have the option to accomplish the reason for which they have been set up. [127] India has made the fundamental stride toward setting up family courts yet much is to be done before the family court framework can be led to effectual working.

In **Ashok Shamjibhai Dharode v. Neeta Ashok Dharode**[128] it is held that an arrangement is made under the principles outlined under Family Courts Act to look for help from the marriage mentor. The advisors are prepared people and whenever considered essential, the managing official can look for help of the instructors. The instructor is qualified for talk with relations, companions and colleagues.

The greater part of the state governments has informed principles with respect to the terms and states of the relationship of instructors and the administration states of the officials and different representatives of the family court. Methodology of determinations of advisors and the structure of the staff and its framework quality is additionally found in them. All the people, including instructor's workers and specialists are relied upon to release their capacities in cooperation. Everyone is required to be keen on administration to the general public and systematize with different individuals from the group to accomplish the point and target of the statute.

Speedy trial of cases has been upheld as a fundamental right under Article 21 of the Constitution of India[129] and the same has been incorporated in subordinate legislations as well. [130] In laws relating to matrimonial disputes, speedy disposal of cases has been prescribed specifically. Section 40B of the Special Marriage Act 1954 hereinafter only as 'SMA and Section 21B[131]of the Hindu Marriage Act, 1955 have explicitly provided that every petition under these Acts should be tried as expeditiously as

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127 Namitha Sing Jamwal, Marital Discord: Mode of Settlement, Special Reference to Family Court in India, Doctoral Dissertation, Jamiya Milia Islamic University, 2009, p.161

128 AIR 2001 Bom 142

129 Hussaina Khatoon v State of Bihar, AIR 1979 SC 1369, Brij Mohan Lal v Union of India and others, AIR 2002 SC 2096, Salem Advocate Bar Association, Tamil Nadu v Union of India, (2005) 6 SCC 344

130 The Protection of Women from Domestic Violence Act, 2005 and the Marriage Laws Amendment Act, 1976

131 Inserted by Marriage Laws amendment Act, 1976 with effect from 27-5-1976

possible and endeavour should be made to conclude the trial within six months from the date of service of notice to the respondent. [132]

Bhagwan Dutt v Kanta Devi and another[133] similarly, the object of Chapter IX of Code of Criminal Procedure 1973 is to provide a speedy remedy by a summary procedure to enforce liability in order to avoid vagrancy.

It can be noticed that there was a consistent effort by the legislature to ensure the speedy disposal by incorporating appropriate modifications in the existing statutes as well as the new legislations. [134]

Conciliation measure has been made compulsory in the suits identifying with issues concerning family through revision of the Code of Civil Procedure, 1908 (hereinafter just as 'CPC') in 1976. [135] Similarly specific provisions with regard to conciliation have been included in Special Marriage Act as well as Hindu Marriage Act. The Civil Procedure Code has been amended and Order XXXIIA was inserted [136] for adopting a different approach so as to bring about an amicable settlement where matters concerning the family are at issue. [137] For the purpose of Order XXXIIA the term 'Family' has been defined exhaustively under Rule 6. [138] Object of the amendment of CPC was to provide a different and special procedure in those cases where affairs of family are in question. [139]

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132 Available on https://indiankanoon.org/doc/171370472/(last visited on 31.7.2020)

133 AIR 1975 SC 83

134 The Sexual harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

135 Available at https://www.lawordo.com/alternative-dispute-resolution-family-and-matrimonial-disputes/ (last visited on 1.8.2020)

136 Order XXXIIA was inserted by Act No. 104 of 1976, with effect from 1st February, 1977

137 Vide Order XXXIIA (1) of the CPC, the subjects brought under the operation are 'validity of a marriage or the matrimonial status of any person, declaration as to legitimacy of any person, guardianship of the person or the custody of any minor or other member of the family, maintenance, validity or effect of an adoption, wills, intestacy and succession

138 Rule 6 of Order XXXIIA runs as For the purposes of this Order, each of the following shall be treated as constituting a family, namely :- (a) (i) a man and his wife living together, (ii) any child or children, being issue of theirs; or of such man or such wife, (iii) any child or children being maintained by such man and wife; (b) a man not having a wife or not living together with his wife, any child or children, being issue of his, and any child or children being maintained by him; (c) a woman not having a husband or not living together with her husband, any child or children being issue of hers, and any child or children being maintained by her; (d) a man or woman and his or her brother, sister, ancestor or lineal descendant living with him or her ; and (e) any combination of one or more of the groups specified in clause (a), clause (b), clause (c) or clause (d) of this rule. Explanation-For the avoidance of doubts, it is hereby declared that the provisions of rule 6 shall be without any prejudice to the concept of "family" in any personal law or in any other law for the time being in force

139 Ordinary judicial procedure is not ideally suited to the sensitive area of personal relationships. Litigation concerning or involving affairs of the family, therefore, seems to require special

Consequent to the insertion of Order XXXIIA in the CPC it has become the obligation of the Court to make an undertaking in the primary occurrence to help the parties in showing up at a settlement in regard of the suits or procedures identifying with family. [140] While interpreting Order XXXIIA of the CPC the judiciary has time and again emphasized that the approach of a Court of law in matrimonial matters should be positive and sympathetic. [141]

R.V.S.L. Annapurna v. R. Saikumar,[142] It was explicitly demanded that the marital issues must be considered by Courts with human point and affectability. [143]

Sushmakumari v Omprakash[144] The object behind Order XXXIIA of the Civil Procedure Code was construed as to extend all help for the maintenance of marital ties and restoration of peace to the estranged couple.

Hina Singh v Sathya Kumar Singh[145] Rule 3(1) emphasis is, however, laid that steps for bringing about reconciliation between the parties should be taken by the Court in the first instance itself.

Manju Singh v Ajay Bir Singh[146] As it were, the undertaking ought to be made right from the earliest starting point of the case. It is additionally given that it will be legitimate with respect to the Court to look for the administrations of government

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approach in view of the serious emotional aspects involved. In the circumstances, the objective of the family counseling as a method of achieving the ultimate object of preservation of the family should be kept in the forefront. The new Order XXXIIA seeks to highlight the need for adopting a different approach where matters concerning the family are at issue, including the need for efforts to bring about an amicable settlement. Statement of objects and reasons of amendment pursuant to Order XXXIIA of the CPC, S.O.R. Clause 80, Gazette of India, 8-4-74. Pt Ii, S. 2 Ext. p. 331

140 Rule 3 of Order XXXIIA of the CPC imposes a duty on the Court to make efforts for settlement as follows- (1) In every suit or proceeding to which this Order applies, an endeavour shall be made by the Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject matter of the suit. (2) If, in any such suit or proceeding, at any stage it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement

141 It was held in Jagraj Singh v Birpal Kaur, AIR 2007 SC 2083 that approach of a Court of law in matrimonial matters is much more constructive, affirmative and productive rather than abstract, theoretical or doctrinaire. Matrimonial matters must be considered by Courts with human angle and sensitivity. Delicate issues affecting conjugal relations have to be handled carefully and legal provisions should be construed and interpreted without being oblivious or unmindful of human weaknesses. See Saroj Rani v Sudarshan Kumar Chadha, AIR 1984 SC 1562, Roopa Reddy v Prabhakar Reddy, AIR 1994 Kant 12

142 1981 Supp SCC 71

143 Available on https://indiankanoon.org/doc/168349686/(last visited on 10.8.2020)

144 AIR 1993 Pat 156

145 AIR 2007 Jharkhand 34

146 AIR 1986 Delhi 420

assistance specialists to aid the parties in screening up at a resolution in regard of the subject matter of the suit. [147]

The Special Marriage Act and Hindu Marriage Act since their inception also have contained the provision for conciliation as a procedural requirement in matrimonial disputes. Section 34 of the Special Marriage Act imposes an obligation on the Court to make each attempt to achieve compromise between the parties. [148]

Similarly under Section 23 of the Hindu Marriage Act the Court is duty bound to make every attempt to cause reconciliation between the parties. [149] However Marriage Laws Amendment Act 1976 [150]limited the scope of conciliation under Special Marriage Act as well as Hindu Marriage Act. [151]

Balwinder Kaur v Hardeep Singh[152] Comparison of relevant provisions in Civil Procedure Code, Special Marriage Act and Hindu Marriage Act relating to family disputes shows that these enactments have stipulated for alternative dispute resolution and laid down conciliation as mandatory practice in such disputes. Except in the case of seeking assistance of welfare experts under Rule 4 of Order XXXIIA of Civil Procedure Code the provisions relating to familial cases in these enactments are almost similar and comparable. The intention of the provision undoubtedly is to render all possible assistances in the maintenance of the marital bond and if at any stage of the case the circumstances are propitious for reconciliation it would be the duty of the Court to make use of such circumstances irrespective of the stage . While section 23(2) of Hindu Marriage Act speaks of reconciliation in the first instance as being the duty of the Court, section 23(3) also speaks of alternate grievance redressal mechanism in addition to its own duty to resort to the initiation of reconciliation. [153]

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147 Available on https://www.iafl.com/media/1129/alternative_dispute_resolution_in_indian_family_law.pdf (last visited on 18.8.2020)

148 Sub-section (2) of Section 34 of the SMA ordains that before proceeding to grant any relief under the Act it shall be the duty of the Court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavor to bring about a reconciliation between the parties

149 Sub section (2) of Section 23 of HMA is a replica of Sub-section (2) of Section 34 of the SMA.

150 Act 68 of 1976 with effect from 01-02-1977

151 The Amendment Act excluded the operation of Sections 34 (2) of SMA and 23 (2) of HMA from any proceedings wherein relief is sought on any of the grounds specified in clause (c), clause (e), clause (f) clause (g) and clause (h) of sub section (1) of Section 27 of SMA and grounds specified in clauses (ii), (iii), (iv), (v), (vi), or (vii) of sub section (1) of section 13 of HMA.

152 AIR 1998 SC 764

153 Sec 23 (3) of HMA says that For the purpose of aiding the Court in bringing about such reconciliation, the Court may, if the parties so desire or if the Court thinks it just and proper so to

Same principles are enunciated in section 34(3) of Special Marriage Act also. The Parliament has decisively incorporated section 89 in the CPC for referring disputes to alternate redressal forums. [154]

S.K. Salam v Sant Singh[155] The judiciary has taken a consistent stand in conformity with the spirit of the legislation **Pramila Bhagat v Ajit Raj Singh**[156] and has held that even if the dissolution of marriage is sought by joint petition of parties the Court has to comply with mandatory provisions and to make endeavor to bring reconciliation between the parties.

The enactment allows the Courts to defer the procedures for a sensible period and allude the issue to any individual named by the parties or the Court in achieving such compromise if the parties so want. [157]

The intention of the legislature in enacting special provisions in Civil Procedure Code, Special Marriage Act and Hindu Marriage Act for conciliation in family disputes was to develop a unique matrimonial jurisprudence distinct from ordinary criminal and civil jurisprudences. [158] This has been categorically declared by the judiciary in various cases as well. [159] It can be seen that in other Personal laws that have not expressly provided for conciliation the gap has been to a great extent made good by judicial activism. [160]

Kamal V.M. Allaudin and Etc. v Raja Shaikh and Etc[161] Notwithstanding specific provisions for alternative dispute resolution mechanisms in the form of reconciliation under the procedural laws relating to family disputes there is a criticism that the judiciary has not made serious efforts to implement them successfully. In majority of

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do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the Court if the parties fail to name any person, with directions to report to the Court as to whether reconciliation can be and has been, effected and the Court shall in disposing of the proceeding have due regard to the report

154 Section 89 of the CPC, inserted by Code of Civil Procedure (Amendment) Act, 1999, and brought into effect on 1st July, 2002

155 AIR 1990 Cal 315; Harender Nath Barman v Suprova Burman, AIR 1989 Cal 120

156 AIR 1989 Pat 163

157 Sub-section (3) of Section 23 of HMA and Sub-section (3) of Section 34 of SMA have been added by Act No. 68 of 1976, with effect from 27th May, 1976.

158 Paras Diwan, Law of Marriage & Divorce, 42 (2010)

159 Sushmakumari v Omprakash, AIR 1993 pat 156, Hina Singh v Satyakumar Singh, AIR 2007 Jhar 34 Bini v Sundaran, AIR 2008 Ker 84 etc.

160 For example, even in the absence of a provision for conciliation in the Dissolution of Muslim Marriage Act, 1939 and in the Divorce Act, 1869 the Family Courts, exercising power under the Family Courts Act, used to send the parties for counseling, conciliation and mediation

161 AIR 1990 Bom 299

family cases the judicial process was carried on in the same manner similar to the disputes under the adversary legal system.

Of course there have been some notable interventions by the judiciary in upholding the conciliation process in the matrimonial cases. [162] Despite the legislative will and occasional judicial intercessions the desired goals in delivering alternate justice to the parties could not be achieved primarily due to the inherent and systemic deficiencies in the law. [163]

K.A. Abdul Jaleel v T.A. Shahida[164] The methodology of the legal executive was that the phrasings disputes identify with matrimony as well as family issues and for issues associated therewith[165] in the preamble, must be generously interpreted.

S.K. Salam v Sant Singh Generally the approach of the judiciary is also positive towards conciliation [166] and it has been held in **Sushama Kumari v Omprakash**[167] that an attempt for conciliation can be made at the appellate stage as well.

Leela Mahadeo Joshi v Mahadeo Sitharam Joshi [168] It is the obligations of the Court to facilitate moreover convince the parties in showing up at settlement of their issues. For this motive a Family Court may subject to any principles made by the High Court, follow such method as it might regard fit. [169]

Baljinder Kaur v. Hardeep Singh[170] further, focusing on the necessitate to treat the cases concerning to family matters in a obliging manner the Supreme Court of India

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[162] In V. K. Gupta v Nirmala Gupta, Justice V.R. Krishna Iyer. J, emphatically stated that it is fundamental that reconciliation of a ruptured marriage is the first essay of the judge, aided by counsel in this noble adventure. The sanctity of marriage is, in essence, the foundation of civilization and, therefore, Court and counsel owe a duty to society to strain to the utmost to repair the snapped relations between the parties. (1979) RD SC-167

[163] P.M Bakshi, Family Courts; Some Reflections, in Kusum (Ed) Women March Towards Dignity; Social and Legal Perspective, 33-36 (1993)

[164] AIR 2003 SC 2525

[165] Available on https://www.iafl.com/media/1129/alternative_dispute_resolution_in_indian_family_law.pdf (last visited on 20.8.2020)

[166] AIR 1990 Cal 315

[167] AIR 1993 Pat 156

[168] AIR 1991 Bom.105.

[169] Available on https://www.iafl.com/media/1129/alternative_dispute_resolution_in_indian_family_law.pdf (last visited on 25.8.2020)

[170] AIR 1998 SC 764

set out that "stress ought to consistently be on saving the organization of marriage. [171] Such a position has been described as the requirement of law. [172]

Gaurav Nagpal v Sumedha Nagpal[173] It was held that "exertion ought to be to achieve conciliation to connect the correspondence hole which prompts such unfortunate procedures. Individuals hurrying to courts for separating of marriage should come if all else fails and except if it has an inescapable outcome, courts should attempt to achieve conciliation. The accentuation ought to be on cautious marriage and not breaking it. As noted above, this is more important in cases where the children bear the brunt of dissolution of marriage.

Growing dissatisfaction with adversarial processes for matrimonial dispute settlement through ordinary courts with its high cost never ending delay, escalation of conflict and bitterness impels one to search for effective, expeditious and inexpensive procedures and forums for disposal of such cases. Strict technical and time consuming procedures are definitely not desirable for these categories of cases. Conciliation has been made part of the procedure to provide a different and effective system for the settlement of matrimonial disputes.

Gurmek Singh v. Simarjit Walia [174] As is evident from the record that in the instant **case**, the parties have amicably settled their **matrimoni**al **disputes** before the **Mediation** and Conciliation Centre of this Court, as per the indicated terms & conditions of Settlement/Agreement dated 23.11.2011 in the manner stated hereinabove. Since, the settlement is in the interest and welfare of the parties so there is no impediment in translating their wishes into reality and to quash the criminal prosecution to set the matter at rest to enable them to live in peace and to enjoy the life and liberty in a dignified manner.

Pankaj Kumar v. State of Bihar & Anr[175] The criminal courts dealing with the complaint under Section 498A IPC should, at any stage and particularly before they take up the complaint for hearing refer the parties to mediation center if they feel that there exist elements of settlement and both the parties are willing. However they

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171 Available on https://www.iafl.com/media/1129/alternative_dispute_resolution_in_indian_family_law.pdf (last visited on 25.8.2020)

172 Anil Malhotra and Ranjit Malhotra, Alternate Dispute Resolution in Indian Family Law - Realities, Practicalities and Necessities. www.iaml.org (last visited on 21.7.2020)

173 AIR 2009 SC 557

174 Decided on 30th July 2012

175 Criminal Miscellaneous No.24361 of 2018

should take care to see that in this exercise rigor, purport and efficacy of Section 498A IPC is not diluted.

Needless to say that the discretion to grant or not to grant bail is not in any way curtailed by this direction. It will be for the court concerned to work out the modalities taking into consideration the facts of each case. All mediation centres shall set up pre- litigation desks/clinics; give them wide publicity and make efforts to settle matrimonial disputes at pre-litigation stage. [176]

A Five Judge Constitution bench of the Hon'ble Supreme Court of India ordered a court-monitored mediation **in the Ajodhya dispute M. Siddiq (D) v. Mahant Suresh Das**[177], The relevant portion of the aforesaid Order dated March 8, 2019 reads as follows. -

We *have considered the nature of the dispute arising. Notwithstanding the lack of consensus between the parties in the matter we are of the view that an attempt should be made to settle the dispute through mediation.*

Considering the provisions of Civil Procedure Code, indicated above we do not find any legal impediment to making a reference to mediation for a possible settlement of the dispute arising out of the appeals.

Mediation proceedings should be conducted with utmost confidentiality so as to ensure its success which can only be safeguarded by directing that the proceedings of mediation and the views expressed therein by any of the parties including the learned Mediators shall be kept confidential and shall not be revealed to any other person. We are of the further opinion that while the mediation proceedings are being carried out, there ought not to be any reporting of the said proceedings either in the print or in the electronic media.

The reference of the highly sensitive Ayodhya dispute to mediation by the Hon'ble Supreme Court of India has brought the mediation process to the attention of the people. In order to take the mediation ahead and use it in the best possible manner, it is important to spread its awareness amongst the public. Those engaged in mediation must acquire mediation skills in a scientific and structured manner. Many

[176] Available on https://indiankanoon.org/doc/17137047/(last visited on 29.8.2020)
[177] Civil Appeal No. 10866-10867 of 2010) vide its Order dated March 8, 2019

relationships can be saved through mediation and also the burden of cases upon the courts will reduce.

In **Abdul Jaleel v. Shahida**[178] the Supreme Court held that the Family Courts Act, 1984 was approved to hold the fundamentals of family courts so as to proceed conciliation in and secure speedy settlement of dispute identify with marriage and family issues and for issues associated therewith by receiving a methodology drastically not the same as that embraced in normal common procedures.

Ashish Kumar Srivastava v. Smt. Ankita Srivastava[179] The counsel for the petitioner submitted that Section **28** of Special Marriage Act, 1954 provides for mutual divorce. Legislature thought it proper to provide more easy procedure of divorce to Hindus also. By Act No. 68 of 1976, **Section 13B** was added under of the Act which provided divorce by mutual consent. From that point, Family Court Act 1984 was enacted. Section 9 of Act, 1984 positions a legal obligation upon Family Courts to convince the parties to settle their dispute in regard of the topic of the suit.

By virtue of **Section 10** of the Act 1984, entire provisions of Code of Civil Procedure 1**9**08 have been applied to the proceeding before Family Court. Thus provisions of **Order 23 Rule 3 C.P.C**. are applicable in the proceeding before Family Court. A combined reading of provisions of **Section 9** and **10** of the Act1984 clarifies that Family Court from the outset example will convince the parties to settle their dispute in regard of the topic of the suit and on the condition that such settlement is shown up, at that point they can record a compromise before the Family Court in the suit and suit can be chosen as far as bargain. The suit for divorce under **Section** 13 of the Act 1955 is not an exception to the application to **Section 9** and **10** of the Act, 1984. As such suit for divorce can also be decided in terms of compromise. Phrase Subject to the provisions of this Act used under **Section 13B** means in accordance with the provisions of **Section 23** of the Act. The compromise operates as estoppels against the parties to it as held by Supreme Court in **Nagubai Ammal vs. B. Shama Rao**[180] The compromise dated 10.10.2014 was duly signed by the parties and verified by this **Court** in presence of the parties. It is a lawful compromise and has been **acted** upon in part. The respondent took Rs. 18, 00,000/- and ornaments from

[178] AIR 2003 SC 2525 = 2003 (4) SCC 166
[179] Decided on 8 April,1972
[180] AIR 1956 SC 593

locker as agreed under this compromise. She had taken benefit of compromise. It is an estoppel by deed as well as estoppels by record. She is now estopped from raising objection that suit for divorce cannot be decreed in terms of compromise. as held by Supreme Court **in S. Shanmugam Pillai vs. K. Shanmugam Pillai**,[181] This **Court in Jodhey vs. State** [182] held that High **Court** has unlimited judicial power. This compromise can be treated as "family settlement. It acknowledges right and liability of the parties and can be enforced under the law as held by Supreme **Court** in **Sahu Madho Das v. Mukund Ram,**[183]This Court **in Jokhan v. Ram Deo**[184] has held that the compromise cannot be ignored only for the reason that compromise was entered before the **Court** which has no jurisdiction. Supreme **Court** in B.C. **Chaturvedi v. Union of India**[185] held that power conferred under Article 142 of the Constitution is also available to High **Court** for doing compete justice between the parties. Family Court placed reliance upon the judgment of Supreme Court in **Sangeeta Das v. Tapan Kumar Mohanty**[186] This judgment has not taken any notice of **Section 9** and **10** of Family Court Act, 1984 as such it is per-incuriam and does not lay binding precedent as held by Supreme Court in **State of U.P. v. Synthetins and Chemicals Ltd**[187] Otherwise also in this case, there was no clause for divorce in the compromise. This Court in **Indrawal v. Radhey Ram**[188], and Supreme Court in **Dr. (Mrs.) Leena Roy v. Dr. Subrato Roy**[189]**,** and **Raj Kumar Rana v. Rita Rathore**[190]**,** decreed divorce petition under **Section 13** of the Act, on compromise. Impugned order is illegal and liable to be set aside and Family Court is liable to be directed to decree the divorce suit in view of compromise dated 10.10.2014.

In the case of *Moti Ram Tr. Lrs. & Anr vs. Ashok Kumar & Anr***, the court held that** *mediation proceedings are confidential proceedings. When the mediator is required to send the report of successful proceedings to the court, he doesn't require sending what transpired during the proceedings. In case the mediation was unsuccessful, he only needs to send the report stating Mediation has been unsuccessful.* This is the one of the

181 AIR 1972 SC 2059
182 AIR 1952 SC 788
183 AIR 1955 SC 481
184 AIR 1967 All 212
185 (1995) 6 SCC 749
186 (2010) 10 SCC 222
187 (1991) 4 SCC 139
188 AIR 1981 All 151
189 AIR 1991 SC 92
190 AIR 2015 SC 2668

most essential and primary benefits of mediation as a mechanism for dispute settlement is that it can save a lot of time, cost, and also ensure confidentiality. [191]

The Supreme Court recommended to the Government to enact an Indian Mediation Act as there is a dire need for it. Eventually legislatures will allow individuals to decide their own matrimonial destiny and courts would rather not deal with divorce disputes. [192]

[191] Law Reform Commission, Report Alternative Dispute Resolution: Mediation and Conciliation (November 2010), available at http://www.lawreform.ie/_fileupload/reports/r98adr.pdf (last visited on 28.7.2020)

[192] *M.R. Krishna Murthi v New India Assurance Co. Ltd and Others, Civil Appeal nos*. 2476–2477 of 2019.

CHAPTER-6

COMPARATIVE ANALYSIS OF MEDIATION AND CONCILIATION CENTERS WITH REGARD TO MATRIMONIAL DISPUTES IN STATE OF PUNJAB AND HIMACHAL PRADESH

6.1 Introduction

This Chapter is the strength and essence of the present study. This study is Doctrinal as well as Empirical in nature. This study basically follows doctrinal research methods, Incompiliation organization, Interpretation and systematization of the primary and secondary source material. The researcher has used both primary as well as secondary sources. The secondary data is collected by researcher from the published sources such as various books, Indian and Foreign Journals, online Journals, newspapers, research articles and various websites on the subject for the purpose of collecting literature and data for the study and analysis. The researcher has also adopted the empirical method of research. In this present study in order to collect and generalize the information through the Questionnaire from variety of Respondents on the subject in hand. The researcher has filed also various Right to Information in order to collect the official data on the subject in hand.

The primary data is collected on the selected 500 Respondents of one districts of Punjab and one District of Himachal Pradesh. In this study the primary data collected from the respondents has also been used to prove and disapprove the research hypothesis.

In this study Questionnaire method has been used for getting the results. An attempt has been made to analyze the views of legal and general respondents through empirical study on the subject in hand. Two Questionnaires have been framed one for Legal Respondents which include Judges, Mediators, Advocates and other for General Respondents-Litigants/General Public. From Punjab: One districts Hoshiarpur has been selected for collection of data. Total number of respondents fixed are 500.From which 250 Legal Respondents and 250 General Respondents. From Himachal Pradesh One districts i.e., Una has been chosen randomly. Questionnaire contains both open ended and close ended questions.The data collected is being analyzed by the researcher in the form of Tables, Pie charts, as well as through Statistical inferential tools.

Table 1: Distribution of Respondents

Legal Respondents	250
General respondents	250
Total	500

Table 2: District – Respondent category Cross tabulation

		Judge	**Mediator/ Advocate**	**Litigant/General Public**	**Total**
District	Hoshiarpur	10	100	115	225
	Una	10	100	107	217
Total		20	200	222	442

Table 3: State of Punjab (District Vise)

Sr. No	**District**	**Year**	**No. of cases Referred**	**No. of cases settled**	**No. of cases Unsettled**	**Success percentage**
1.	Hoshiarpur	2008-2019	796	186	528	23.36
2.	Jalandhar	2008-2019	1298	119	902	9.16
3.	Ludhiana	2013-2019	803	113	701	14.07
4.	Amritsar	2013-2019	4395	1984	2411	45.14
5.	Bathinda	2013-2019	809	276	593	34.11
6.	Rupnagar	2013-2019	503	180	57	35.78
7.	Pathankot	2000-2019	482	58	402	12.03
8.	Patiala	2008-2019	3375	1048	2159	31.05
9.	Mansa	2008-2019	424	70	354	16.05
10.	Fazilka	2014-2019	249	73	307	29.31
11.	Fatehgarh Sahib	2014-2019	510	96	414	18.82
12.	Barnala	2014-2019	1899	1854	1	97.63
13.	Faridkot	2014-2019	276	13	254	4.70
14.	Ferozepur	2000-2019	604	120	189	19.86
15.	Kapurthala	2001-2019	299	67	222	22.40
16.	Moga	2008-2019	2553	701	1849	27.4
17.	Gurdaspur	2014-2019	622	259	363	41.6
18.	Sangrur	2014-2019	2214	406	1808	18.3
19.	Muktsar sahi	2014-2019	107	28	79	22.5
20.	SBS Nagar (Nawa Shahar)	2014-2019	326	12		3.68
21	Taran Taran	2014-2019	15	01	14	6.66

Table 4: State of Himachal Pradesh (District Vise)

Sr. No	Districts	Year	No. of Cases Referred	No. of Cases Settled	No. of Cases Unsettled	Success Percentage
1.	Una	2013-2020	1085	216	869	19.91
2.	Hamirpur	2015-2019	494	63	439	12.75
3.	Bilaspur	2015-2019	438	62	340	14.15
4.	Kangra	2015-2019	1304	271	954	20.78
5.	Mandi	2015-2019	750	114	610	15.2
6.	Kullu	2015-2019	928	365	559	39.33
7.	Chamba	2015-2019	144	21	118	14.89
8.	Shimla	2015-2019	582	212	343	36.42
9.	Solan	2015-2019	645	122	543	18.91
10.	Sirmaur	2015-2019	357	50	292	14.00
11.	Kinnaur	2015-2019	363	108	184	29.75

6.2 District Selected for Study

In the Parlance with Provisional Equity the universe of the study is State of Punjab and Himachal Pradesh. And from those universe two districts have been selected i.e. District Hoshiarpur from Punjab and District Una from Himachal Pradesh.

Reasons for choosing these two districts (Hoshiarpur and Una) from State of Punjab and Himachal Pradesh are –

Firstly, both the districts are chosen randomly. Apart from that researcher found that both district (Hoshiarpur and Una) are border centric to each other. Earlier District Una was the one of the Tehsil of District Hoshiarpur (Punjab). Consequent upon reorganization of Punjab, all the hilly areas including Una Tehsil of district Hoshiarpur (Punjab) was transferred to Himachal Pradesh.

As both districts are border centric and their cultures are also connected to each other. So, here researcher has a keen interest to study the functionality and implementation of mediation and conciliation in matrimonial disputes in these two districts and make comparative analysis to assess that which district have greater number of disposal in dispute resolution especially in mediation in matrimonial disputes.

Instead of that they are border areas and their cultures are same but it might be possible that their disposal system vary with each other. So, in order to touch that notion it is very important for the researcher to find out at what extend mediation and conciliation is really successful in solving the matters of matrimonial disputes particularly in these two districts of State of Punjab and Himachal Pradesh and to find out how effectively it has been used.

The road to justice in India is not just full of turns and twist, but also long and seems to be unending. Eminent Jurist Nani Palkhiwala said if longevity of litigation is made an item in Olympics, no doubt the Gold will come to India. This state of affair made the people more cynical humans. It is very difficult to understand the human minds especially when it comes to matrimonial disputes, it is very laborious to understand the problems find solution or seek an alternative way of resolving marital problems. When these disputes come out from private sphere and enter public domain through courts to find solution the courts these issues very delicately.

Family Courts established under Family Courts Act, 1984 emphasizes on resolving these disputes amicably through mediation. Instead of Family courts, Section 89 of the Code of Civil Procedure provides reference of cases pending in the courts to Alternative Dispute Resolution which also includes mediation. Court-Annexed mediation and conciliation centres are now established at several courts in India and courts have started referring cases to such mediation and conciliation centres.

Mediation has significant potential for bringing about qualitative change in the focus of the legal system from adjudication to amicable settlement of the disputes. As a field of mediation and conciliation continue to evolve and develop all over India, evaluating the functioning /implementation of mediation process is essential and becomes an important indicator of its acceptability by the society. It helps to identify the problems and needs from the perspective of the parties attending the mediation.

No doubt mediation is a dynamic process and understanding its different dimensions to make the system more responsive to the needs of the parties. This study plans to make an appraisal of mediation and conciliation in matrimonial disputes and make a comparative analysis of State of Punjab and Himachal Pradesh.

Table 5 depicts the information about the mediation in district Una, Himachal Pradesh From 2013 to 2019.

Table 5: District Una

Category of Cases	Year 2013			Year 2014			Year 2015			Year 2016			Year 2017			Year 2018			Year 2019		
	Case Referred	Settled	Unsettled	Referred	Settled	Unsettled	Referred	Settled	Unsettled	Referred	Settled	Unsettled	Referred	Settled	Unsettled	Referred	Settled	Unsettled	Referred	Settled	Unsettled
Matrimonial Disputes (TOTAL)	**64**	**3**	**61**	**93**	**30**	**63**	**120**	**26**	**94**	**140**	**35**	**105**	**192**	**41**	**151**	**199**	**44**	**155**	**127**	**20**	**107**
Percentage of total		**5%**	**95 %**		**32 %**	**68 %**		**22 %**	**78 %**		**25 %**	**75 %**		**21 %**	**79 %**		**22 %**	**78 %**		**16 %**	**84 %**
Divorce	46	-	46	34	13	21	27	9	18	32	9	23	72	11	61	65	13	52	30	3	27
Maintenance	6	1	5	18	3	15	13	2	11	23	8	15	30	5	25	27	5	22	22	5	17
Custody/Guardianship	-	-	-	1	-	1	3	-	3	4	-	4	4	-	4	4	1	3	-	-	-
U/S498 A/ 406 IPC	-	-	-	-	-	-	-	-	-	2	2	-	-	-	-	-	-	-	2	2	-
Domestic Violence	6	1	5	18	3	15	58	10	48	61	13	48	81	23	58	96	23	73	71	9	62
Matrimonial	6	1	5	22	11	11	19	5	14	18	3	15	5	2	3	7	2	5	2	1	1

Source: Right to Information Act,2005

From the data above it is evident that the referred cases have been increased over this period of 7 years. Yet, the success rate has no clear trend showing any improvement in the system. Over the 4 years from 2015 through 2018 the settled cases are lying around 20% of all the referred cases of that year, in the year 2019 the settled cases are mere 16% of the total 127 referred cases of that year.

Table 6

Year 2020		
Referred	**Settled**	**Unsettled**
150	17	133
	11%	89%

Source: Right to Information Act, 2005

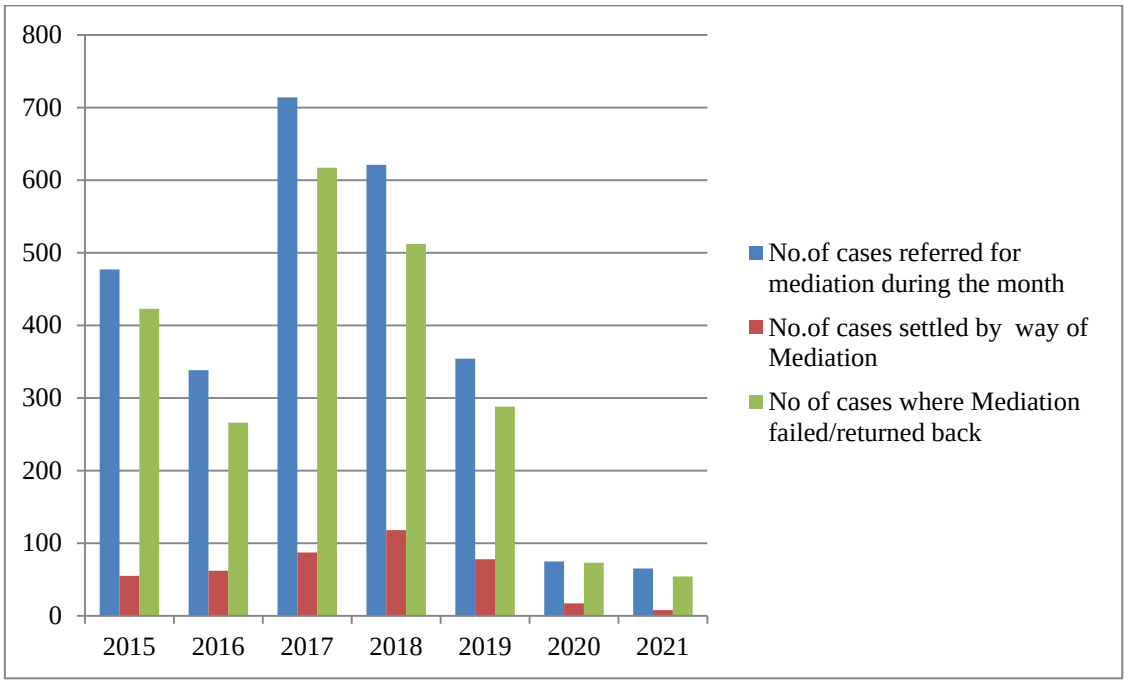
Further, more data for 2020 shows that the settled cases are even lesser than the previous year and it is amounted to just 11% of the total 150 referred cases of that year.

The consolidated picture depicts about 19.91% of all cases referred to mediation and conciliation from 2013 to 2020 is settled.

This may be considered as a clear indication that the mediation process to handle matrimonial disputes in Una district is lacking considerably and fails to provide settlements to the litigants and this opens a variety of opportunities for academicians,

researchers and legal stake holders to explore the system thoroughly to identify the shortcomings of the system and provide with solution measures to improve the system for the betterment of the society.

Figure 1



This graph shows the real picture of District Una.Himachal Pradesh from year 2015 to 2021.In 2015 the number of cases referred for mediation is 477 out of which 55 cases are settled and 423 cases are returned back to court. In 2016 the number of cases 338 is referred out of which 62 cases are get settle and 266 cases are returned back to court. In 2017, the number of cases referred is 714 out of which only 87 cases get settle and 617 cases returned back to court. In 2018, 621 cases are being referred to mediation out of which 118 cases get settle and 512 cases returned back to court. In 2019, the number of cases referred for mediation is 354 out of which 78 get settle and 288 failed and returned back to court. In 2020, only 75 cases are being referred to mediation out of which 17 cases get settle and 73 cases get unsettled and return back to courts. In 2021, 65 cases are referred out of which 8 cases get settle and 54 cases get failed for mediation and returned back to court. Here this table shows the actual picture of referral of cases to mediation in district Una Himachal Pradesh from 2015 to 2021.There is continue fluctuation in the referral of cases in mediation and most of cases get failed in mediation and coming back to court. This record shows that mediation is still a distinct dream in district Una (H.P).

Table 7: Statistical Information of Hoshiarpur (Punjab) Cases Referred to Mediation Centre for Settlement between the Parties through Mediation from 2008 to 2019[1]

Sr. No.	Category of Cases	No. of Cases referred by the Courts	No. of Cases Settled Sent back	No .of Cases Unsettled sent back	No. of Cases unfit sent back
1.	Hindu Marriage Act	796	186	528	82
2.	125 Cr.P.C	539	133	343	63
3.	Crl. Revision /Crl. appeal	10	1	4	5
4.	406/498	27	2	18	7
5.	MACT	23	9	12	2
6.	12 DV Act	366	73	252	41
7.	Crl Misc.	152	15	99	38
8.	Civil Appeal	31	9	14	8
9.	Crl. Appeal	33	6	15	12
10.	Civil Suit	592	177	362	53
11.	138	349	88	219	42
12.	Execution	47	4	30	13
13	Bail Application	103	16	48	39
14.	IPC Challan	44	6	18	20
15.	IPC Complaint	101	16	48	39
16.	G &W Act	33	6	16	11
17.	Rent Petition/ Rent Controller	27	1	21	5
18.	Civil Misc	12	6	5	1
19.	Pauper	3		3	
	Total	**3288**	**756**	**2061**	**471**
	16 Pre- Litigative received	13	2	7	4

[1] Right to Information Act, 2005

As per the data presented above, over the period of 12 years, the number of Hindu Marriage Act Cases referred by the courts was 796 and out of this only 186 cases were settled (23.37%).

The above table clearly indicates the increasing trend of referral cases in mediation. The number of settled cases also increased but on an average it is lesser than in comparison to the referred cases. Keeping in mind the above criteria, the present data analyses were performed through questionnaires method. The present research work may indicate the appraisal given by the respondents and reflects the awareness level of the mediation system within and outside the frontier of the courts.

6.3 Analysis of Data

Respondents or subjects of analysis are Professionals and General Public. Professionals include Advocates, Mediators and Judges whereas General Public comprises of litigants and local people of the areas studied. The total fraction of respondents depicted in Table 6.3 is given below:

Table 8 -District – Respondent category Crosstabulation

		Judge	Mediator/ Advocate	Litigant/General Public	Total
District	Hoshiarpur	10	100	115	225
	Una	10	100	107	217
Total		20	200	222	442

For this study three different sets of questionnaires have been framed, one for the Advocates /mediators; one for Judges and other for general public. The total sample size of professionals for the study are collected from each district is 220 out of which 100 from advocates/mediators and 10 from Judges. And the sample size of General public is 222 out of which 115 from district Hoshiarpur (Punjab) ,107 from district Una (H.P).Keeping in view of COVID 19 pandemic; there were limitations as to the meeting the general respondents and legal respondents personally so the questionnaires are circulated through the Google forms.

The responses of the legal respondents and general respondents to the various questions are as follows-

6.3.1 Legal Respondents

Judges

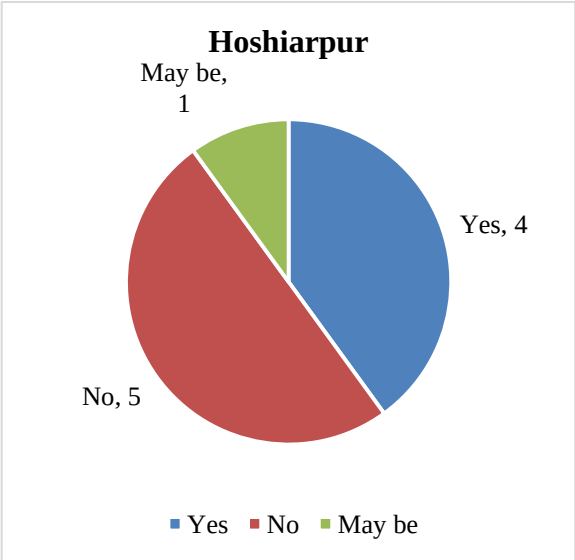
1. Litigants' inclination

The question Do you believe that litigants are more inclined to resolve their matrimonial matters through Mediation and Conciliation other than Courts? Was asked to the judges and 10 responses came from each district.

Table 8

		Do you believe that litigants are more inclined to resolve their matrimonial matters through Mediation and Conciliation other than Courts.			Total
		Yes	No	May be	
District	Hoshiarpur	4	5	1	10
	Una	4	4	2	10
Total		8	9	3	20

The picture shows that in district Hoshiarpur 40% judges believes that the litigants are inclined to resolve their matrimonial disputes through the mediation and conciliation, 50% judges says that litigants are not agree to resolve their matrimonial disputes through mediation and conciliation and 10% judges gave response as a neutral. In district Una, 40% judges gave positive response, 40% gave negative response and 20% gave neutral response. **Figure 2** below



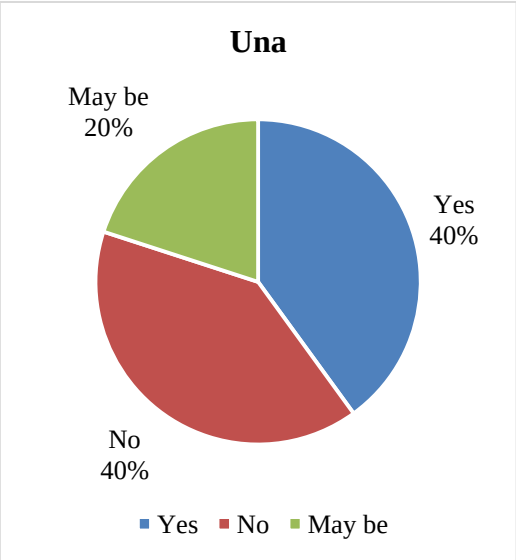


Table 9: Chi-Square Tests

	Value	Df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	.444[a]	2	.801	1.000		
Likelihood Ratio	.451	2	.798	1.000		
Fisher's Exact Test	.604			1.000		
Linear-by-Linear Association	.097[b]	1	.755	1.000	.500	.232
N of Valid Cases	20					

a. 6 cells (100.0%) have expected count less than 5. The minimum expected count is 1.50.

b. The standardized statistic is .312.

A Chi-square test is performed in order to find out if the judges perceive differently or in the same manner for the both the concerned districts under study. Since, the sample size is small (n=10), the expected count is less than 5 in 100% cases, Fisher's Exact Test is also performed. As the significance is >0.05 it may be concluded that statistically there is no significant difference between them and the judges of both the district perceive in the same manner. This conclusion is further supported by a strong Cramer's V significance (0.801).

Table 10: Symmetric Measures

		Value	Approx. Sig.	Exact Sig.
Nominal by Nominal	Phi	.149	.801	1.000
	Cramer's V	.149	.801	1.000
N of Valid Cases		20		

2. Reasons for avoiding the mediation and conciliation

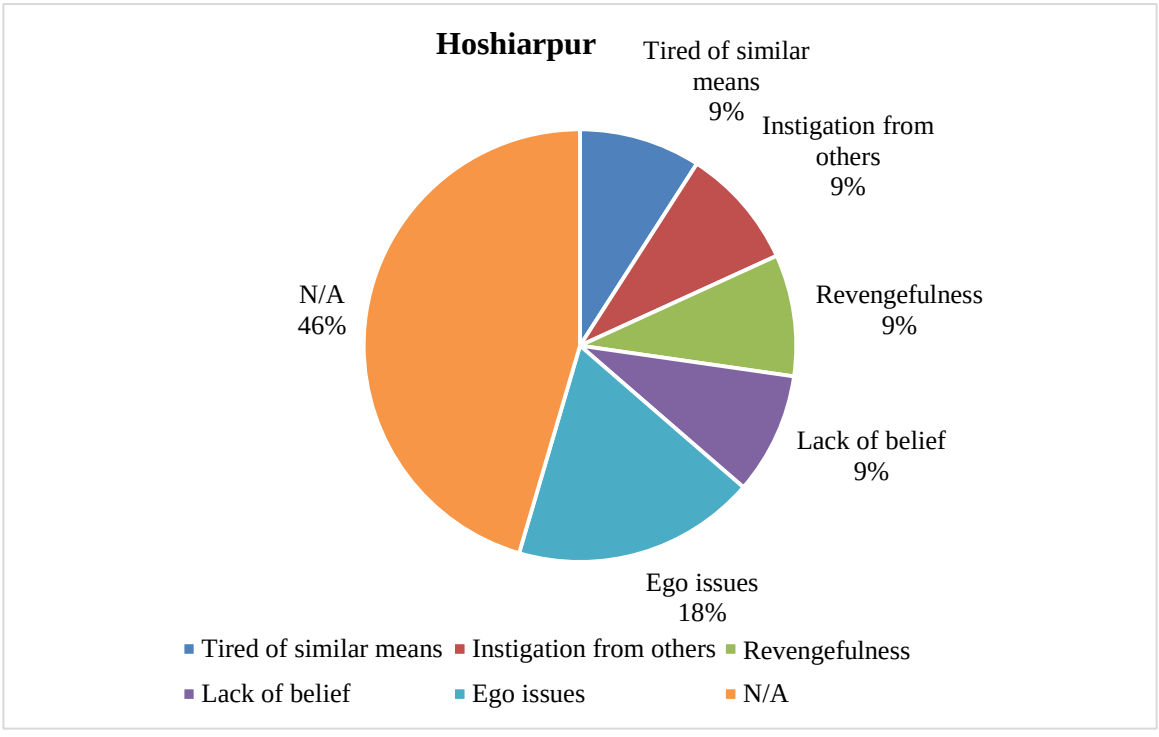
The question **If 'No' then what are the basic reasons for avoiding the mediation and conciliation in matrimonial matter.** . The distribution of responses is depicted in the table below.

Table 11

		Reason for avoiding mediation[a]						Total
		Tired of similar means	Instigation from others	Revengefulness	Lack of belief	Ego issues	N/A	
District	Hoshiarpur	1	1	1	1	2	5	10
	Una	0	0	2	0	3	6	10
Total		1	1	3	1	5	11	20

As the judges (50% in Hoshiarpur and 60% in Una) perceive that the litigants are inclined towards mediation and conciliation they haven't responded to this question. The judges say that the parties to the dispute have ego issue and they are not willing to resolve their matrimonial matters through mediation and conciliation as most of the responses depict it. Revengefulness is another major factor following to ego issues 3 out of 9 judges (33% of no responses) mentions this. It noteworthy that the judges of Hoshiarpur (1 response) also perceive that the litigants don't believe in the system of mediation and conciliation. The response distribution is presented in the pie-chart below

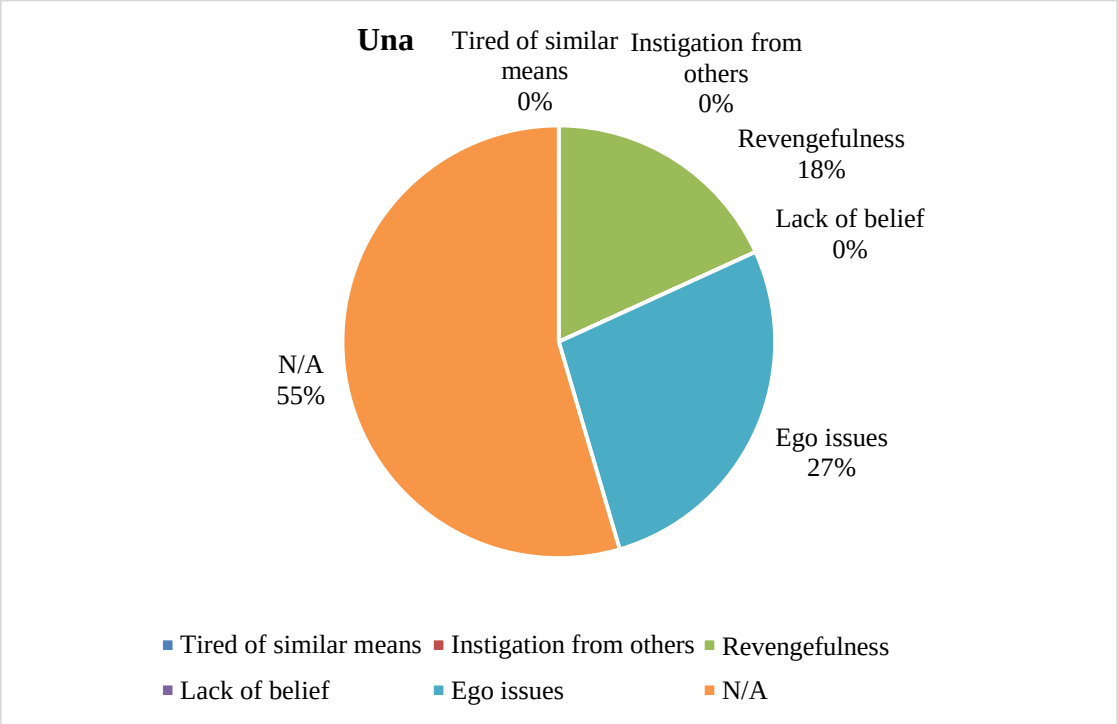
Figure 3



This shows that in district namely Hoshiarpur (Punjab) & district Una (H.P) both have common reasons where the parties to matrimonial disputes avoid resolving it through the mediation and conciliation. The major reasons for avoiding the mediation and conciliation in both the districts are that parties have personal issues with each other and they just want to make harassments and for this they prefer courts rather to go mediation and conciliation.

The Fisher's Exact test is performed to test the existence of any pattern between the judges' perception and the districts belong. The significance probability ($p = 0.019648$) is smaller than 0.05 hence, we reject the hypothesis and may conclude that the judges of both the district have different opinions about why the litigants avoid mediation in the first place.

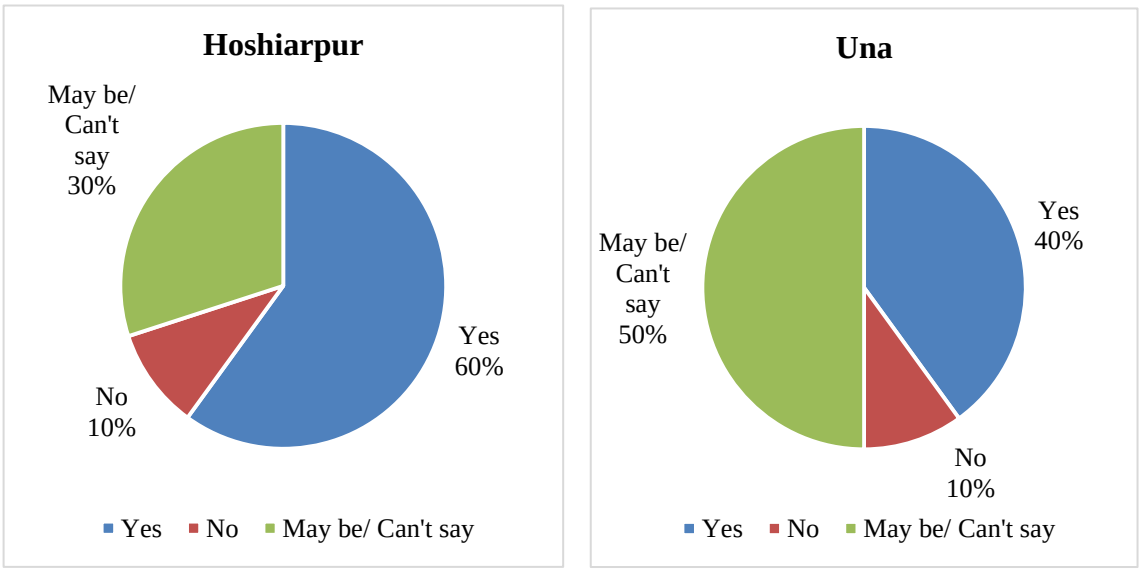
Figure 3



3. Mediators are f-air, balanced and maintain integrity

The question Do you think that mediators are fair balanced and maintain integrity in the process of mediation and conciliation? Was asked to judges of both the districts under study

Figure 4



In Hoshiarpur out of 10 responses, 60% judges are satisfied with that the mediators are fair balanced and maintain integrity in the process of mediation and conciliation. 10% shows their dissatisfaction and 30% judges remain neutral to this. And in district Una the judges' responses came in which 40% judges says that mediators are fair balanced and maintain integrity, 10% judges of Una are not satisfied with the work of mediators and 50% judges remain neutral.

Table 12

		Do you think that mediators (parties) are fair, balanced and maintain integrity in the process of mediation and conciliation			**Total**
		Yes	**No**	**May be/ Can't say**	
District	Hoshiarpur	6	1	3	10
	Una	4	1	5	10
Total		10	2	8	20

The Fisher's Exact test is performed to test the existence of any pattern between the judges' perception and the districts belong. The significance probability ($p = 0.809$) is greater than 0.05 hence, we can't reject the hypothesis and may conclude that the judges of both the district have similar opinions on this matter. This conclusion is further supported by a strong Cramer's V significance (0.809)

Table 13: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	.900[a]	2	.638	.809		
Likelihood Ratio	.908	2	.635	.809		
Fisher's Exact Test	1.140			.809		
Linear-by-Linear Association	.854[b]	1	.355	.497	.249	.127
N of Valid Cases	20					

a. 4 cells (66.7%) have expected count less than 5. The minimum expected count is 1.00.

b. The standardized statistic is .924.

Table 14: Symmetric Measures

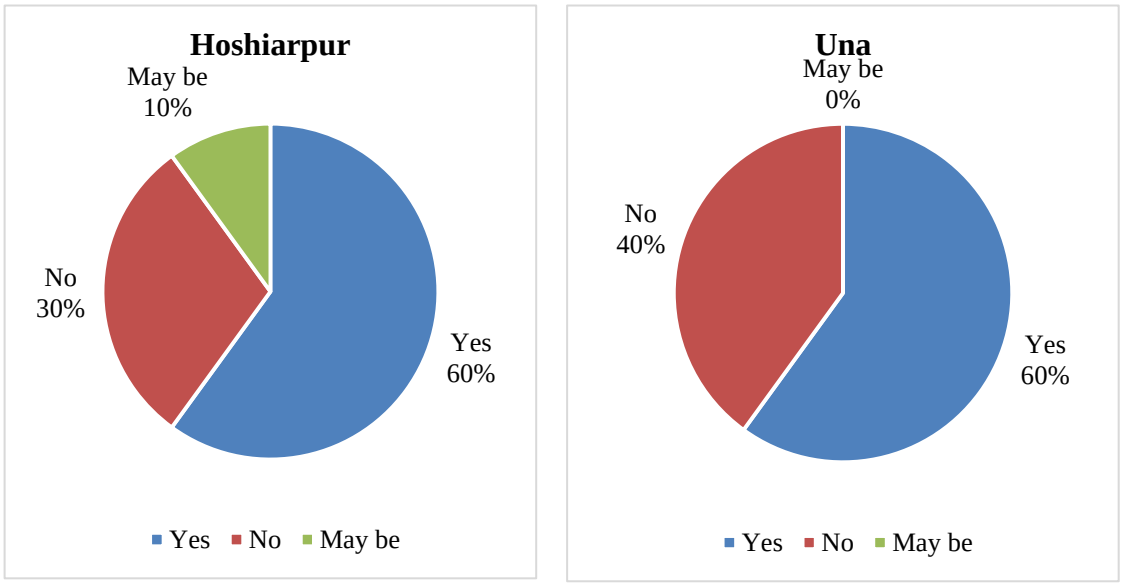
		Value	Approx. Sig.	Exact Sig.
Nominal by Nominal	Phi	.212	.638	.809
	Cramer's V	.212	.638	.809
N of Valid Cases		20		

This table depicts that majority of judges gave their positive response towards the working of mediators that they are fair enough and also maintain integrity during the process of the mediation and conciliation. And the majority of judges are in dilemma with the working of mediators whether in actual mediators are fair balanced and also maintain the integrity in the process of mediation and conciliation.

4. Role as a mediator

A question Have you ever played a role of mediator in matrimonial disputes? Was asked to understand the judges' direct involvement in mediation.

Figure 5



Here in both the districts, 60% judges show affirmative response that they have played a role of mediator in matrimonial disputes. And 30% judges of Hoshiarpur say that they have never played a role of mediator, 10% judges remain neutral. Whereas in Una district, 40% judges gave their dissents that they never act as mediator. Here this shows that the majority of judges in the both districts actively played role of mediators.

Table 15

		Have you ever played a role of mediator in matrimonial disputes?			**Total**
		Yes	**No**	**May be**	
District	Hoshiarpur	6	3	1	10
	Una	6	4	0	10
Total		12	7	1	20

The Fisher's Exact test is performed to test the existence of any pattern between the judges' participation and the districts they belong. The significance probability (p = 1.000) is greater than 0.05 hence, we can't reject the hypothesis and may conclude that the judges of both the district have similar participation. This conclusion is further supported by a strong Cramer's V significance (1.000).

Table 16: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	1.143[a]	2	.565	1.000		
Likelihood Ratio	1.530	2	.465	1.000		
Fisher's Exact Test	1.147			1.000		
Linear-by-Linear Association	.137[b]	1	.712	1.000	.500	.265
N of Valid Cases	20					

a. 4 cells (66.7%) have expected count less than 5. The minimum expected count is .50.

b. The standardized statistic is -.370.

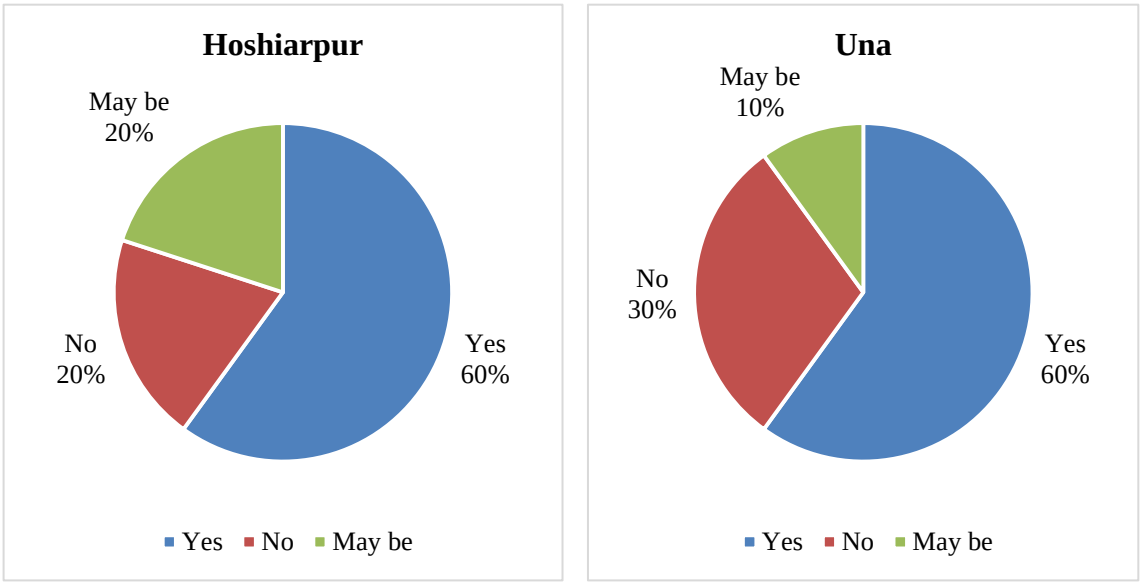
Table 17: Symmetric Measures

		Value	Approx. Sig.	Exact Sig.
Nominal by Nominal	Phi	.239	.565	1.000
	Cramer's V	.239	.565	1.000
N of Valid Cases		20		

5. Suggestion to resolve through mediation and conciliation

This question Have you ever suggested parties to the matrimonial disputes to resolve it through mediation and conciliation? was asked to the judges of both the districts.

Figure 6



In both the districts, 60% judges gave positive response that they have strongly suggested the parties to the matrimonial disputes to resolve their disputes through mediation and conciliation. 20% in Hoshiarpur and 30% in Una say that they have not suggested any of the parties to resolve their matrimonial disputes through mediation & conciliation.20% judges in Hoshiarpur and 10% in Una remain neutral neither they show positive nor negative response.

Table 18

		Have you ever suggested parties to the matrimonial disputes to resolve it through mediation and conciliation?			**Total**
		Yes	**No**	**May be**	
District	Hoshiarpur	6	2	2	10
	Una	6	3	1	10
Total		12	5	3	20

Table 19: Chi-Square Tests

	Value	**df**	**Asymp. Sig. (2-sided)**	**Exact Sig. (2-sided)**	**Exact Sig. (1-sided)**	**Point Probability**
Pearson Chi-Square	.533[a]	2	.766	1.000		
Likelihood Ratio	.541	2	.763	1.000		
Fisher's Exact Test	.693			1.000		
Linear-by-Linear Association	.087[b]	1	.768	1.000	.500	.219
N of Valid Cases	20					

a. 4 cells (66.7%) have expected count less than 5. The minimum expected count is 1.50.

b. The standardized statistic is -.295.

The Fisher's Exact test is performed to test the existence of any pattern between the judges' suggestion in this regard and the districts they belong. The significance probability (p = 1.000) is greater than 0.05 hence, we can't reject the hypothesis and may conclude that the judges of both the district have similar participation. This conclusion is further supported by a strong Cramer's V significance (1.000)

Table 20: Symmetric Measures

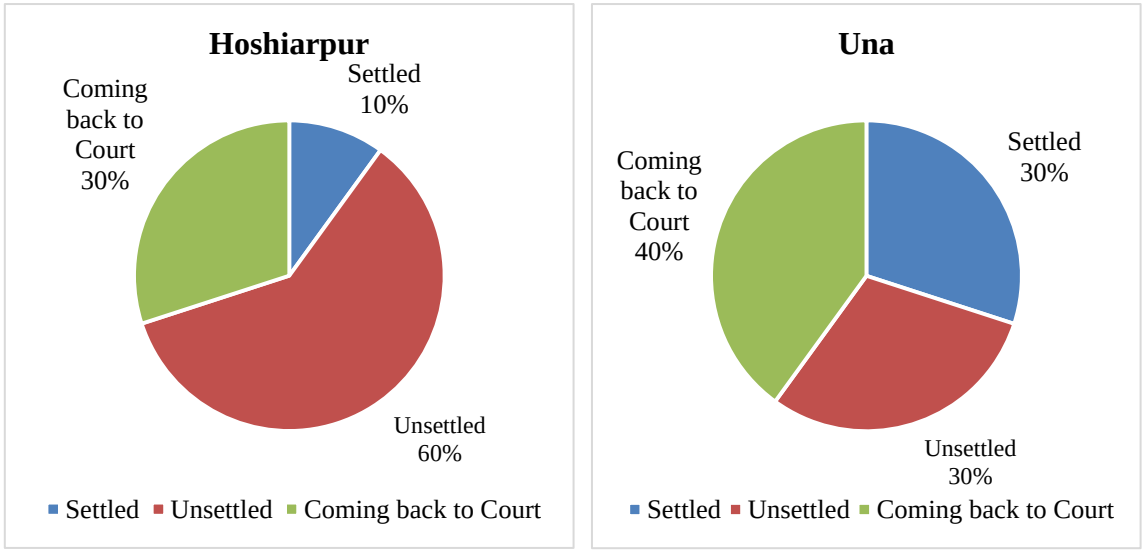
		Value	Approx. Sig.	Exact Sig.
Nominal by Nominal	Phi	.163	.766	1.000
	Cramer's V	.163	.766	1.000
N of Valid Cases		20		

This shows that the majority of judges of the both districts strongly suggested the parties to resolve their matrimonial matters through mediation and conciliation.

6. Settlement of under section 89 of Civil Procedure Court

This table shows the response to question Do you think that the most of cases which are being referred under section 89 of Civil Procedure Court got- pictures perception of judges for the status to the cases being referred under Section 89 of civil Procedure Code.

Figure 7



10% Judges of district Hoshiarpur vis-à-vis 30%of Una district say that the cases which are referred under section 89 of Cpc get settled. To the contrary 60% of judges Hoshiarpur and 30% judges of Una say that the cases being referred under section 89 of Civil Procedure Code are not getting settled and 30% judges and 40% judges of respective districts say that if the cases are being referred to mediation and conciliation the cases remain unsettled and cases are again coming back to the court.

Table 21

		Do you think that the most of cases which are being referred under section 89 of Civil Procedure Court got-			Total
		Settled	**Unsettled**	**Coming back to Court**	
District	Hoshiarpur	1	6	3	10
	Una	3	3	4	10
Total		4	9	7	20

Table 22: Chi-Square Tests

	Value	**df**	**Asymp. Sig. (2-sided)**	**Exact Sig. (2-sided)**	**Exact Sig. (1-sided)**	**Point Probability**
Pearson Chi-Square	2.143[a]	2	.343	.523		
Likelihood Ratio	2.209	2	.331	.523		
Fisher's Exact Test	2.072			.523		
Linear-by-Linear Association	.090[b]	1	.764	1.000	.500	.224
N of Valid Cases	20					

a. 6 cells (100.0%) have expected count less than 5. The minimum expected count is 2.00.

b. The standardized statistic is -.300.

The Fisher's Exact test is performed to test the existence of any pattern between the judges' perception in this regard and the districts they belong. The significance probability (p = 0.523) is greater than 0.05 hence, we can't reject the hypothesis and may conclude that the judges of both the district have similar perceptions. This conclusion is further supported by a strong Cramer's V significance (0.523)

Table 23: Symmetric Measures

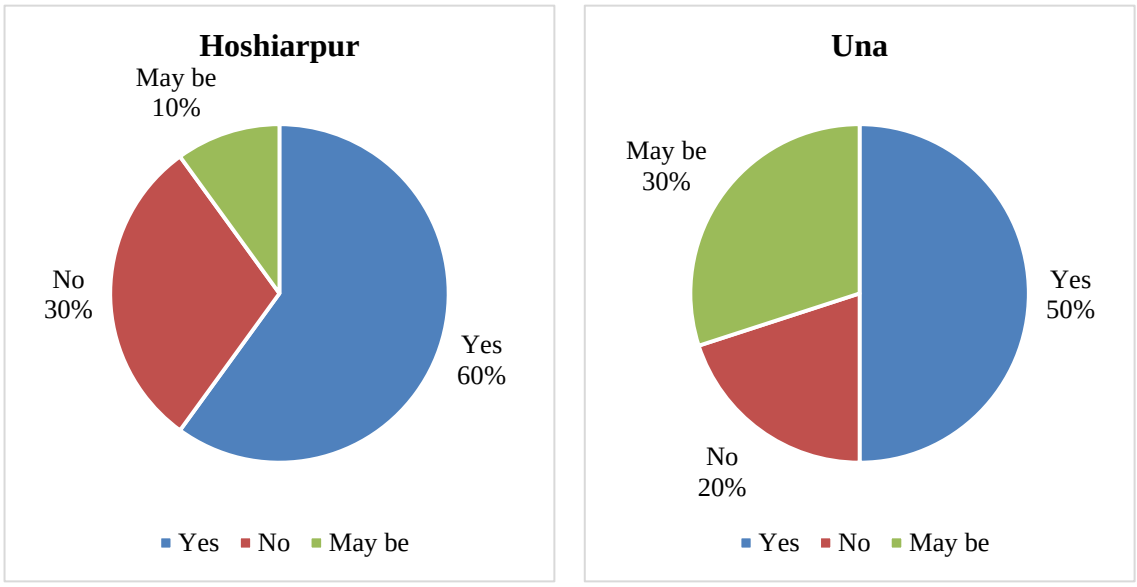
		Value	Approx. Sig.	Exact Sig.
Nominal by Nominal	Phi	.327	.343	.523
	Cramer's V	.327	.343	.523
N of Valid Cases		20		

This shows that majority of cases in Hoshiarpur district as compared to district Una remains unsettled due to some reason of the other and the cases are coming back to court. The judges can refer the dispute to Mediation as per section 89; however, the referral becomes ceremonial unless the litigants regularly utilize this referral option.

7. Perception about duty of judges to encourage parties

The question Do you think that it is the duty of judges to encourage parties to make use of mediation and conciliation in matrimonial disputes? was asked to Judges whether it is the duty of judges to encourage parties to make use of mediation and conciliation in matrimonial disputes .10 responses came from both districts are as under.

Figure 8



60% Judges of district Hoshiarpur vis-à-vis 50%of Una district say that it is the duty of the judges to encourage parties to make use of mediation and conciliation in matrimonial disputes. To the contrary 30% of judges Hoshiarpur and 20% judges of

Una say that itis not the duty of judges to encourage parties to make use of mediation and conciliation in matrimonial disputes and 10% judges and 30% judges of respective districts remain neutral in this matter.

Table 24

		Do you think that it is the duty of judges to encourage parties to make use of mediation and conciliation in matrimonial disputes			Total
		Yes	No	May be	
District	Hoshiarpur	6	3	1	10
	Una	5	2	3	10
Total		11	5	4	20

Table 25: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	1.291[a]	2	.524	.700		
Likelihood Ratio	1.339	2	.512	.700		
Fisher's Exact Test	1.304			.700		
Linear-by-Linear Association	.681[b]	1	.409	.586	.293	.156
N of Valid Cases	20					

a. 4 cells (66.7%) have expected count less than 5. The minimum expected count is 2.00.

b. The standardized statistic is .825.

The Fisher's Exact test is performed to test the existence of any pattern between the judges' perception in this regard and the districts they belong. The significance probability (p = 0.700) is greater than 0.05 hence, we can't reject the hypothesis and may conclude that the judges of both the districts have similar perception. This conclusion is further supported by a strong Cramer's V significance (0.700)

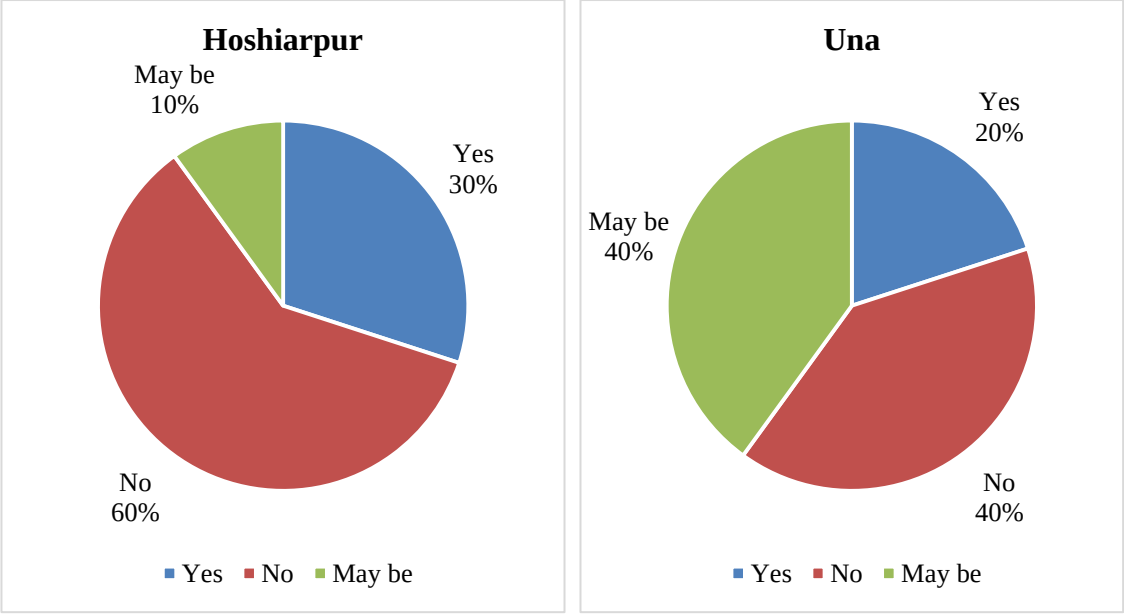
Table 26: Symmetric Measures.

		Value	Approx. Sig.	Exact Sig.
Nominal by Nominal	Phi	.254	.524	.700
	Cramer's V	.254	.524	.700
N of Valid Cases		20		

8. Judiciary in resolving matrimonial matters

To the question Whether Judiciary is really successful in resolving matrimonial matters through mediation and conciliation. The responses so obtained are as under.

Figure 9



The data shows that 30% Judges of district Hoshiarpur vis-à-vis 20%of Una district say that Judiciary is really successful in resolving matrimonial matters through mediation and conciliation. To the contrary 60% of judges Hoshiarpur and 40% judges of Una say that Judiciary is not successful in resolving matrimonial matters through mediation and conciliation and 10% judges and 40% judges of respective districts remain neutral in this matter.

Table 27

		Whether Judiciary is really successful in resolving matrimonial matters through mediation and conciliation.			Total
		Yes	No	May be	
District	Hoshiarpur	3	6	1	10
	Una	2	4	4	10
Total		5	10	5	20

Table 28: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	2.400[a]	2	.301	.500		
Likelihood Ratio	2.532	2	.282	.500		
Fisher's Exact Test	2.306			.500		
Linear-by-Linear Association	1.520[b]	1	.218	.357	.178	.119
N of Valid Cases	20					

a. 4 cells (66.7%) have expected count less than 5. The minimum expected count is 2.50.

b. The standardized statistic is 1.233.

The Fisher's Exact test is performed to test the existence of any pattern between the judges' perception in this regard and the districts they belong. The significance probability (p = 0.500) is greater than 0.05 hence, we can't reject the hypothesis and may conclude that the judges of both the districts have similar perception. This conclusion is further supported by a moderate Cramer's V significance (0.500).

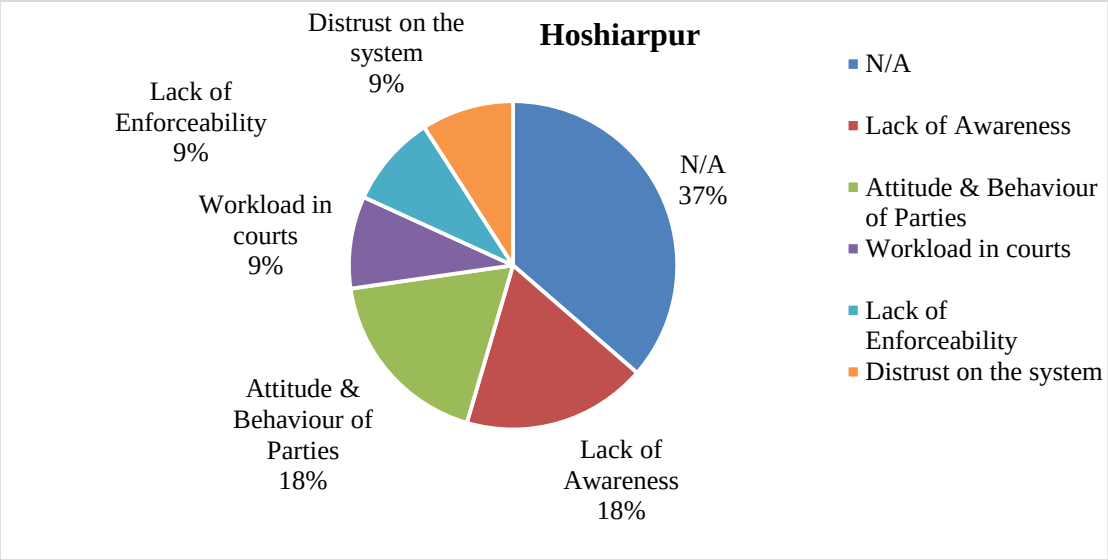
Table 29: Symmetric Measures

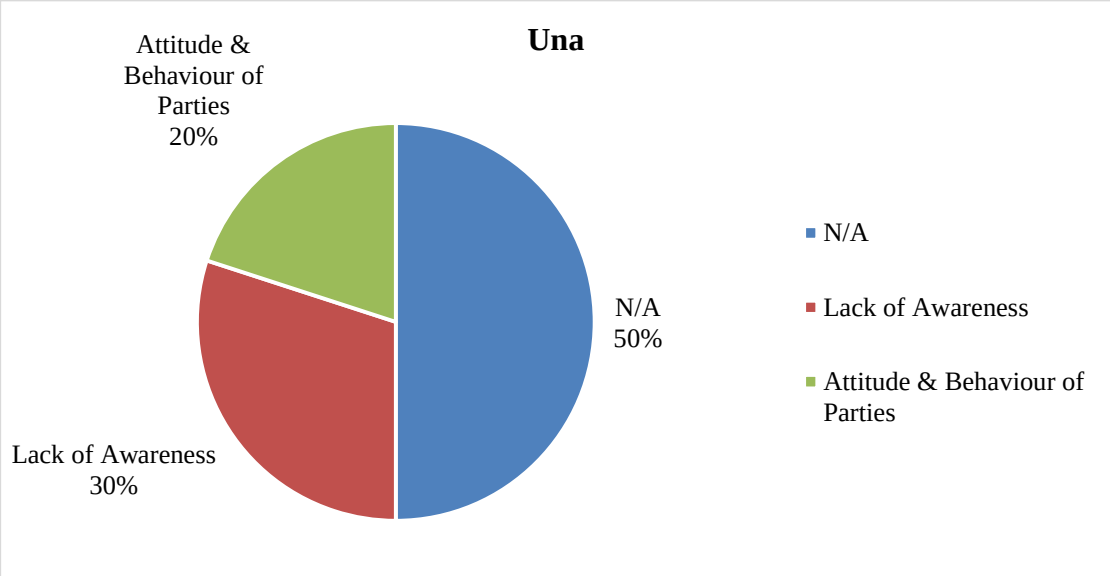
		Value	Approx. Sig.	Exact Sig.
Nominal by Nominal	Phi	.346	.301	.500
	Cramer's V	.346	.301	.500
N of Valid Cases		20		

9. Reasons for the failure of mediation and conciliation

To the question If 'No' then what are the reasons for the failure of mediation and conciliation in matrimonial matters. The responses so obtained are as under.

Figure 10





As the judges (37% in Hoshiarpur and 50% in Una) perceive that the Judiciary is really successful in resolving matrimonial matters through mediation and conciliation, they haven't responded to this question. The judges say that the reasons for the failure of mediation and conciliation in matrimonial matters are majorly lack of awareness (18% Hoshiarpur and 30% Una). Attitude and behavior of parties is another major factor following to awareness where 18% and 20% of respondents respectively mention this. It noteworthy that some of the judges of Hoshiarpur also perceive that the lack of enforceability and distrust on the system are also the reasons of failure of mediation and conciliation.

Table 30

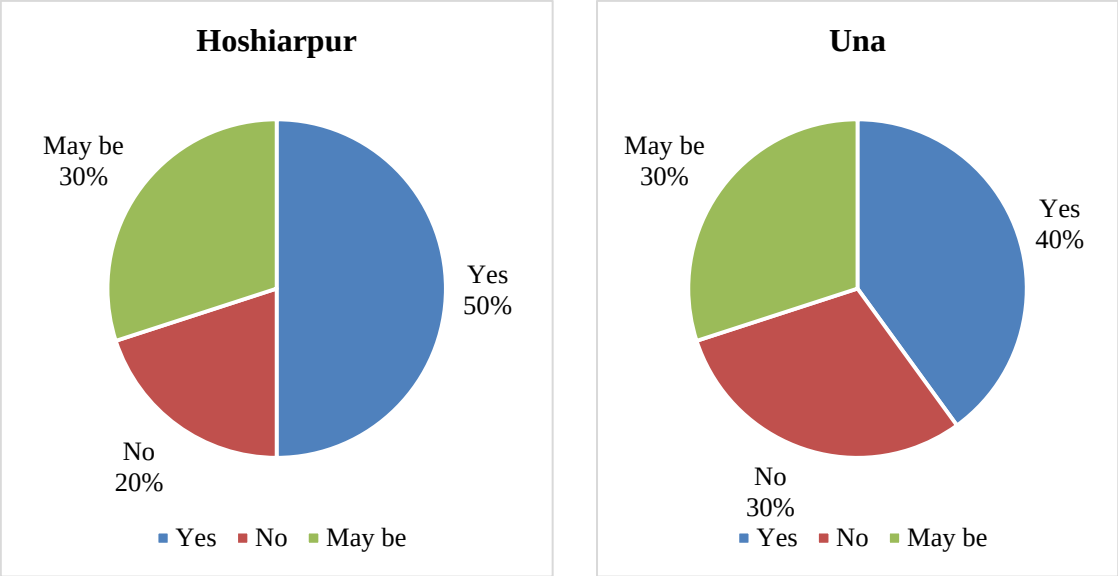
		Reasons for failure of mediation[a]						**Total**
		N/A	**Lack of Awareness**	**Attitude & Behaviour of Parties**	**Workload in courts**	**Lack of Enforceability**	**Distrust on the system**	
District	Hoshiarpur	4	2	2	1	1	1	11
	Una	5	3	2	0	0	0	10
Total		9	5	4	1	1	1	21

The Fisher's Exact test is performed to test the existence of any pattern between the judges' perception and the districts they belong. The significance probability so computed ($p = 0.02143367$) is smaller than 0.05 hence, we reject the hypothesis and may conclude that the judges of both the district have different opinions about why the mediation and conciliation in matrimonial matters may fail.

10. Situations where judge can overrule a mediation agreement

The question Are there any situations where judge can overrule a mediation agreement in matrimonial matters? was asked to Judges to ascertain if there are situations where a judge may overrule the mediation agreement in matrimonial disputes .10 responses came from both districts are as under.

Figure 11



The data shows that 50% Judges of district Hoshiarpur and 40%judges of Una district say that there are situations where judge can overrule a mediation agreement in matrimonial matters. To the contrary 20% of judges Hoshiarpur and 30% judges of Una say that there are not any situations where judge can overrule a mediation agreement in matrimonial matters and 30% judges and 30% judges of respective districts remain neutral in this matter.

The Fisher's Exact test is performed to test the existence of any pattern between the judges' perception in this regard and the districts they belong. The significance probability (p = 1.000) is greater than 0.05 hence, we can't reject the hypothesis and may conclude that the judges of both the districts have similar perception. This conclusion is further supported by a moderate Cramer's V significance (1.000)

Table 31

		Are there any situations where judge can overrule a mediation agreement in matrimonial matters?			**Total**
		Yes	**No**	**May be**	
District	Hoshiarpur	5	2	3	10
	Una	4	3	3	10
Total		9	5	6	20

Table 32: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	.311[a]	2	.856	1.000		
Likelihood Ratio	.313	2	.855	1.000		
Fisher's Exact Test	.479			1.000		
Linear-by-Linear Association	.065[b]	1	.798	1.000	.500	.194
N of Valid Cases	20					

a. 6 cells (100.0%) have expected count less than 5. The minimum expected count is 2.50.

b. The standardized statistic is .256.

Table 33: Symmetric Measures

		Value	Approx. Sig.	Exact Sig.
Nominal by Nominal	Phi	.125	.856	1.000
	Cramer's V	.125	.856	1.000
N of Valid Cases		20		

11. Circumstances judge can overrule the mediation agreement

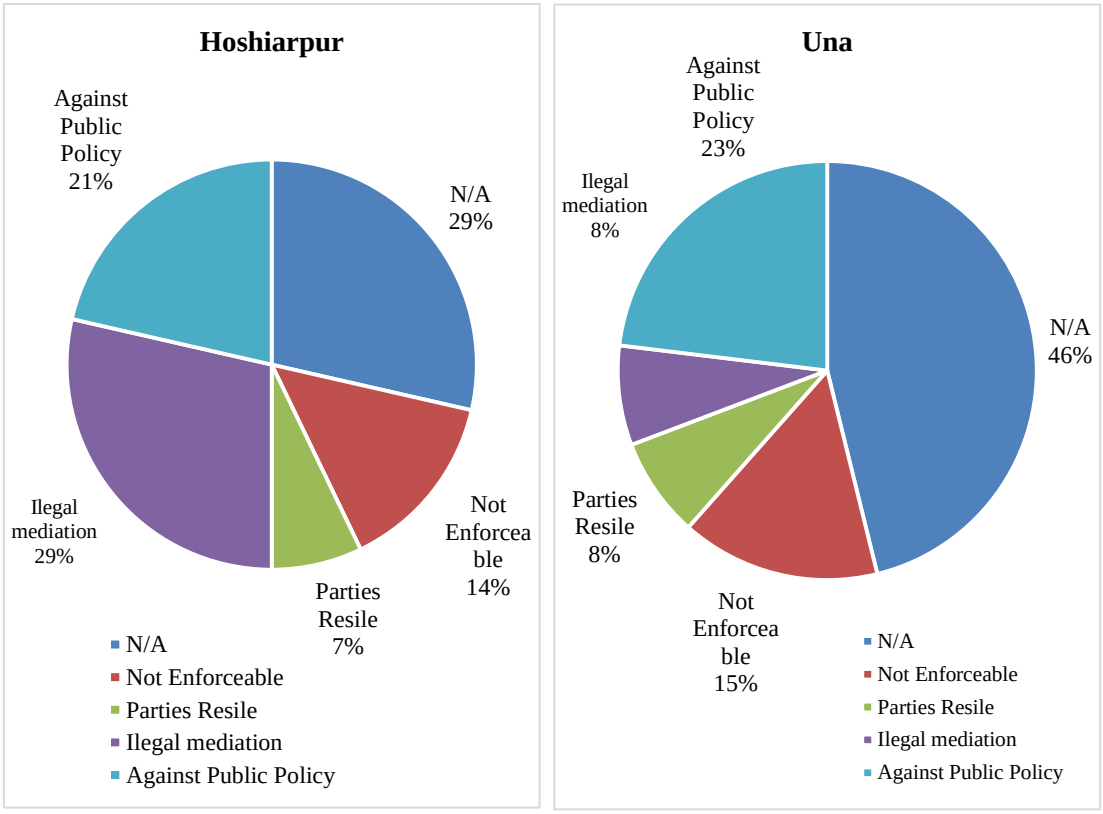
For the judges who think that the overrule is applicable under some circumstances the question If 'Yes ' under what circumstances judge can overrule the mediation agreement. is asked to find out the different circumstances to the same. The 27 multiple responses so recorded are as under in pie-chart and in the table.

Table 34

		Circumstances to overrule[a]					Total
		N/A	Not Enforceable	Parties Resile	Illegal mediation	Against Public Policy	
District	Hoshiarpur	4	2	1	4	3	14
	Una	6	2	1	1	3	13
Total		10	4	2	5	6	27

The data shows that 30% Judges of both the districts mention that it can be overruled if the agreement is against public policy. 40% judges of Hoshiarpur district and 10% judges of Una district say that if the mediation is illegal, it can be overruled. Also, 20% Judges of both the districts mention that it can be overruled if the agreement is not enforceable. Further, 10% Judges of both the districts mention that it can be overruled if parties resile.

Figure 12



The Fisher's Exact test is performed to test the existence of any pattern between the judges' perception and the districts they belong. The significance probability so computed (p = 0.012563378) is smaller than 0.05 hence, we reject the hypothesis and may conclude that the judges of both the district have different opinions about the circumstances under which the agreement may be overruled.

12. Significance and sacredness of marriage and rise in divorce cases in India

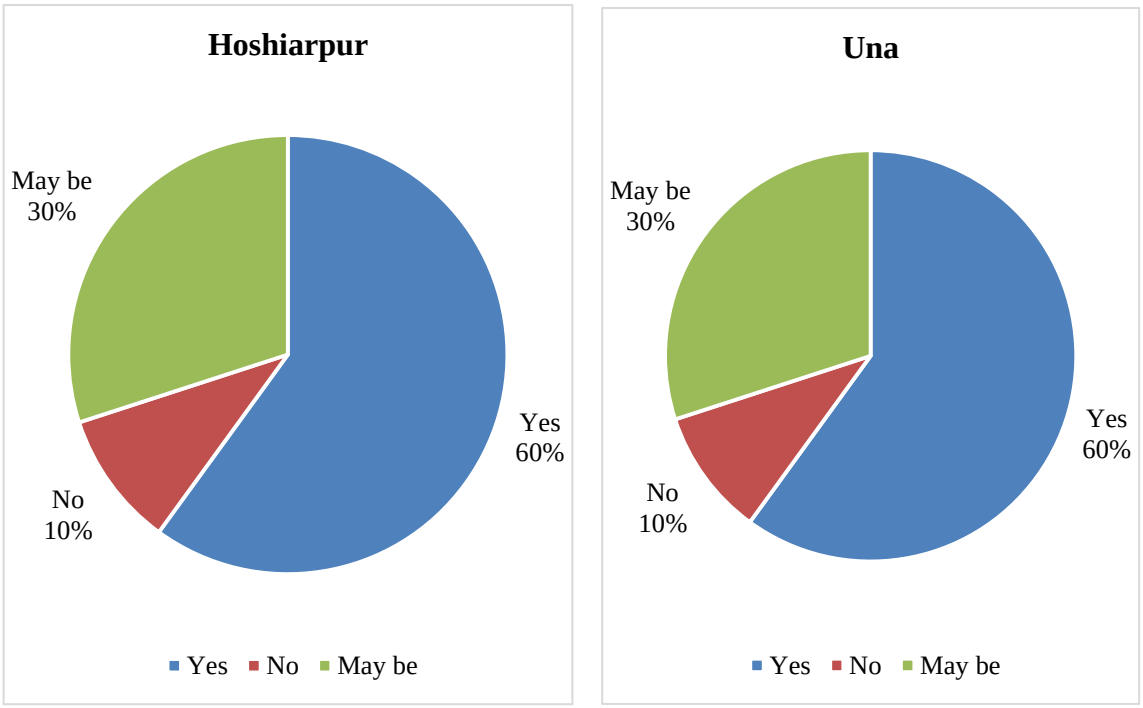
To the question Do you think with the rise in divorce cases in India is marriage losing its significance and sacredness the responses from the judges of both the districts have responded in a similar fashion. 60% of each district say Yes, 30% are neutral and 10% say No the question.

Table 35

		Do you think with the rise in divorce cases in India, is marriage losing its significance and sacredness?			Total
		Yes	No	May be	
District	Hoshiarpur	6	1	3	10
	Una	6	1	3	10
Total		12	2	6	20

This also confirms that the judges feel that the rise in number of divorce cases in India is definitely ruining the significance and sacredness of marriage.

Figure 13



13. Number of matrimonial disputes over a year

To the question, Can you please explain, on average how many matrimonial disputes you preside over a year the responses are as under

Figure 14

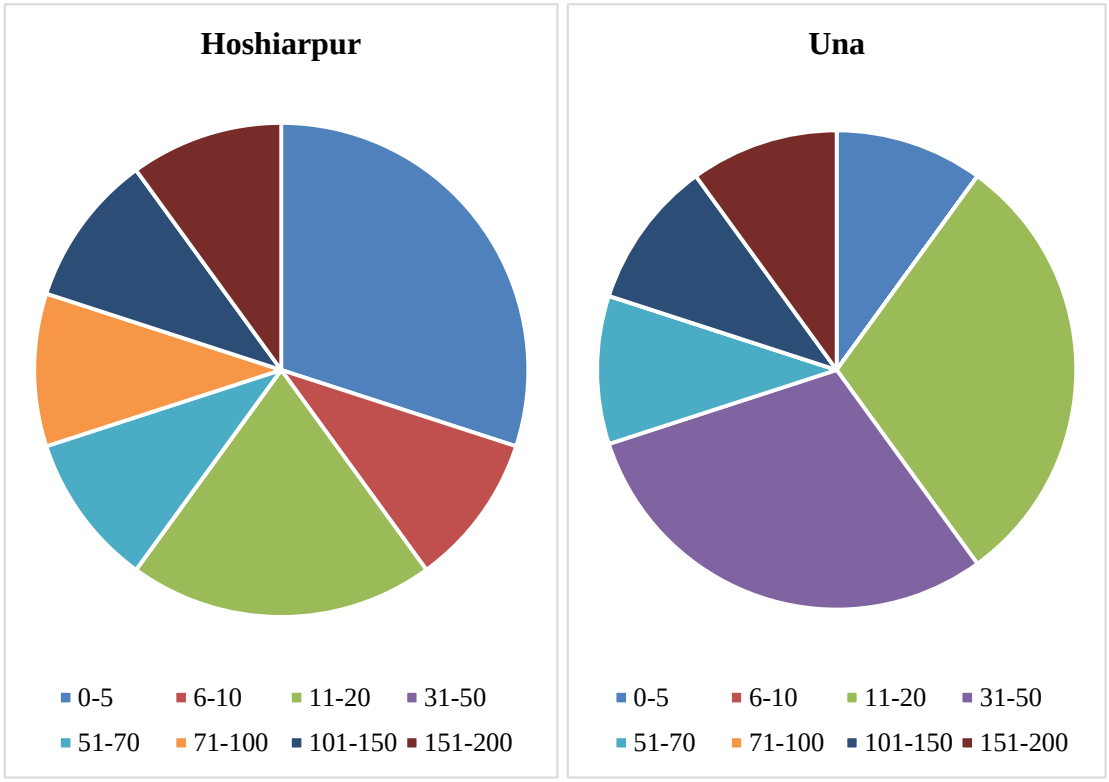


Table 36

		Can you please explain ,on average how many matrimonial disputes you preside over a year.								Total
		0-5	6-10	11-20	31-50	51-70	71-100	101-150	151-200	
District	Hoshiarpur	3	1	2	0	1	1	1	1	10
	Una	1	0	3	3	1	0	1	1	10
Total		4	1	5	3	2	1	2	2	20

In the table above and the pie-charts above the data shows that there are judges in both the district who preside in more than 150 cases and also there are judges who preside in less than 5 on no cases over a year. In order to identify any existing differences in the judges of both the districts a Fisher's exact test is conducted. As the Fisher's Exact Test significance is 0.564 (>0.05) the hypothesis that there is significant differences between judges of both the districts with respect to the number of cases they preside over one year cannot be rejected; concluding that they are the same in both the districts. The cases presided by judges over one year don't vary with

respect to the districts, hence they are the same. The finding is further supported by the strong Cramer's V significance (0.645).

Table 37: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	6.200[a]	7	.517	.645		
Likelihood Ratio	8.179	7	.317	.645		
Fisher's Exact Test	6.378			.564		
Linear-by-Linear Association	.326[b]	1	.568	.632	.316	.055
N of Valid Cases	20					

a. 16 cells (100.0%) have expected count less than 5. The minimum expected count is .50.

b. The standardized statistic is .571.

Table 38: Symmetric Measures

		Value	Approx. Sig.	Exact Sig.
Nominal by Nominal	Phi	.557	.517	.645
	Cramer's V	.557	.517	.645
N of Valid Cases		20		

14. Relevance of K. Srinivas Rao v/s. D.A. Deepa (2013)5 SCC 226in today's matrimonial matters

In the question In K. Srinivas Rao v/s. D.A. Deepa (2013)5 SCC 226, the supreme court discussed the idea of pre- litigation mediation in context of family disputes what is the relevance of the case in today's matrimonial matters , the researchers wanted to explore the applicability and relevance of the case in today's matrimonial disputes being handled in the judiciary system. The data so collected is depicted as under.

The data shows that 70% judges of Hoshiarpur and 50% judges of Una districts show that it has relevance and is effective as well, where as 10% respondents from both districts have opinion that they are irrelevant. One response from Hoshiarpur

also responds that the case is non-effective under today's conditions. There are also 10% and 40% respondents in Hoshiarpur and Una respectively who stand neutral about this matter.

Table 39

		In K. Srinivas Rao v/s. D.A. Deepa (2013)5 SCC 226, the supreme court discussed the idea of pre-litigation mediation in context of family disputes what is the relevance of the case in today's matrimonial matters.				Total
		Relevant and Effective	Irrelevant	Non-effective	Neutral	
District	Hoshiarpur	7	1	1	1	10
	Una	5	1	0	4	10
Total		12	2	1	5	20

Table 40: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	3.133[a]	3	.372	.628		
Likelihood Ratio	3.649	3	.302	.628		
Fisher's Exact Test	3.153			.528		
Linear-by-Linear Association	1.413[b]	1	.235	.307	.153	.070
N of Valid Cases	20					

a. 6 cells (75.0%) have expected count less than 5. The minimum expected count is .50.

b. The standardized statistic is 1.189.

The Fisher's Exact test is performed to test the existence of any pattern between the judges' perception in this regard and the districts they belong. The significance probability ($p = 0.528$) is greater than 0.05 hence, we can't reject the hypothesis and

may conclude that the judges of both the districts have similar perception. This conclusion is further supported by a moderate Cramer's V significance (0.628)

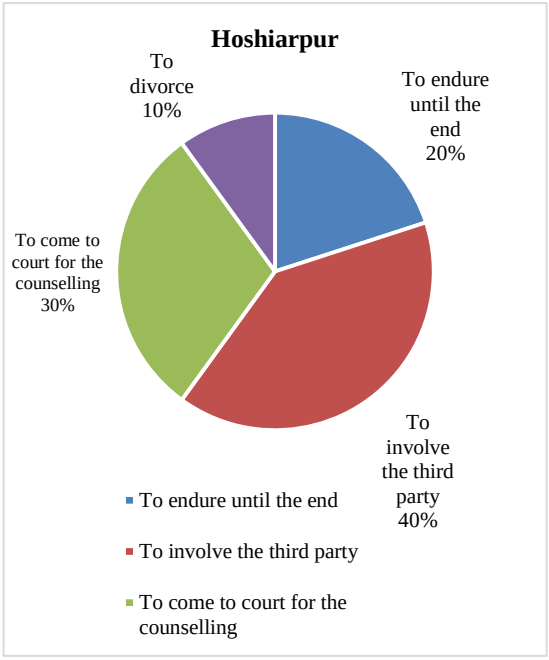
Table 41: Symmetric Measures

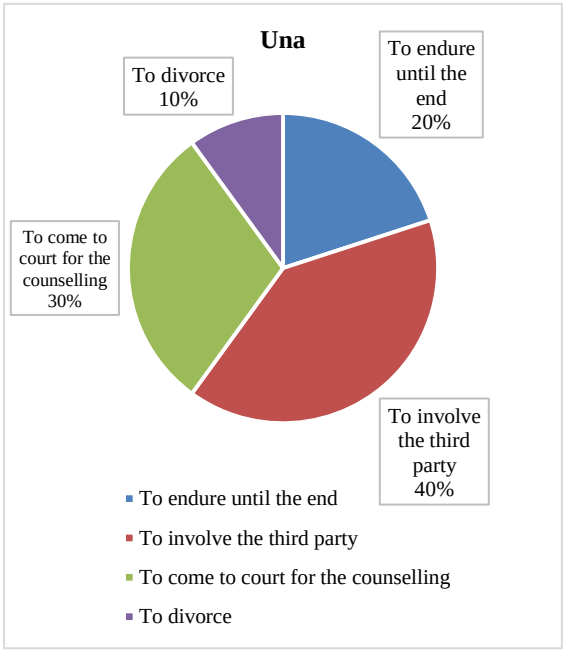
		Value	Approx. Sig.	Exact Sig.
Nominal by Nominal	Phi	.396	.372	.628
	Cramer's V	.396	.372	.628
N of Valid Cases		20		

15. Advice to young married couples going through differences

With the question with your experiences, what advices can you give to young married couples who are going through differences. An attempt is made to explore professional suggestion to resolve any matrimonial differences at the earliest. The data so collected is presented in the pie-chart and in the table as follow.

Figure 15





The responses from both the districts follow an identical pattern where 40% say to involve the third party, followed by 30% to go to court for counseling, 20% to endure and 10% to go for divorce. Peculiarly, the judges seem to have very diverse suggestions to handle the rough matrimonial incidents with young married couples.

Table 42

		With your experience, what advice can you give to young married couples who are going through differences.				Total
		To endure until the end	To involve the third party	To come to court for the counselling	To divorce	
District	Hoshiarpur	2	4	3	1	10
	Una	2	4	3	1	10
Total		4	8	6	2	20

16. Need of specific law on mediation

In this question Do you think that there should also be specific law on mediation? it is attempted to explore what the professionals of the judiciary system think of having specific law for mediation. They are asked here to give response if there is a need of specific law or not for this purpose. The data is depicted below.

Table 43

		Do you think that there should also be specific law on mediation.			Total
		Yes	No	May be	
District	Hoshiarpur	7	1	2	10
	Una	7	2	1	10
Total		14	3	3	20

It is worthwhile that the judges of both the districts (70%) have clear indication that there is a need to have a specific law for handling mediation. Only 10% in Hoshiarpur and 20% in Una find that there is no such need and 20% in Hoshiarpur and 10% in Una are found to be neutral regarding this.

Figure 16

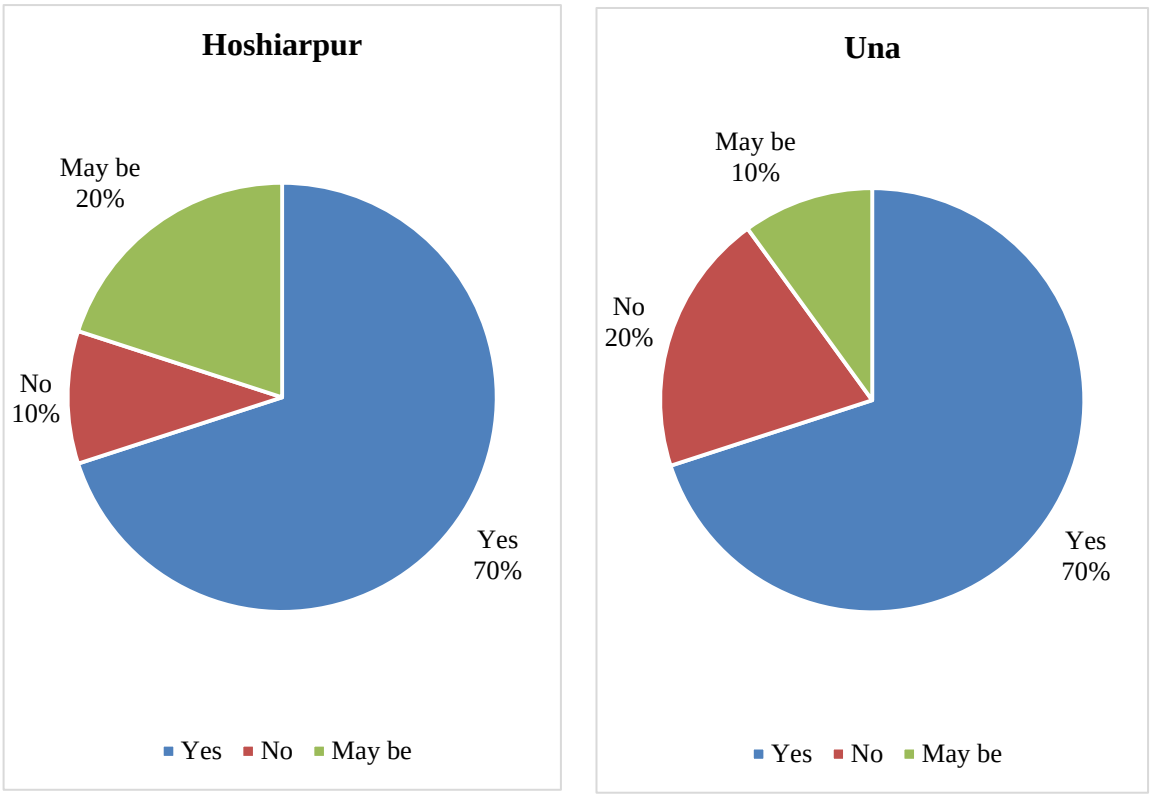


Table 44: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	.667[a]	2	.717	1.000		
Likelihood Ratio	.680	2	.712	1.000		
Fisher's Exact Test	.834			1.000		
Linear-by-Linear Association	.087[b]	1	.768	1.000	.500	.216
N of Valid Cases	20					

a. 4 cells (66.7%) have expected count less than 5. The minimum expected count is 1.50.

b. The standardized statistic is -.295.

The Fisher's Exact test is performed to test the existence of any pattern between the judges' perception in this regard and the districts they belong. The significance probability (p = 1.000) is greater than 0.05 hence, we can't reject the hypothesis and

may conclude that the judges of both the districts have similar perception. This conclusion is further supported by a very strong Cramer's V significance (1.000)

Table 45: Symmetric Measures

		Value	Approx. Sig.	Exact Sig.
Nominal by Nominal	Phi	.183	.717	1.000
	Cramer's V	.183	.717	1.000
N of Valid Cases		20		

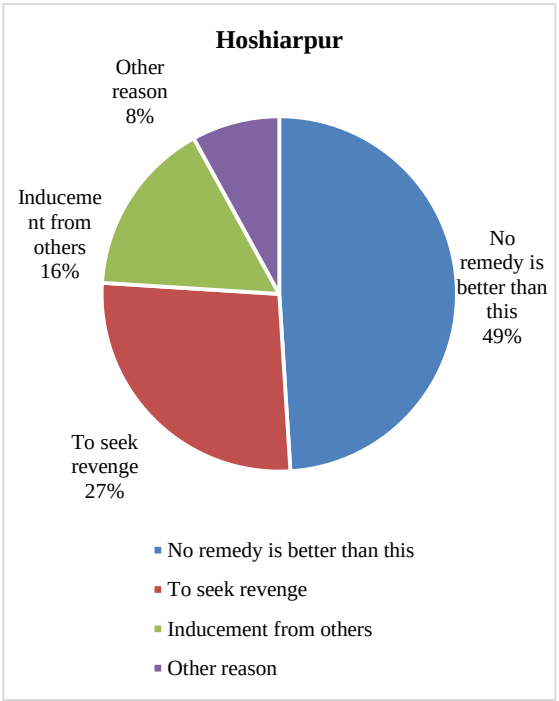
Mediators/Advocates

1. Reasons to bring matrimonial disputes to the court

The Mediators/Advocates of both the district under study were asked the question According to you, why litigants are bringing their matrimonial disputes before the court and the responses are recorded for both the districts. The responses are presented below.

In Hoshiarpur the mediators/lawyer respond to No remedy is better than this (49%), To seek revenge (27%), inducement from others (16%) and other reasons (8%). Similarly we have for Una No remedy is better than this (53%), To seek revenge (15%), Inducement from others (11%) and other reasons (21%).

Figure 17



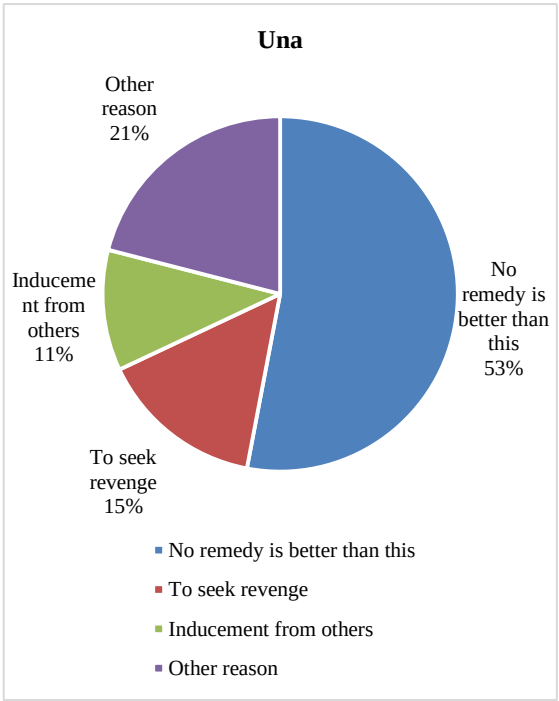


Table 46

		According to you, why litigants are bringing their matrimonial disputes before the court.				Total
		No remedy is better than this	To seek revenge	Inducement from others	Other reason	
District	Hoshiarpur	49	27	16	8	100
	Una	53	15	11	21	100
Total		102	42	27	29	200

A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner for the both the concerned districts under study. At 5% level of significance and df=3 the computed significance (0.016) is < 0.05. This it may be concluded that statistically there is significant difference between them and the respondents of both the district perceive the reasons differently. This conclusion is further supported by a weak Cramer's V significance (0.016).

Table 47: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	10.339[a]	3	.016
Likelihood Ratio	10.605	3	.014
Linear-by-Linear Association	1.181	1	.277
N of Valid Cases	200		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 13.50.

Table 48: Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.227	.016
	Cramer's V	.227	.016
N of Valid Cases		200	

2. Current court system and satisfaction of the litigants

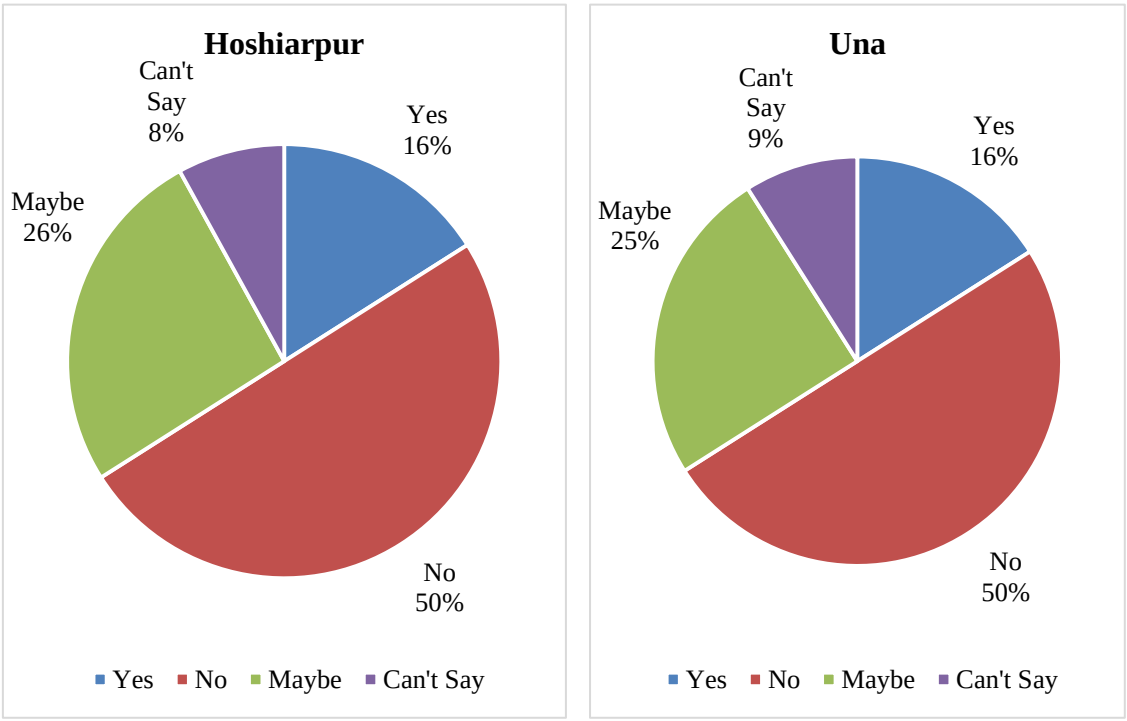
The Mediators/Advocates of both the district under study were asked the question Do you believe that the current court system satisfy the needs of the litigants.

100 Responses From both Hoshiarpur from Una and the responses are recorded for both the districts. The responses are presented below.

Table 49

		Do you believe that the current court system satisfies the needs of the litigants?				Total
		Yes	No	Maybe	Can't Say	
District	Hoshiarpur	16	50	26	8	100
	Una	16	50	25	9	100
Total		32	100	51	17	200

Figure 18



In Hoshiarpur the mediators/lawyer responded Yes (16%), No (50%), Maybe (26%) and Can't Say (8%). Similarly, we have for Una Yes (16%), No (50%), Maybe (25%) and Can't Say (9%).

Table 50: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	.078[a]	3	.994
Likelihood Ratio	.078	3	.994
Linear-by-Linear Association	.007	1	.932
N of Valid Cases	200		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 8.50.

A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner for the both the concerned districts under study. At 5% level of significance and df=3 the computed significance (0.994) is > 0.05. This it may be concluded that statistically there is no significant difference between them and the respondents of both the district perceive the matter similarly. This conclusion is further supported by a strong Cramer's V significance (0.994)

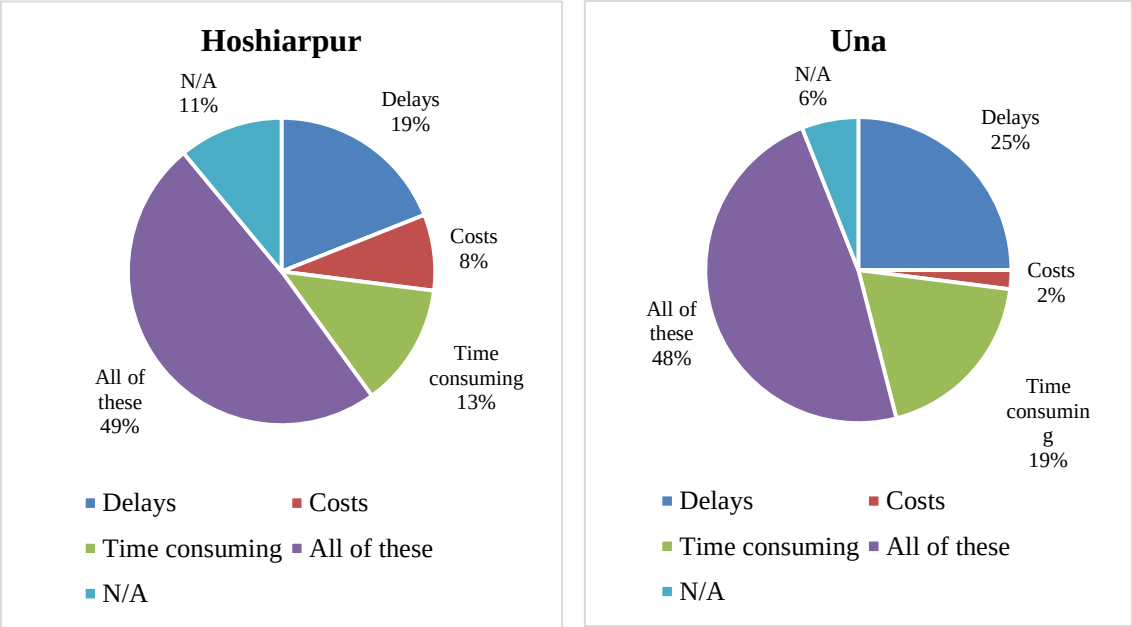
Table 51: Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.020	.994
	Cramer's V	.020	.994
N of Valid Cases		200	

3. If 'No' which is the primary reason makes you feel dissatisfied.

The Mediators/Advocates of both the district under study were asked the question Do you believe that the current court system satisfy the needs of the litigants. 100 Responses From both Hoshiarpur and Una are recorded and the responses are presented below.

Figure 19



In Hoshiarpur the mediators/lawyer responded Delays (19%), Costs (8%), Time consuming (13%) and All of these (49%). Similarly we have for Una Delays (25%), Costs (2%), Time consuming (19%) and All of these (48%).

Table 52

		If 'No' which is the primary reason makes you feel dissatisfied.					Total
		Delays	Costs	Time consuming	All of these	N/A	
District	Hoshiarpur	19	8	13	49	11	100
	Una	25	2	19	48	6	100
Total		44	10	32	97	17	200

A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner for the both the concerned districts under study. At 5% level of significance and df=4 the computed significance (0.135) is > 0.05. This it may be concluded that statistically there is no significant difference between them and the respondents of both the district perceive the matter similarly.

Table 53: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	7.024[a]	4	.135	.135		
Likelihood Ratio	7.310	4	.120	.130		
Fisher's Exact Test	6.869			.141		
Linear-by-Linear Association	.832[b]	1	.362	.391	.196	.028
N of Valid Cases	200					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 5.00.

b. The standardized statistic is -.912.

4. Suggesting client to resolve matrimonial disputes through the Mediation and Conciliation

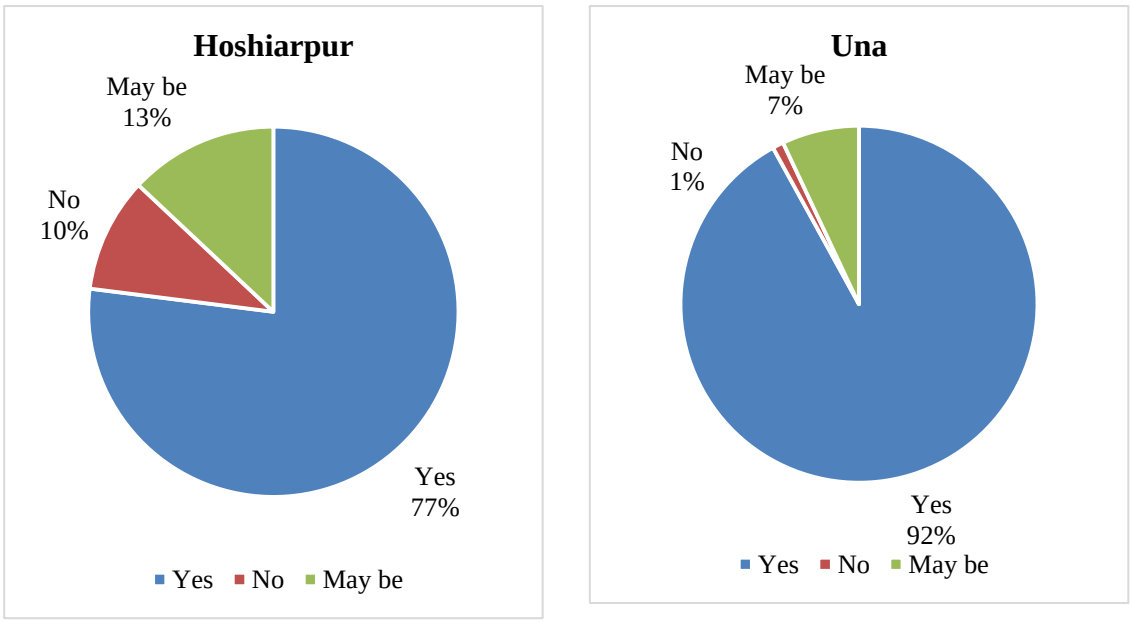
The Mediators/Advocates of both the district under study were asked the question Have you ever suggested/or will suggest in future any of your client to resolve matrimonial disputes through the Mediation and Conciliation. 100 Responses From both Hoshiarpur from Una are recorded for both the districts. The responses are presented below.

Table 54

		Have you ever suggested parties to the matrimonial disputes to resolve it through mediation and conciliation?			Total
		Yes	No	May be	
District	Hoshiarpur	77	10	13	100
	Una	92	1	7	100
Total		169	11	20	200

In Hoshiarpur the mediators/lawyer responded Yes (77%), No (10%) and May be (13%). Similarly, we have for Una Yes (92%), No (1%) and May be (7%).

Figure 20



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner for the both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.005) is < 0.05. This it may be concluded that statistically there is significant difference between them and the respondents of both the district perceive the matter similarly.

This depicts that the respondents' contribution in suggesting clients to go for mediation and conciliation varies significantly with districts. The mediators/advocates' attitude towards varies across the districts under study.

Table 55: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	10.495[a]	2	.005
Likelihood Ratio	11.708	2	.003
Linear-by-Linear Association	5.626	1	.018
N of Valid Cases	200		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 5.50.

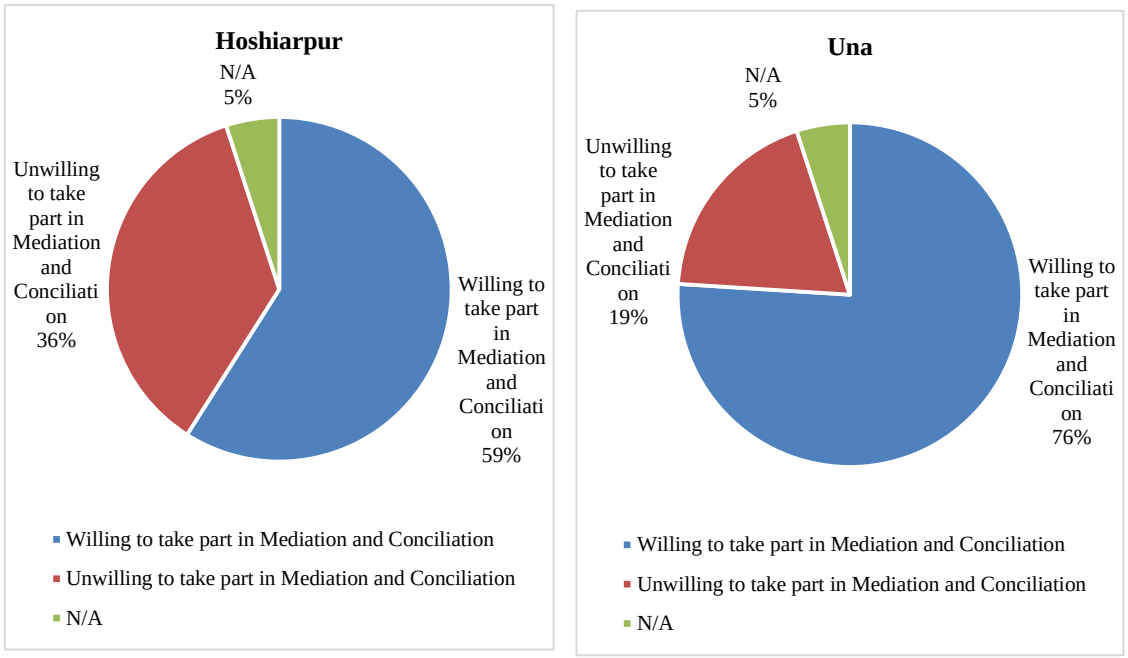
5. Client reaction to mediation suggestion

The Mediators/Advocates of both the district under study were asked the question If 'Yes' how your client has reacted to your suggestion . 100 Responses From both Hoshiarpur from Una are recorded for both the districts. The responses are presented below.

Table 56

		If 'Yes' how your client has reacted to your suggestion.			Total
		Willing to take part in Mediation and Conciliation	Unwilling to take part in Mediation and Conciliation	N/A	
District	Hoshiarpur	59	36	5	100
	Una	76	19	5	100
Total		135	55	10	200

Figure 21



In Hoshiarpur the mediators/lawyer responded Willing to take part in Mediation and Conciliation (59%), Unwilling to take part in Mediation and Conciliation (36%) and N/A (5%). Similarly, we have for Una Willing to take part in Mediation and Conciliation (76%), Unwilling to take part in Mediation and Conciliation (19%) and N/A (5%).

Table 57: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	7.395[a]	2	.025
Likelihood Ratio	7.488	2	.024
Linear-by-Linear Association	4.300	1	.038
N of Valid Cases	200		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 5.00.

A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner for the both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.025) is < 0.05. This it may be concluded that statistically there is significant difference between them and the respondents of both the district perceive the matter similarly. This also explains that the client of the respondents in Una district is more positively inclined towards to the suggestion for mediation and conciliation.

This conclusion is further supported by a weak Cramer's V significance (0.025)

Table 58: Symmetric Measures

		Value	Approx. Sig.
Nominal by Nominal	Phi	.192	.025
	Cramer's V	.192	.025
N of Valid Cases		200	

6. Training in regards to mediation and conciliation

The Mediators/Advocates of both the district under study were asked the question A person in legal fraternity, have you taken any form of training in regards to mediation and conciliation . 100 Responses From both Hoshiarpur from Una are recorded for both the districts. The responses are presented below.

Table 59

		A person in legal fraternity., have you taken any form of training in regards to mediation and conciliation.		Total
		Yes	No	
District	Hoshiarpur	43	57	100
	Una	40	60	100
Total		83	117	200

In Hoshiarpur the mediators/lawyer responded Yes (43%) and No (57%). Similarly, we have for Una Yes (40%) and No (60%).

Figure 22

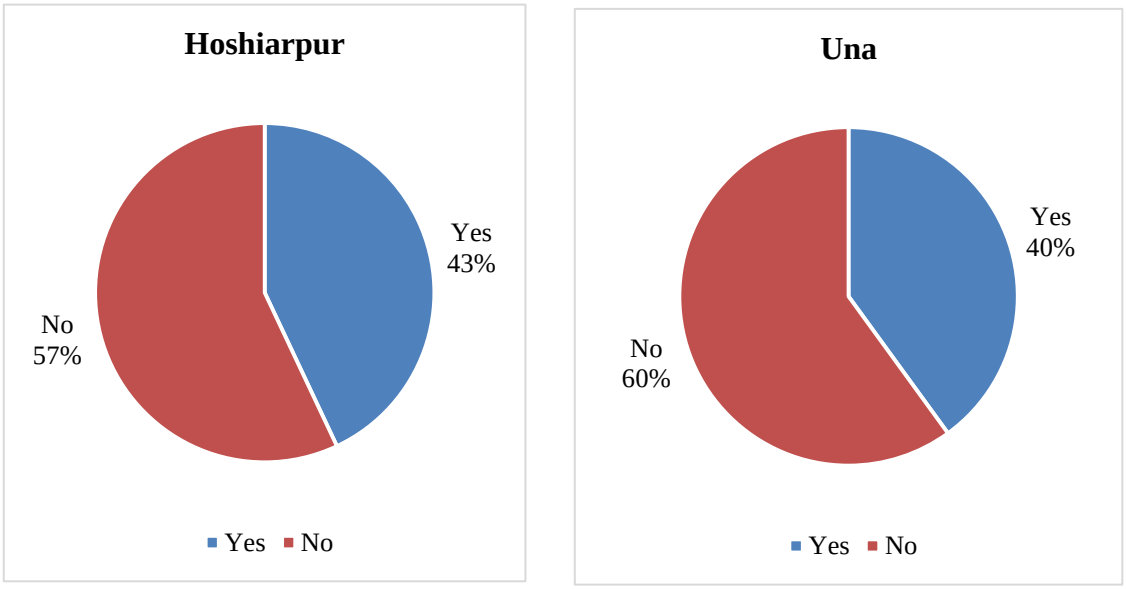


Table 60: Chi-Square Tests

	Value	Df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	.185[a]	1	.667		
Continuity Correction[b]	.082	1	.774		
Likelihood Ratio	.185	1	.667		
Fisher's Exact Test				.774	.387
Linear-by-Linear Association	.184	1	.668		
N of Valid Cases	200				

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 41.50.

b. Computed only for a 2x2 table

A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner for the both the concerned districts under study. At 5% level of significance and df=1 the computed significance (0.667) is > 0.05. This it may be concluded that statistically there is no significant difference between them and the respondents' training status with respect to mediation and conciliation stand similar for both the districts.

7. Topics avoided by couples in mediation and conciliation

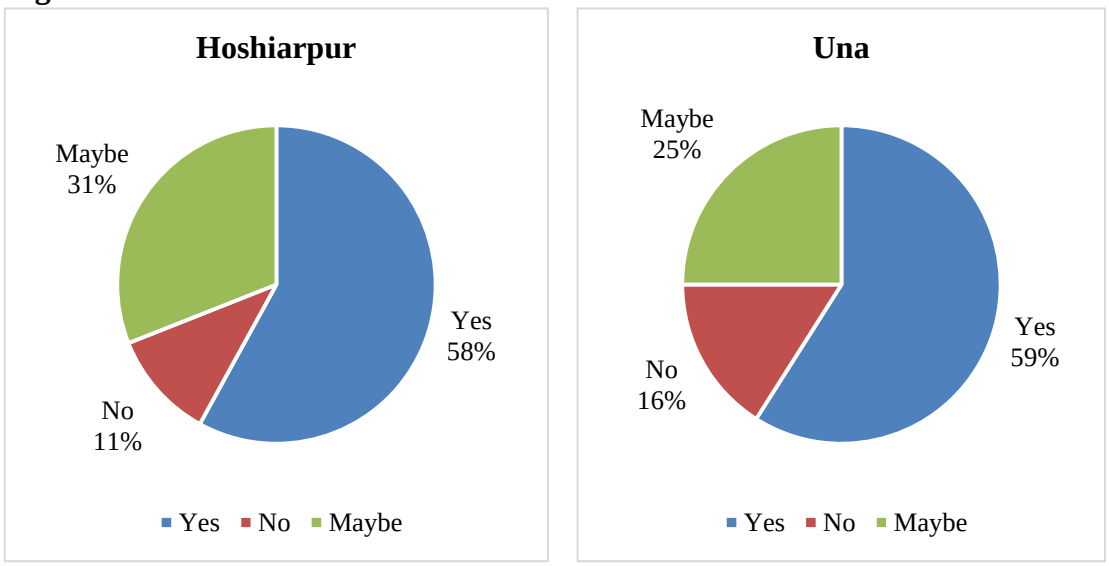
The Mediators/Advocates of both the district under study were asked the question According to your expertise are there any topics that couples usually avoid to discuss in mediation and conciliation . 100 Responses From both Hoshiarpur from Una are recorded for both the districts. The responses are presented below.

Table 61

		According to your expertise are there any topics that couples usually avoid to discuss in mediation and conciliation.			Total
		Yes	No	Maybe	
District	Hoshiarpur	58	11	31	100
	Una	59	16	25	100
Total		117	27	56	200

In Hoshiarpur the mediators/lawyer responded Yes (58%), No (11%) and Maybe (31%). Similarly, we have for Una Yes (59%), No (16%) and Maybe (25%).

Figure 23



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner for the both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.454) is > 0.05. This it may be concluded that statistically there is no significant difference between them and the respondents' find their clients in a similar way when it comes to avoiding some topics during mediation and conciliation for both the districts.

Table 62: Chi-Square Tests

	Value	Df	Asymp. Sig. (2-sided)
Pearson Chi-Square	1.577[a]	2	.454
Likelihood Ratio	1.584	2	.453
Linear-by-Linear Association	.316	1	.574
N of Valid Cases	200		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 13.50.

8. Skills to a good mediator

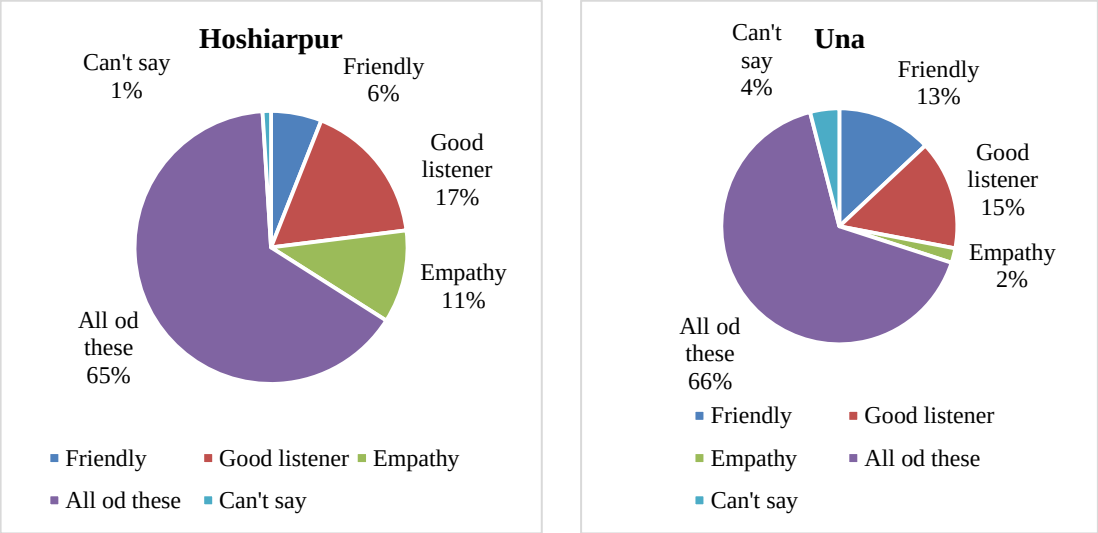
The Mediators/Advocates of both the district under study were asked the question As per your belief, what skill do you need to be good mediator . 100 Responses From both Hoshiarpur from Una are recorded for both the districts. The responses are presented below.

Table 63

		As per your belief, what skill do you need to be good mediator.					Total
		Friendly	Good listener	Empathy	All of these	Can't say	
District	Hoshiarpur	6	17	11	65	1	100
	Una	13	15	2	66	4	100
Total		19	32	13	131	5	200

In Hoshiarpur the mediators/lawyer responded Friendly (6%), Good listener (17%), Empathy (11%) All of these (65%) and Can't say (1%). Similarly, we have for Una Friendly (13%), Good listener (15%), Empathy (2%) All of these (66%) and Can't say (4%).

Figure 24



The Fisher's Exact test at 5% level of significance shows the computed significance (0.026) is < 0.05. This it may be concluded that statistically there is significant difference between the samples (districts) and the respondents' understanding about the required skills to be a good moderator varies across districts.

Table 64: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	10.742[a]	4	.030	.025		
Likelihood Ratio	11.560	4	.021	.029		
Fisher's Exact Test	10.616			.026		
Linear-by-Linear Association	.106[b]	1	.744	.795	.397	.049
N of Valid Cases	200					

a. 2 cells (20.0%) have expected count less than 5. The minimum expected count is 2.50.

b. b. The standardized statistic is -.326.

9. Effectiveness of mediation when spouses are not under the same roof or on talking terms

The Mediators/Advocates of both the district under study were asked the question Do you think that mediation and conciliation is effective enough where spouses are

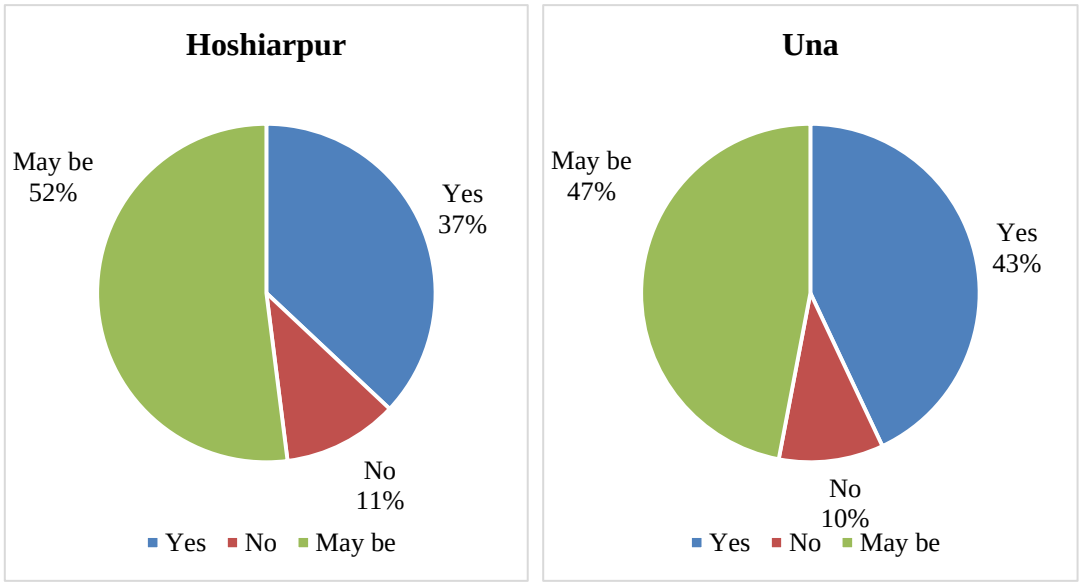
not under the same roof or on talking terms . 100 Responses From both Hoshiarpur from Una are recorded for both the districts. The responses are presented below.

Table 65

		Do you think that mediation and conciliation is effective enough where spouses are not under the same roof or on talking terms.			Total
		Yes	**No**	**May be**	
District	Hoshiarpur	37	11	52	100
	Una	43	10	47	100
Total		80	21	99	200

In Hoshiarpur the mediators/lawyer responded Yes (37%), No (11%) and Maybe (52%). Similarly, we have for Una Yes (43%), No (10%) and Maybe (47%).

Figure 25



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner for the both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.687) is > 0.05. This it may be concluded that statistically there is no significant difference between them and the distribution of respondents' is indifferent across the district under study.

Table 66: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	.750[a]	2	.687
Likelihood Ratio	.751	2	.687
Linear-by-Linear Association	.679	1	.410
N of Valid Cases	200		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 10.50.

10. Reason for failure of mediation

The Mediators/Advocates of both the district under study were asked the question If 'No' then what is the basic reason in such situation . 100 Responses From both Hoshiarpur from Una are recorded for both the districts. The responses are presented below.

Table 67

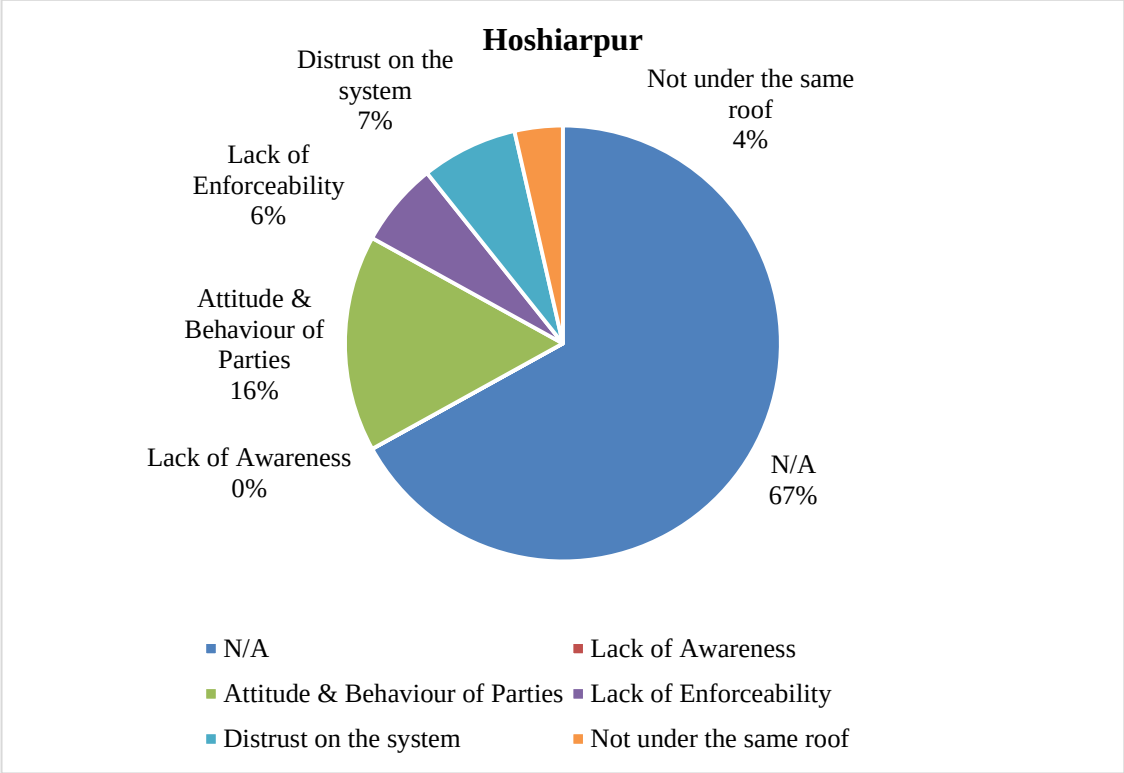
		Reason for failure of mediation[a]						Total
		N/A	Lack of Awareness	Attitude & Behaviour of Parties	Lack of Enforceability	Distrust on the system	Not under the same roof	
District	Hoshiarpur	75	0	18	7	8	4	112
	Una	78	4	13	9	7	5	116
Total		153	4	31	16	15	9	228

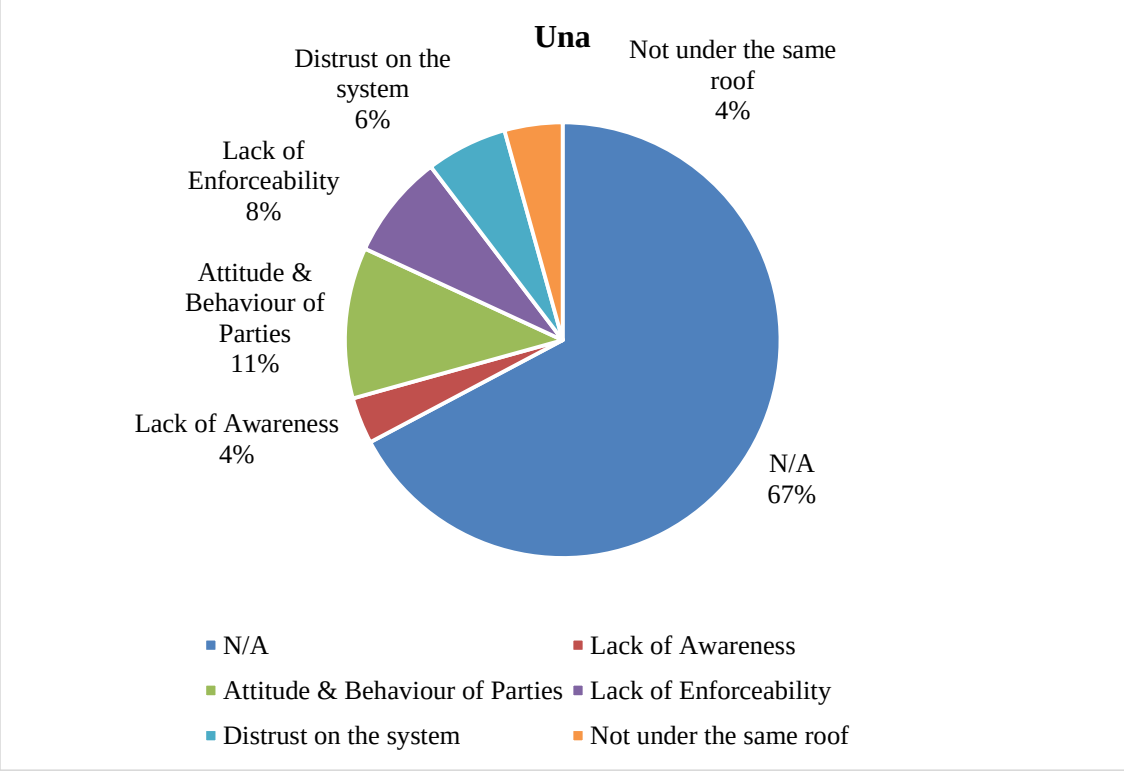
In Hoshiarpur the mediators/lawyer responded N/A (75%), Lack of Awareness (0%), Attitude & Behavior of Parties (18%), Lack of Enforceability (7%), Distrust on the system (8%) and Not under the same roof (4%). Similarly, we have for Una N/A (78%), Lack of Awareness (4%), Attitude & Behavior of Parties (13%), Lack of Enforceability (9%), Distrust on the system (7%) and Not under the same roof (5%).

A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner for the both the concerned districts under study. At 5% level of significance and df=5 the computed significance (0.389102598) is >

0.05. This it may be concluded that statistically there is no significant difference between them and the distribution of respondents' is indifferent across the district under study.

Figure 26





11. Duration of Mediation process

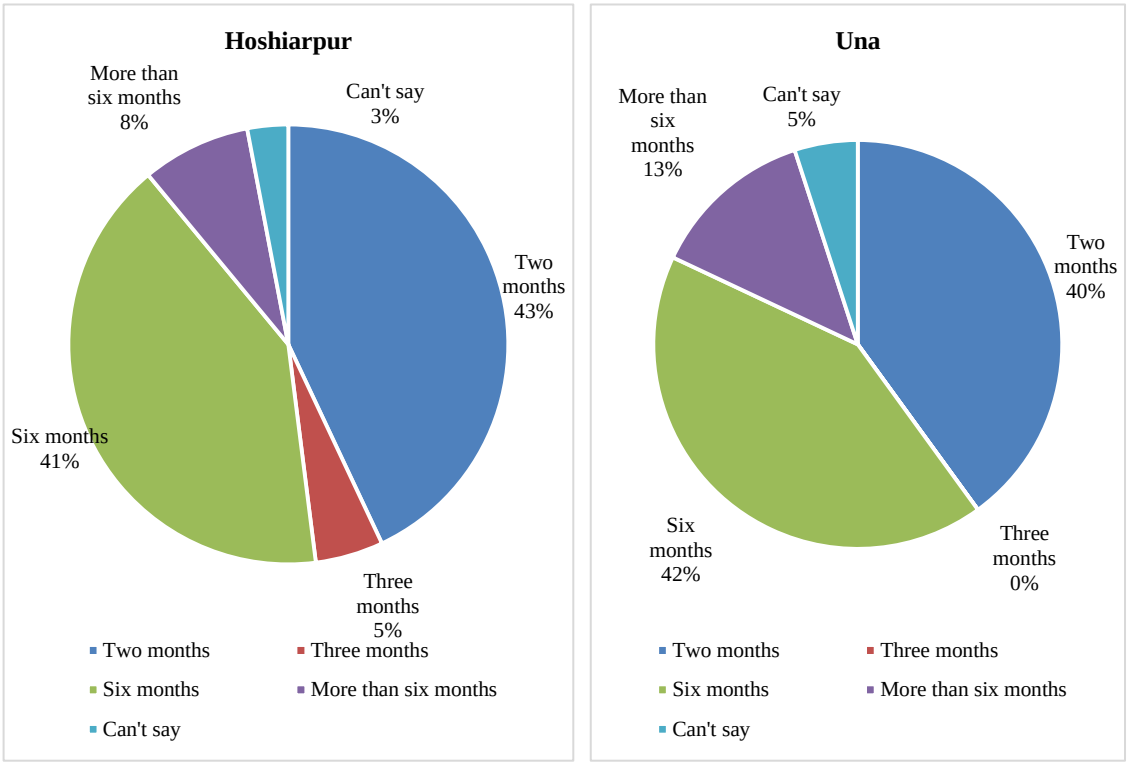
The Mediators/Advocates of both the district under study were asked the question How long does mediation and conciliation in matrimonial typically take . 100 Responses From both Hoshiarpur from Una are recorded for both the districts. The responses are presented below.

Table 68

		How long does mediation and conciliation in matrimonial typically take .					Total
		Two months	Three months	Six months	More than six months	Can't say	
District	Hoshiarpur	43	5	41	8	3	100
	Una	40	0	42	13	5	100
Total		83	5	83	21	8	200

In Hoshiarpur the mediators/lawyer responded Two months (43%), Three months (5%), Six months (41%), More than six months (8%), and Can't say (3%). Similarly, we have for Una Two months (40%), Three months (0%), Six months (42%), More than six months (13%), and Can't say (5%).

Figure 27



The Fisher's Exact test at 5% level of significance shows the computed significance (0.149) is > 0.05. This it may be concluded that statistically there is no significant difference between the respondents the samples (districts) and the distribution of respondents' is indifferent across the district under study.

Table 69: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	6.811[a]	4	.146	.146		
Likelihood Ratio	8.759	4	.067	.091		
Fisher's Exact Test	6.677			.149		
Linear-by-Linear Association	1.326[b]	1	.250	.274	.137	.024
N of Valid Cases	200					

a. 4 cells (40.0%) have expected count less than 5. The minimum expected count is 2.50.

b. The standardized statistic is 1.151.

12. Mediation and domestic violence case

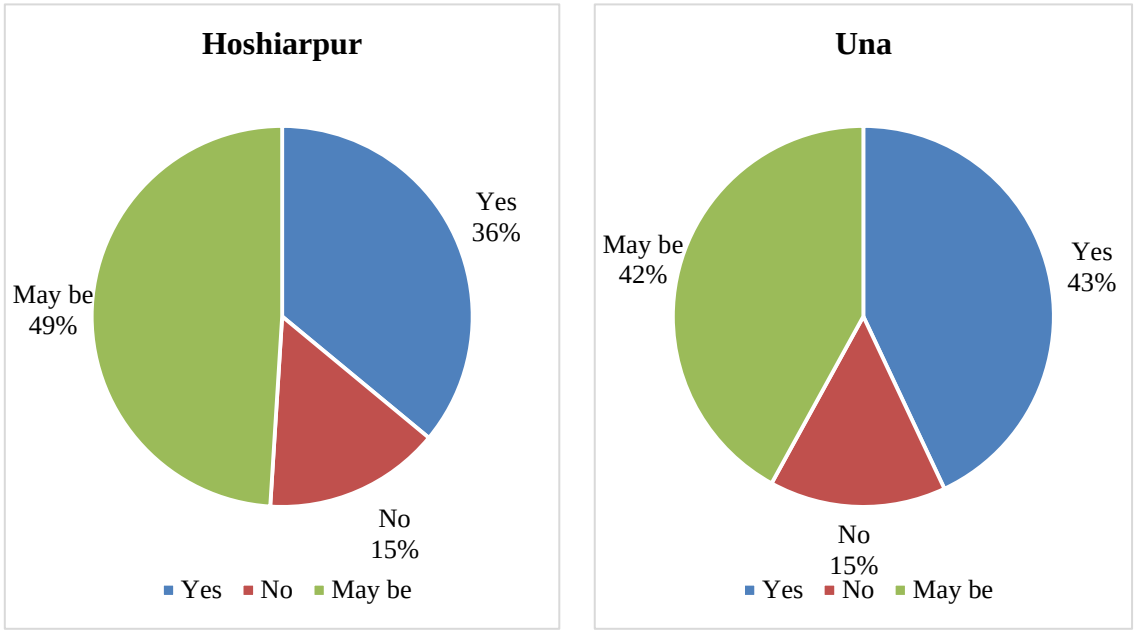
The Mediators/Advocates of both the district under study were asked the question Do you think mediation and conciliation actually reduce the domestic violence case. 100 Responses From both Hoshiarpur from Una are recorded for both the districts. The responses are presented below.

Table 70

		Do you think mediation and conciliation actually reduce the domestic violence case.			Total
		Yes	No	May be	
District	Hoshiarpur	36	15	49	100
	Una	43	15	42	100
Total		79	30	91	200

In Hoshiarpur the mediators/lawyer responded Yes (36%), No (15%) and Maybe (49%). Similarly, we have for Una Yes (43%), No (15%) and Maybe (42%).

Figure 28



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner for the both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.560) is > 0.05. This it may be concluded that statistically there is no significant difference between them and the distribution of respondents' is indifferent across the district under study.

Table 71: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	1.159[a]	2	.560
Likelihood Ratio	1.160	2	.560
Linear-by-Linear Association	1.152	1	.283
N of Valid Cases	200		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 15.00.

13. Effectiveness of mediation and conciliation in the state

The Mediators/Advocates of both the district under study were asked the question How do you see mediation and conciliation in matrimonial disputes particularly in

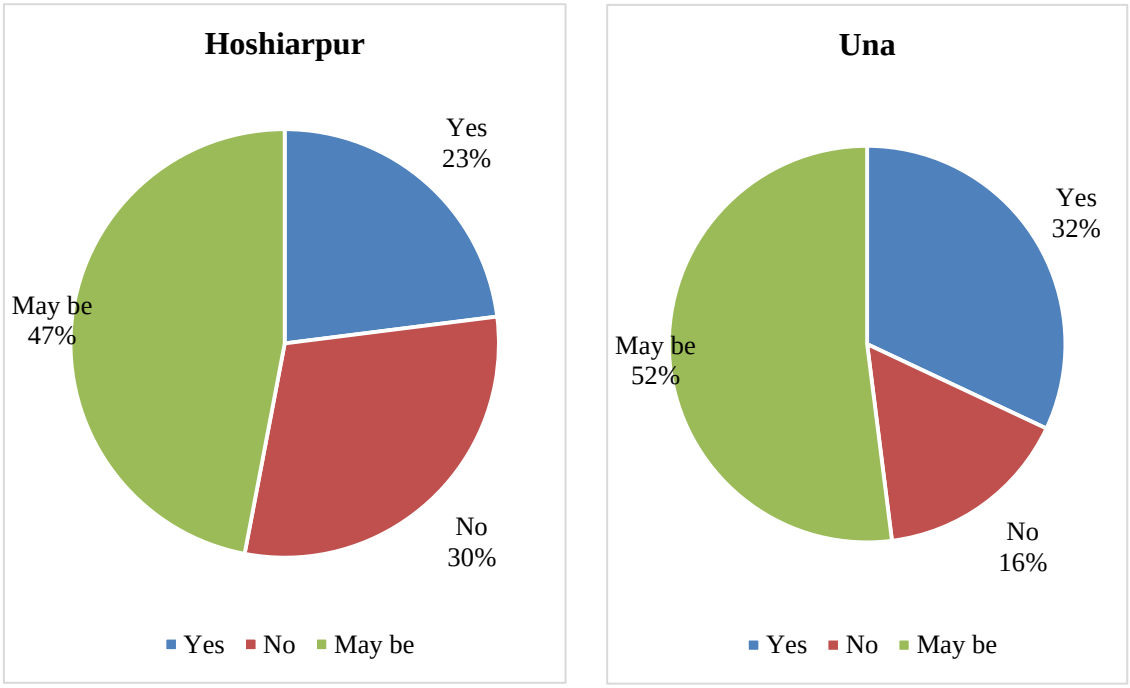
your state? 100 Responses From both Hoshiarpur from Una are recorded for both the districts. The responses are presented below.

Table 72

		Whether Judiciary is really successful in resolving matrimonial matters through mediation and conciliation.			Total
		Yes	No	May be	
District	Hoshiarpur	23	30	47	100
	Una	32	16	52	100
Total		55	46	99	200

In Hoshiarpur the mediators/lawyer responded Yes (23%), No (30%) and Maybe (47%). Similarly, we have for Una Yes (32%), No (16%) and Maybe (52%).

Figure 29



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner for the both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.05) is = 0.05. This is not sufficient evidence to reject the null hypothesis. This it may be concluded that statistically there is no significant difference between them and the distribution of respondents' is indifferent across the district under study.

Table 73: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	5.986[a]	2	.050
Likelihood Ratio	6.061	2	.048
Linear-by-Linear Association	.110	1	.740
N of Valid Cases	200		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 23.00.

14. The court and the ADR

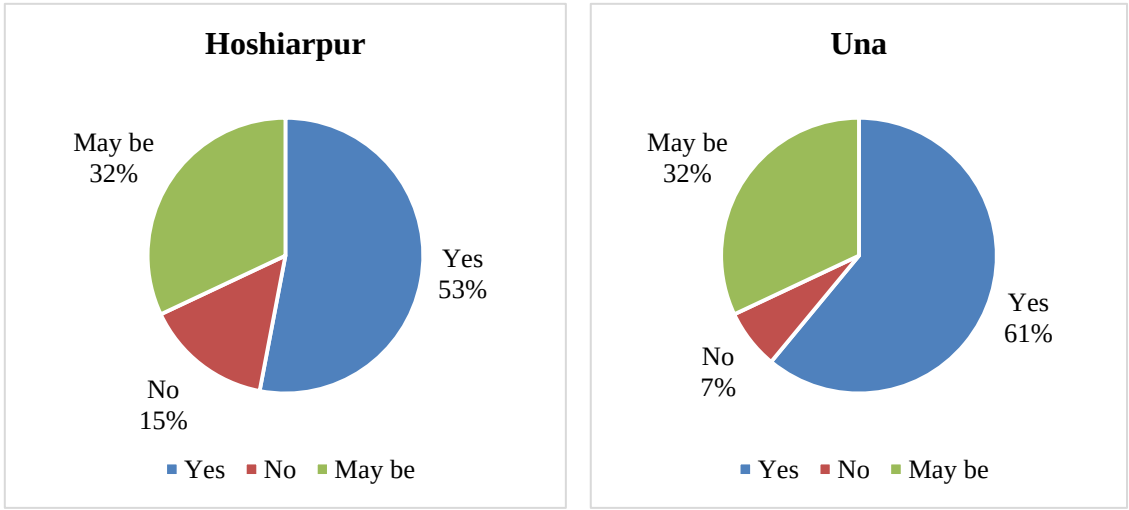
The Mediators/Advocates of both the district under study were asked the question Do you think that the trial court is in favor of ADR referral under section 89 of Civil Procedure Code . 100 Responses From both Hoshiarpur from Una are recorded for both the districts. The responses are presented below.

Table 74

		Do you think that the trial court is in favour of ADR referral under section 89 of Civil Procedure Code.			Total
		Yes	No	May be	
District	Hoshiarpur	53	15	32	100
	Una	61	7	32	100
Total		114	22	64	200

In Hoshiarpur the mediators/lawyer responded Yes (53%), No (15%) and Maybe (32%). Similarly, we have for Una Yes (61%), No (7%) and Maybe (32%).

Figure 30



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner for the both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.176) is > 0.05. This is not sufficient evidence to reject the null hypothesis. This it may be concluded that statistically there is no significant difference between them and the distribution of respondents' is indifferent across the district under study.

Table 75: Chi-Square Tests

	Value	**df**	**Asymp. Sig. (2-sided)**
Pearson Chi-Square	3.470[a]	2	.176
Likelihood Ratio	3.539	2	.170
Linear-by-Linear Association	.385	1	.535
N of Valid Cases	200		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 11.00.

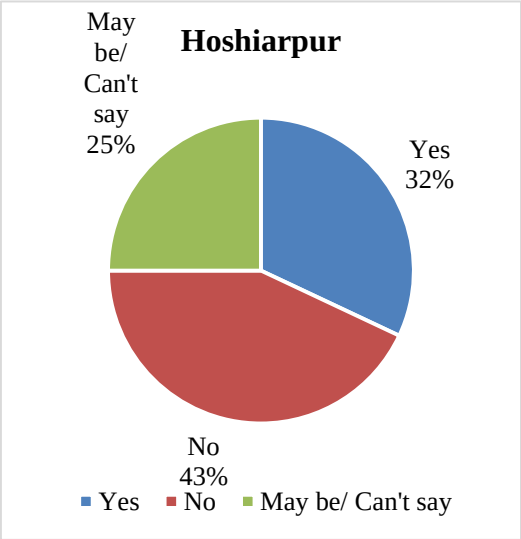
15. Parties' participation in the process of mediation and conciliation

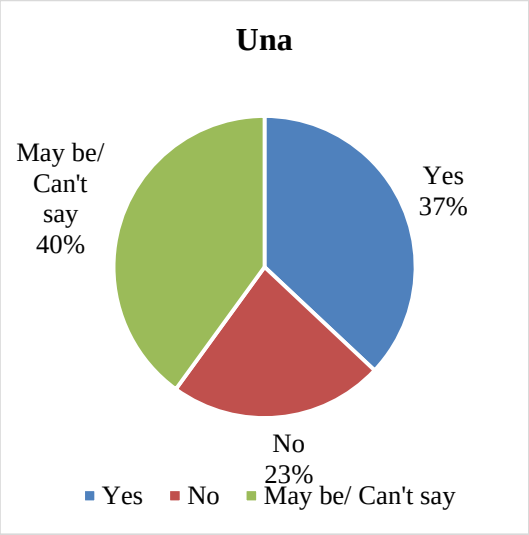
The Mediators/Advocates of both the district under study were asked the question Do you think that parties to matrimonial disputes are fairly participating in process of mediation and conciliation . 100 Responses From both Hoshiarpur from Una are recorded for both the districts. The responses are presented below.

Table 76

		Do you think that mediators (parties) are fair, balanced and maintain integrity in the process of mediation and conciliation			**Total**
		Yes	**No**	**May be/ Can't say**	
District	Hoshiarpur	32	43	25	100
	Una	37	23	40	100
Total		69	66	65	200

Figure 31





In Hoshiarpur the mediators/lawyer responded Yes (32%), No (43%) and Maybe/ Can'tsay (25%). Similarly, we have for Una Yes (37%), No (23%) and Maybe/ Can't say (40%).

A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner for the both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.007) is< 0.05. Thus, it may be concluded that statistically there is significant difference between them and the distribution of respondents' does vary across the district under study stating that the perception of respondents are not similar between the district under study.

Table 77: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	9.884[a]	2	.007
Likelihood Ratio	10.013	2	.007
Linear-by-Linear Association	.743	1	.389
N of Valid Cases	200		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 32.50.

16. Reason for avoiding the process of mediation and conciliation

The Mediators/Advocates of both the district under study were asked the question If ' No' then what should be basic reason for avoiding the process of mediation and

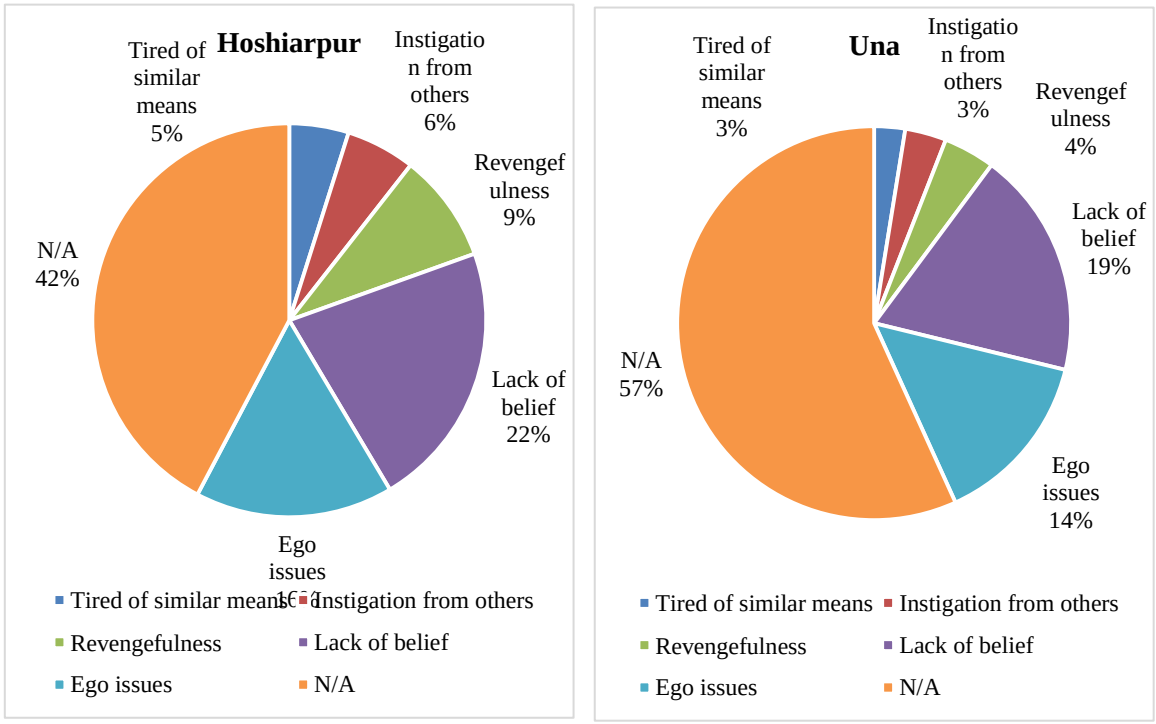
conciliation Comment. 100 Responses From both Hoshiarpur from Una are recorded for both the districts. The responses are presented below.

Table 78

		Reason for avoiding mediation						Total
		Tired of similar means	Instigation from others	Revengefulness	Lack of belief	Ego issues	N/A	
District	Hoshiarpur	6	7	11	27	20	52	123
	Una	3	4	5	22	17	67	118
Total		9	11	16	49	37	119	241

In Hoshiarpur the mediators/lawyer responded Tired of similar means (6%), Instigation from others (7%), Revengefulness (11%), Lack of belief (27%), Ego issues (20%) and N/A (52%). Similarly, we have for Una responded Tired of similar means (3%), Instigation from others (4%), Revengefulness (5%), Lack of belief (22%), Ego issues (17%) and N/A (67%).

Figure 32



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner for the both the concerned districts under study. At 5% level of significance and df=5 the computed significance (0.251173533) is>

0.05. Thus, it may be concluded that statistically there is no significant difference between them and the distribution of respondents' doesn't vary across the district under study stating that the perception of respondents are similar between the district under study.

17. Mediation cost and mediation service

The Mediators/Advocates of both the district under study were asked the question How much mediation will cost. Do your services include the preparation of filing of all court documents? 100 Responses From both Hoshiarpur from Una are recorded for both the districts. The responses are presented below.

1. Mediation cost

Table 79

		Mediation cost							Total
		0	**0-500**	**500-1000**	**1000-3000**	**3000-5000**	**5000-7000**	**7000-10000**	
District	Hoshiarpur	8	4	4	5	9	17	5	52
	Una	11	0	12	2	4	0	0	29
Total		19	4	16	7	13	17	5	81

In the above table, it is evident that there is not much consistency in responses, meaning, the respondents are found to have various opinion about the cost of mediation ranging between Re. 0 and Rs.10, 000.

Table 80: Chi-Square Tests

	Value	**df**	**Asymp. Sig. (2-sided)**	**Exact Sig. (2-sided)**	**Exact Sig. (1-sided)**	**Point Probability**
Pearson Chi-Square	29.533[a]	6	.000	.000		
Likelihood Ratio	37.386	6	.000	.000		
Fisher's Exact Test	30.319			.000		
Linear-by-Linear Association	15.484[b]	1	.000	.000	.000	.000
N of Valid Cases	81					

a. 7 cells (50.0%) have expected count less than 5. The minimum expected count is 1.43.

b. The standardized statistic is -3.935.

The Fisher's Exact test at 5% level of significance shows the computed significance (0.000) is < 0.05. This it may be concluded that statistically there is significant difference between the respondents the samples (districts) and the distribution of respondents varies across the district under study. Meaning, the cost of mediation as followed and perceived by the respondents is not same between the Hoshiarpur and Una districts.

2. Basis of Mediation cost

The respondents provide information on what basis the mediation fee is charged and the cost is determined. Here out of 16, 14 say it depends on the case, 2 say on the party's paying capacity in Hoshiarpur where as 10 out of 14 say that it varies case to case basis, 3 say it depends on party's paying capacity, and 1 say on the basis of number of hearings in Una district.

Table 81

		Basis of fee			Total
		Case	**Party's capacity to pay**	**Per hearing**	
District	Hoshiarpur	14	2	0	16
	Una	10	3	1	14
Total		24	5	1	30

The Fisher's Exact test at 5% level of significance shows the computed significance (0.471) is >0.05. This it may be concluded that statistically there is no significant difference between the respondents the samples (districts) and the distribution of respondents indifferent across the district under study.

Table 82: Chi-Square Tests

	Value	**df**	**Asymp. Sig. (2-sided)**	**Exact Sig. (2-sided)**	**Exact Sig. (1-sided)**	**Point Probability**
Pearson Chi-Square	1.741[a]	2	.419	.471		
Likelihood Ratio	2.124	2	.346	.471		
Fisher's Exact Test	1.726			.471		
Linear-by-Linear Association	1.584[b]	1	.208	.293	.194	.144
N of Valid Cases	30					

a. 4 cells (66.7%) have expected count less than 5. The minimum expected count is .47.

b. The standardized statistic is 1.259.

18. Obstacles faced by mediators

The Mediators/Advocates of both the district under study were asked the question What type of obstacles being faced by you as mediator while handling the matrimonial matters . 100 Responses From both Hoshiarpur from Una are recorded for both the districts. The responses are presented below.

Table 83

		Obstacle in handling matrimonial matters[a]												Total
		Don't listen & shout	Don't want settlement	Relatives' pressure on parties	Don't appear for proceedings	Don't participiate	Don't disclose facts	Lack of training of mediators	Discomfort to the parties	Police intervention	Literacy/Lack of awareness of parties	Unhappy with the decisions	N/A	
District	Hoshiarpur	20	11	3	5	27	4	8	4	1	4	0	35	122
	Una	19	6	3	2	15	6	10	3	1	2	3	55	125
Total		39	17	6	7	42	10	18	7	2	6	3	90	247

A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner for the both the concerned districts under study. At 5% level of significance and df=11 the computed significance (0.180106561) is> 0.05. Thus, it may be concluded that statistically there is no significant difference between them and the distribution of respondents doesn't vary across the district under study stating that the perception of respondents are similar between the district under study.

19. Mediation style

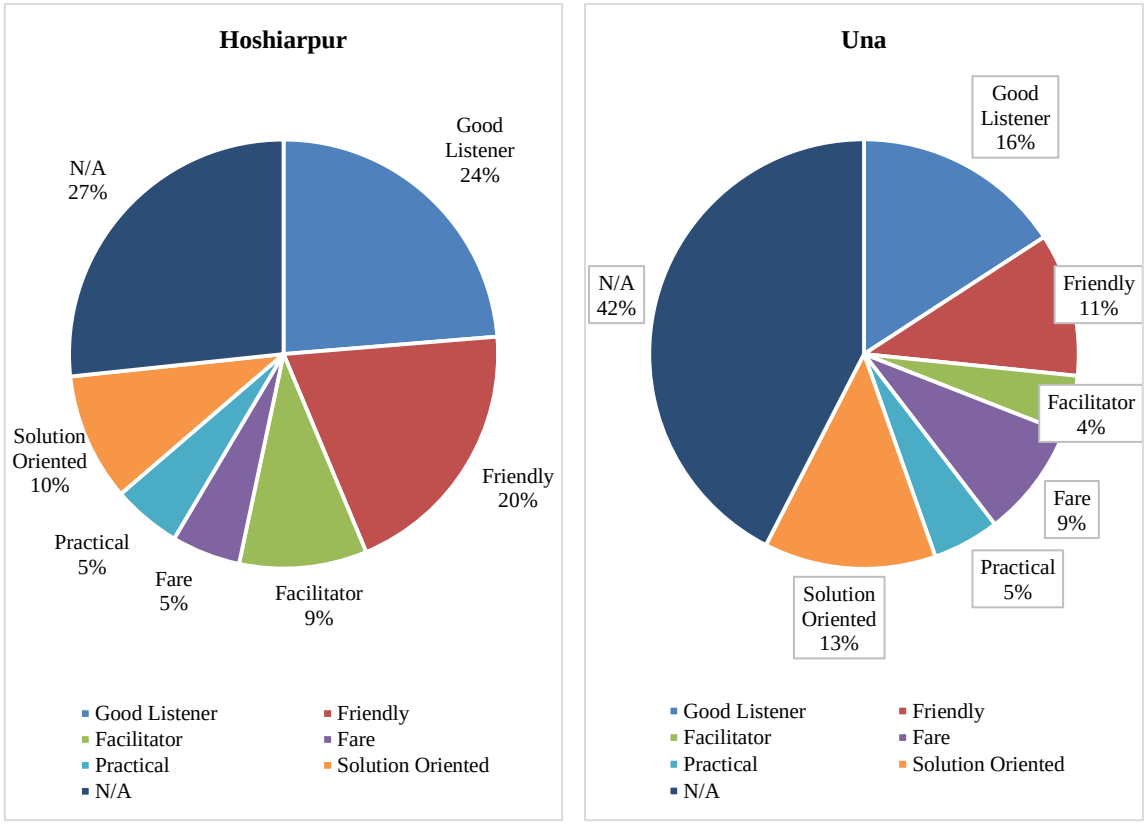
The Mediators/Advocates of both the district under study were asked the question How would you describe your mediation style? 100 Responses From both Hoshiarpur from Una are recorded for both the districts. The responses are presented below.

Table 84

		Mediation style[a]							Total
		Good Listener	Friendly	Facilitator	Fair	Practical	Solution Oriented	N/A	
District	Hoshiarpur	32	27	13	7	7	13	36	135
	Una	22	15	6	12	7	18	59	139
Total		54	42	19	19	14	31	95	274

In Hoshiarpur the mediators/lawyer responded Good Listener (32%), Friendly (27%), Facilitator (13%), Fair (7%), Practical (7%), Solution Oriented (13%) and N/A (36%). Similarly, we have for Una responded Good Listener (22%), Friendly (15%), Facilitator (6%), Fair (12%), Practical (7%), Solution Oriented (18%) and N/A (59%).

Figure 33



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner for the both the concerned districts under study. At 5% level of significance and df=6 the computed significance (0.016737487) is< 0.05. Thus, it may be concluded that statistically there is significant difference

between them and the distribution of respondents varies across the district under study stating that the mediation style of respondents is different between the districts under study.

20. Right to file an appeal against mediator's decision

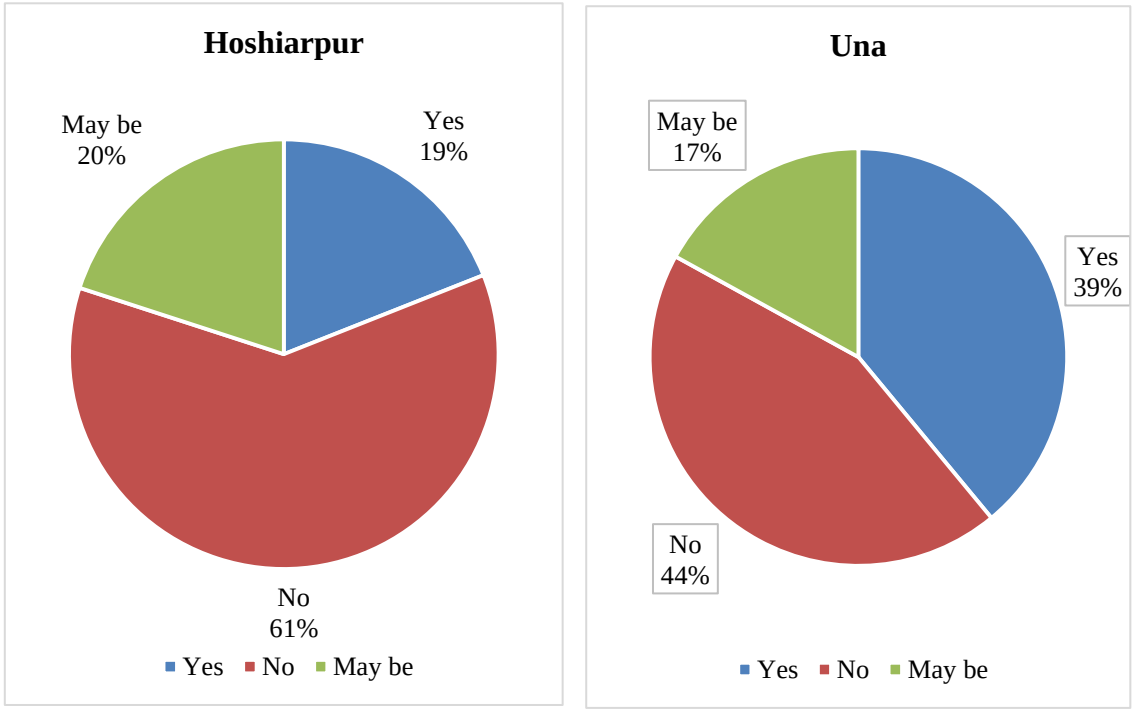
The Mediators/Advocates of both the district under study were asked the question Do the parties have right to file an appeal against mediator's decision . 100 Responses From both Hoshiarpur from Una are recorded for both the districts. The responses are presented below.

Table 85

		Do the parties have right to file an appeal against mediator's decision.			Total
		Yes	No	May be	
District	Hoshiarpur	19	61	20	100
	Una	39	44	17	100
Total		58	105	37	200

In Hoshiarpur the mediators/lawyer responded Yes (19%), No (61%) and Maybe (20%). Similarly, we have for Una Yes (39%), No (44%) and Maybe (17%).

Figure 34



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.007) is< 0.05. Thus, it may be concluded that statistically there is significant difference between them and the distribution of respondents varies across the district under study stating that the respondents' perception about the rights of the litigant to file an appeal against mediator's decision is different between the districts under study.

Table 86: Chi-Square Tests

	Value	**df**	**Asymp. Sig. (2-sided)**
Pearson Chi-Square	9.892[a]	2	.007
Likelihood Ratio	10.048	2	.007
Linear-by-Linear Association	5.672	1	.017
N of Valid Cases	200		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 18.50.

6.3.2 General Public / Litigants

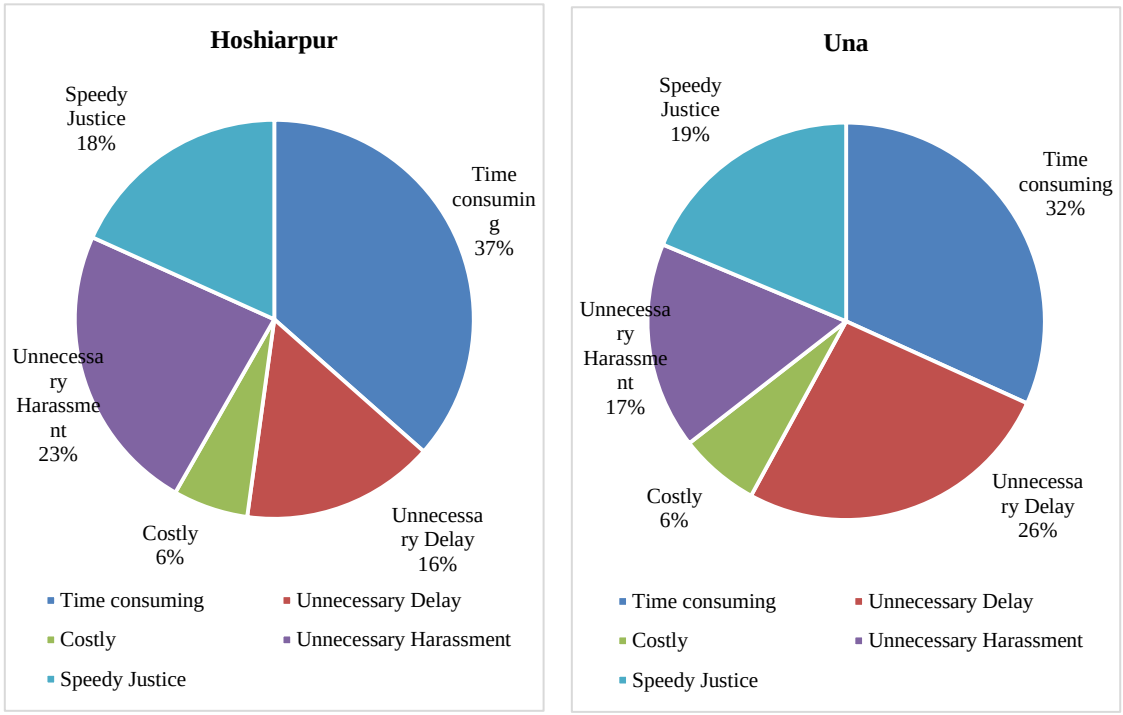
1. Litigation in traditional courts

The General public/Litigants of both the district under study are asked the question What comes first in your mind when you think about litigation in traditional courts? 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

Table 87

		What comes first in your mind when you think about litigation in traditional courts ?					**Total**
		Time consuming	**Unnecessary Delay**	**Costly**	**Unnecessary Harassment**	**Speedy Justice**	
District	Hoshiarpur	42	18	7	27	21	115
	Una	34	28	7	18	20	107
Total		76	46	14	45	41	222

Figure 35



In Hoshiarpur the General public/Litigants responded Time consuming (37%), Unnecessary Delay (16%), Costly (6%), Unnecessary Harassment (23%), and Speedy Justice (18%). Similarly, we have for Una responded Time consuming (32%), Unnecessary Delay (26%), Costly (6%), Unnecessary Harassment (17%), and Speedy Justice (19%).

Table 88: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	4.558[a]	4	.336	.340		
Likelihood Ratio	4.583	4	.333	.344		
Fisher's Exact Test	4.564			.336		
Linear-by-Linear Association	.106[b]	1	.745	.763	.389	.033
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 6.75.

b. The standardized statistic is -.326.

A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=4 the computed significance (0.336) is > 0.05. Thus, it may be concluded that statistically there is no significant difference between them and the distribution of respondents doesn't vary across the district under study stating that the respondents' perception is indifferent between the Hoshiarpur and Una.

2. Preference to resolve matrimonial disputes

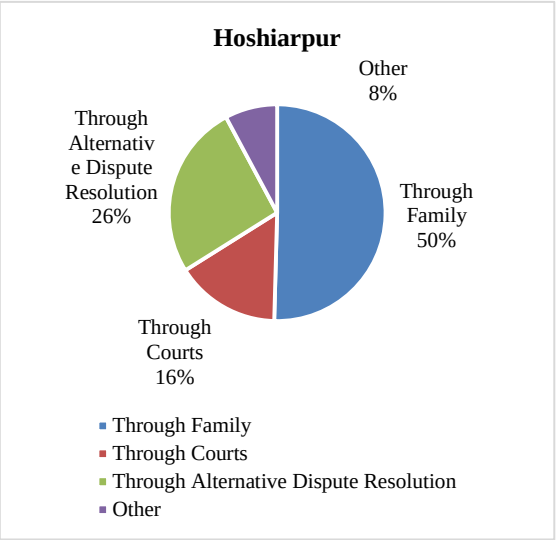
The General public/Litigants of both the district under study are asked the question How do you prefer to resolve your matrimonial disputes? . 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

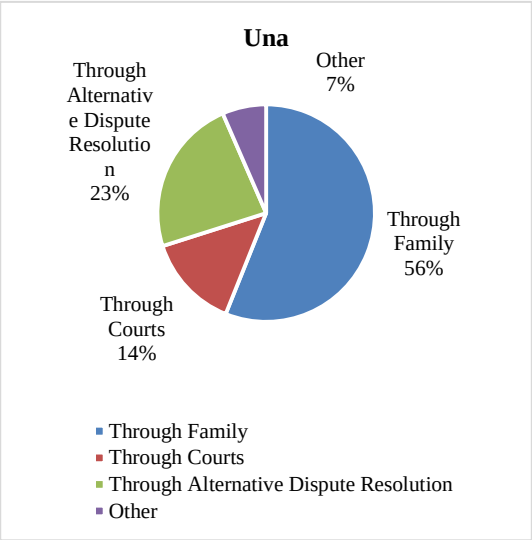
Table 89

		How do you prefer to resolve your matrimonial disputes ?				**Total**
		Through Family	**Through Courts**	**Through Alternative Dispute Resolution**	**Other**	
District	Hoshiarpur	58	18	30	9	115
	Una	60	15	25	7	107
Total		118	33	55	16	222

In Hoshiarpur the General public/Litigants responded Through Family (50%), Through Courts (16%), Through Alternative Dispute Resolution (26%), and Other (8%). Similarly, we have for Una responded Through Family (56%), Through Courts (14%), Through Alternative Dispute Resolution (23%), and Other (7%).

Figure 36





A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=3 the computed significance (0.868) is > 0.05. Thus, it may be concluded that statistically there is no significant difference between them and the distribution of respondents doesn't vary across the district under study stating that the respondents' perception is indifferent between the Hoshiarpur and Una.

Table 90: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	.724[a]	3	.868	.874		
Likelihood Ratio	.724	3	.867	.874		
Fisher's Exact Test	.755			.874		
Linear-by-Linear Association	.629[b]	1	.428	.434	.234	.038
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 7.71.

b. The standardized statistic is -.793.

3. Satisfaction with the court system

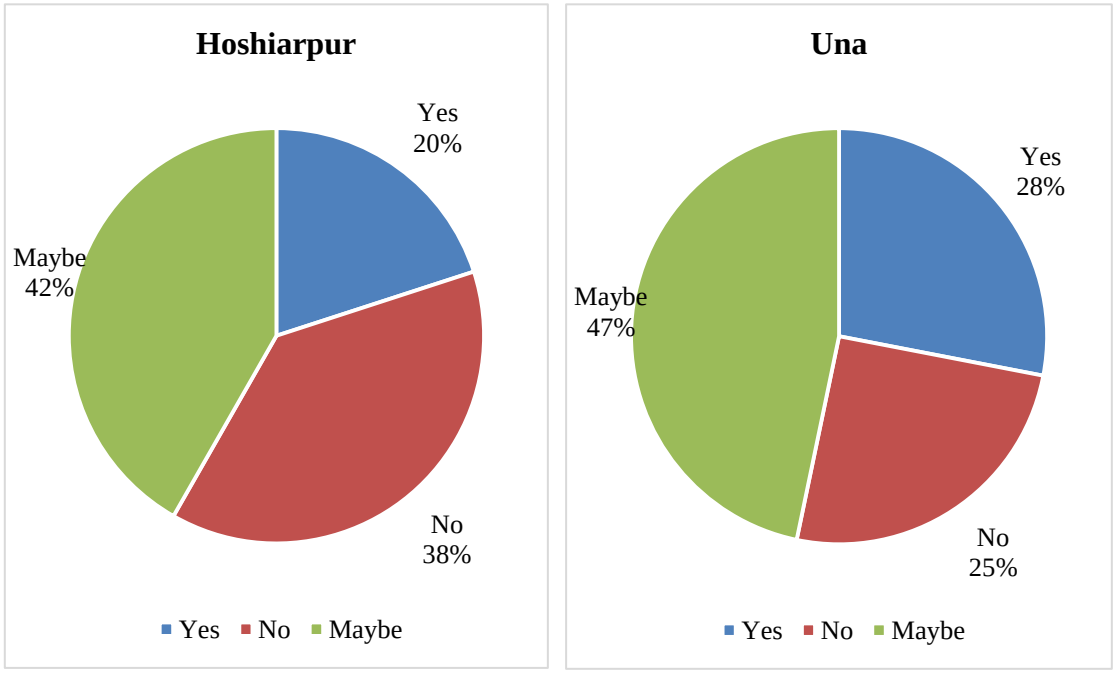
The General public/Litigants of both the district under study are asked the question If "Courts"are you satisfied with this system? . 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

Table 91

		If "Courts" are you satisfied with this system?			Total
		Yes	No	Maybe	
District	Hoshiarpur	23	44	48	115
	Una	30	27	50	107
Total		53	71	98	222

In Hoshiarpur the General public/Litigants responded Yes (20%), No (38%), and Maybe (42%). Similarly, we have for Una responded Yes (28%), No (25%), and Maybe (47%).

Figure 37



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.093) is > 0.05.

Thus, it may be concluded that statistically there is no significant difference between them and the distribution of respondents doesn't vary across the district under study stating that the respondents' perception is indifferent between the Hoshiarpur and Una.

Table 92: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	4.754[a]	2	.093	.091		
Likelihood Ratio	4.790	2	.091	.091		
Fisher's Exact Test	4.737			.091		
Linear-by-Linear Association	.080[b]	1	.777	.802	.421	.064
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 25.55.

b. The standardized statistic is -.283.

4. Duration to process matrimonial case in court

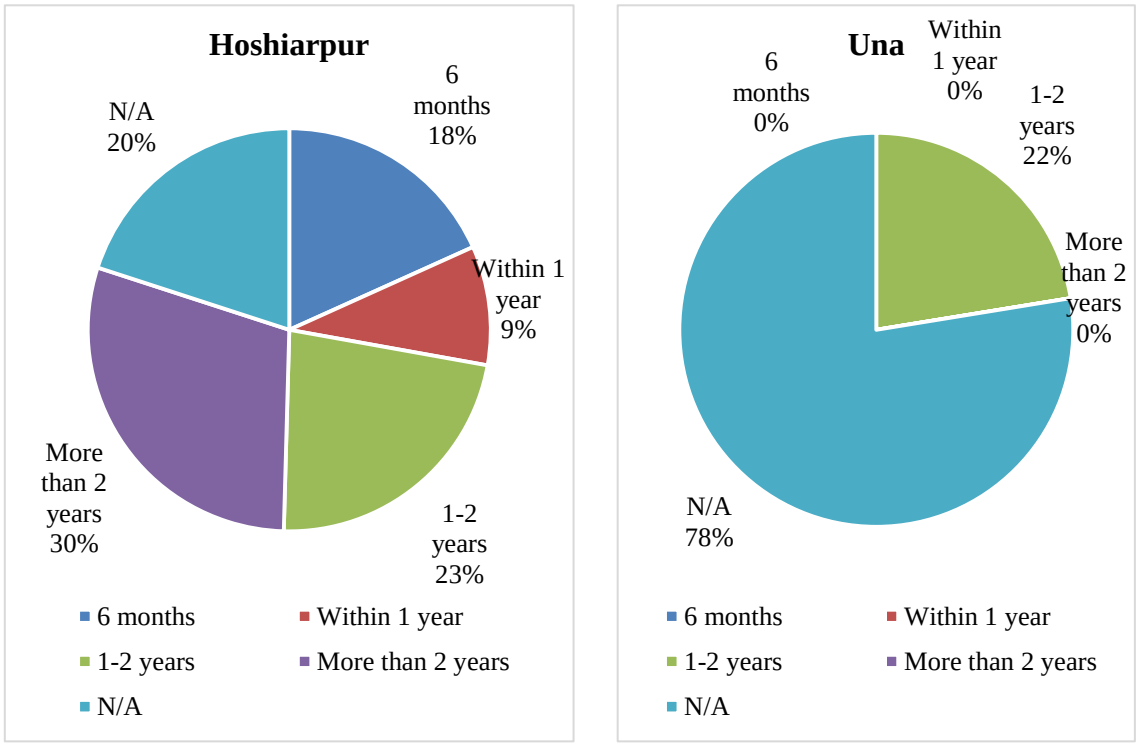
The General public/Litigants of both the district under study are asked the question If you have previously submitted a matrimonial case to court, how long did the entire process take to be resolve? 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

Table 93

		If you have previously submitted a matrimonial case to court , how long did the entire process take to be resolve?					Total
		6 months	Within 1 year	1-2 years	More than 2 years	N/A	
District	Hoshiarpur	21	11	26	34	23	115
	Una	0	0	24	0	83	107
Total		21	11	50	34	106	222

In Hoshiarpur the General public/Litigants responded 6 months (18%), Within 1 year (9%), 1-2 years (23%) More than 2 years (30%), and N/A (20%). Similarly, we have for Una responded 6 months (0%), Within 1 year (0%), 1-2 years (22%), More than 2 years (0%), and N/A (78%).

Figure 38



Data here is evidently skewed and 78% of the respondents of Una district in contrast to 20% respondents of Hoshiarpur district seem to have never submitted a case in court regarding the matter and rest 22% of Una those who have approached court say that it takes 1-2 years to resolve where the responses have a scattered distribution in case of Hoshiarpur district.

A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=4 the computed significance (0.000) is < 0.05. Thus, it may be concluded that statistically there is significant difference between them and the distribution of respondents varies across the district under study stating that the respondents' experience with court process duration is different between the Hoshiarpur and Una.

Table 94: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	99.884[a]	4	.000	.000		
Likelihood Ratio	127.345	4	.000	.000		
Fisher's Exact Test	116.656			.000		
Linear-by-Linear Association	55.124[b]	1	.000	.000	.000	.000
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 5.30.

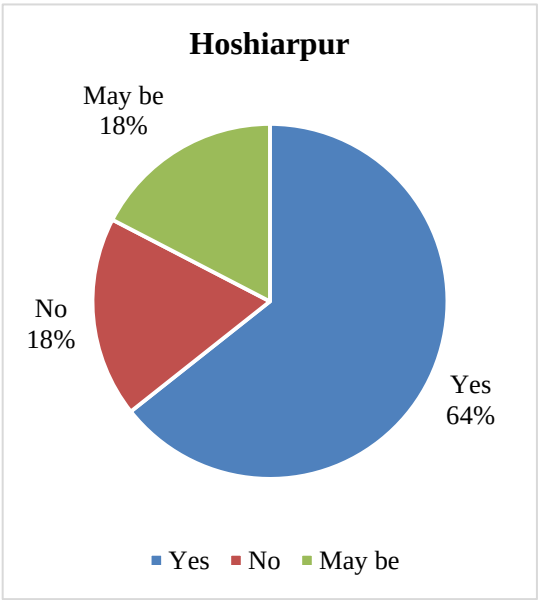
b. The standardized statistic is 7.425.

5. Awareness about Alternative Dispute Resolution System

The General public/Litigants of both the district under study are asked the question Have you ever heard about Alternative Dispute Resolution System . 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

In Hoshiarpur the General public/Litigants responded Yes (64%), No (18%), and Maybe (18%). Similarly, we have for Una responded Yes (55%), No (21%), and Maybe (24%).

Figure 39



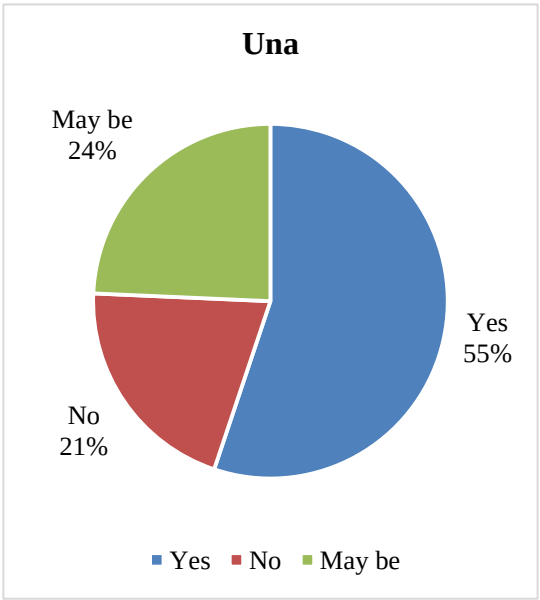


Table 95

		Have you ever heard about Alternative Dispute Resolution System			Total
		Yes	No	May be	
District	Hoshiarpur	74	21	20	115
	Una	59	22	26	107
Total		133	43	46	222

Table 96: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	2.212[a]	2	.331	.326		
Likelihood Ratio	2.215	2	.330	.332		
Fisher's Exact Test	2.213			.326		
Linear-by-Linear Association	2.195[b]	1	.138	.158	.081	.022
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 20.73.

b. The standardized statistic is 1.482.

A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.331) is > 0.05. Thus, it may be concluded that statistically there is no significant difference between them and the distribution of respondents doesn't vary across the district under study stating that the respondents' awareness about the Alternative dispute resolution system is indifferent between the Hoshiarpur and Una.

6. Awareness about Mediation and Conciliation

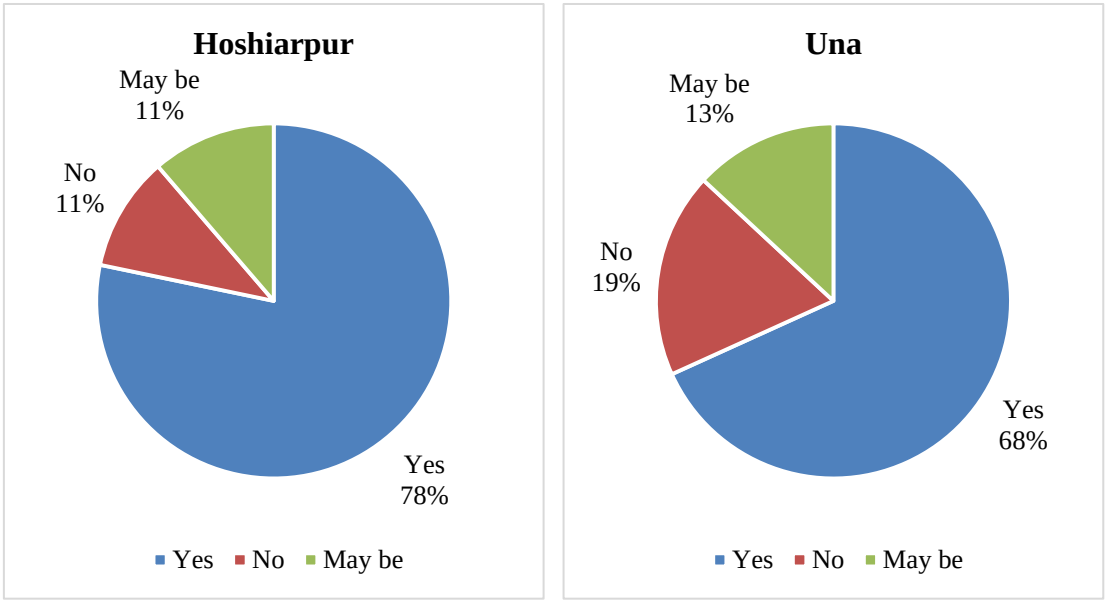
The General public/Litigants of both the district under study are asked the question Have you heard about Mediation and Conciliation . 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

Table 97

		Have you heard about Mediation and Conciliation ?			Total
		Yes	No	May be	
District	Hoshiarpur	90	12	13	115
	Una	73	20	14	107
Total		163	32	27	222

In Hoshiarpur the General public/Litigants responded Yes (78%), No (11%), and Maybe (11%). Similarly, we have for Una responded Yes (68%), No (19%), and Maybe (13%).

Figure 40



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.172) is > 0.05. Thus, it may be concluded that statistically there is no significant difference between them and the distribution of respondents doesn't vary across the district under study stating that the respondents' awareness about Mediation and Conciliation is indifferent between the Hoshiarpur and Una.

Table 98: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	3.526[a]	2	.172	.166		
Likelihood Ratio	3.546	2	.170	.166		
Fisher's Exact Test	3.510			.166		
Linear-by-Linear Association	1.603[b]	1	.205	.211	.121	.035
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 13.01.

b. The standardized statistic is 1.266.

7. Inclination towards mediation and conciliation

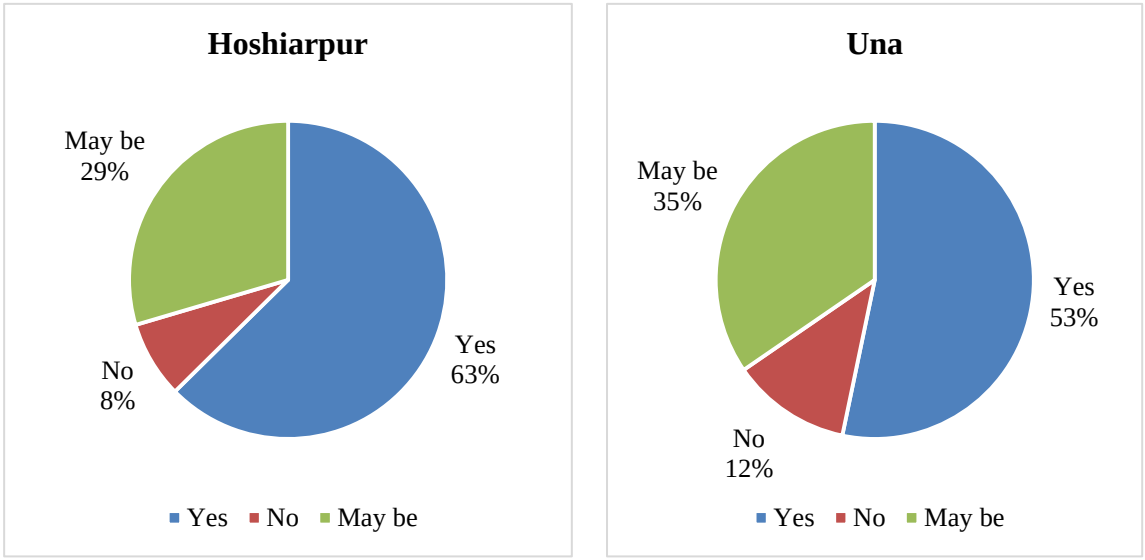
The General public/Litigants of both the district under study are asked the question Would you like to resolve your matrimonial disputes through mediation and conciliation . 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

Table 99

		Would you like to resolve your matrimonial disputes through mediation and conciliation			Total
		Yes	No	May be	
District	Hoshiarpur	72	9	34	115
	Una	57	13	37	107
Total		129	22	71	222

In Hoshiarpur the General public/Litigants responded Yes (63%), No (8%), and Maybe (29%). Similarly, we have for Una responded Yes (53%), No (12%), and Maybe (35%)

Figure 41



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.315) is > 0.05. Thus, it may be concluded that statistically there is no significant difference between them and the distribution of respondents doesn't vary across the district under study stating that the respondents' inclination towards Mediation and Conciliation is indifferent between the Hoshiarpur and Una.

Table 100: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	2.313[a]	2	.315	.329		
Likelihood Ratio	2.318	2	.314	.329		
Fisher's Exact Test	2.305			.323		
Linear-by-Linear Association	1.365[b]	1	.243	.271	.137	.030
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 10.60.

b. The standardized statistic is 1.168.

8. Factor influencing mediation and conciliation choice

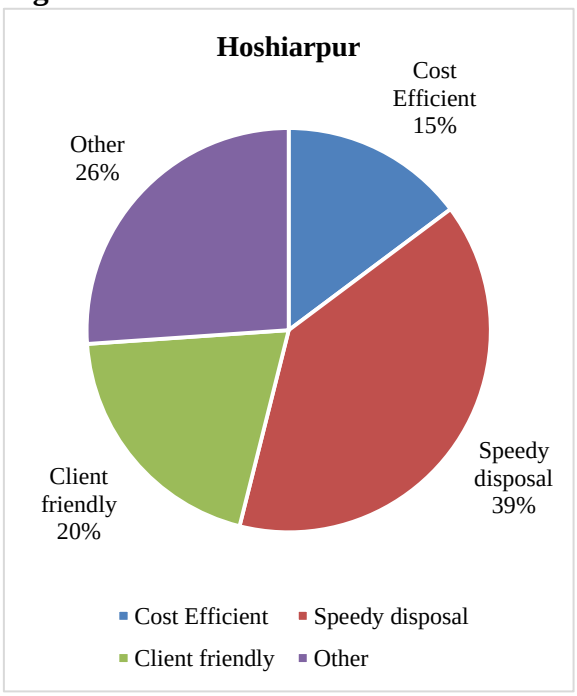
The General public/Litigants of both the district under study are asked the question If ' Yes' what factor would influence your decision in choosing mediation and conciliation in matrimonial disputes. 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

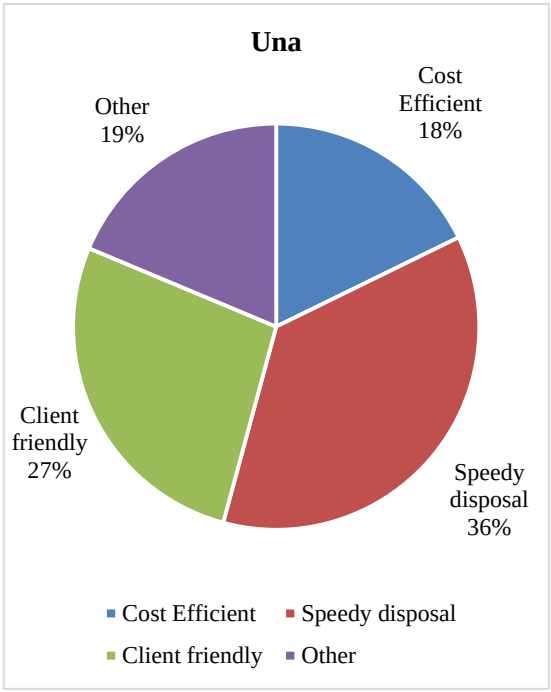
Table 101

		If ' Yes' what factor would influence your decision in choosing mediation and conciliation in matrimonial disputes?				Total
		Cost Efficient	Speedy disposal	Client friendly	Other	
District	Hoshiarpur	17	45	23	30	115
	Una	19	39	29	20	107
Total		36	84	52	50	222

In Hoshiarpur the General public/Litigants responded Cost Efficient (15%), Speedy disposal (39%), Client friendly (20%), and Other (26%). Similarly, we have for Una responded Cost Efficient (18%), Speedy disposal (36%), Client friendly (27%), and Other (19%)

Figure 42





A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=3 the computed significance (0.400) is > 0.05. Thus, it may be concluded that statistically there is no significant difference between them and the distribution of respondents doesn't vary across the district under study stating that the respondents' perceived factor for selecting Mediation and Conciliation is indifferent between the Hoshiarpur and Una.

Table 102: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	2.948[a]	3	.400	.400		
Likelihood Ratio	2.959	3	.398	.400		
Fisher's Exact Test	2.940			.400		
Linear-by-Linear Association	.612[b]	1	.434	.467	.237	.039
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 17.35.

b. The standardized statistic is -.783.

9. Suggestion from Advocate to resolve through mediation and conciliation

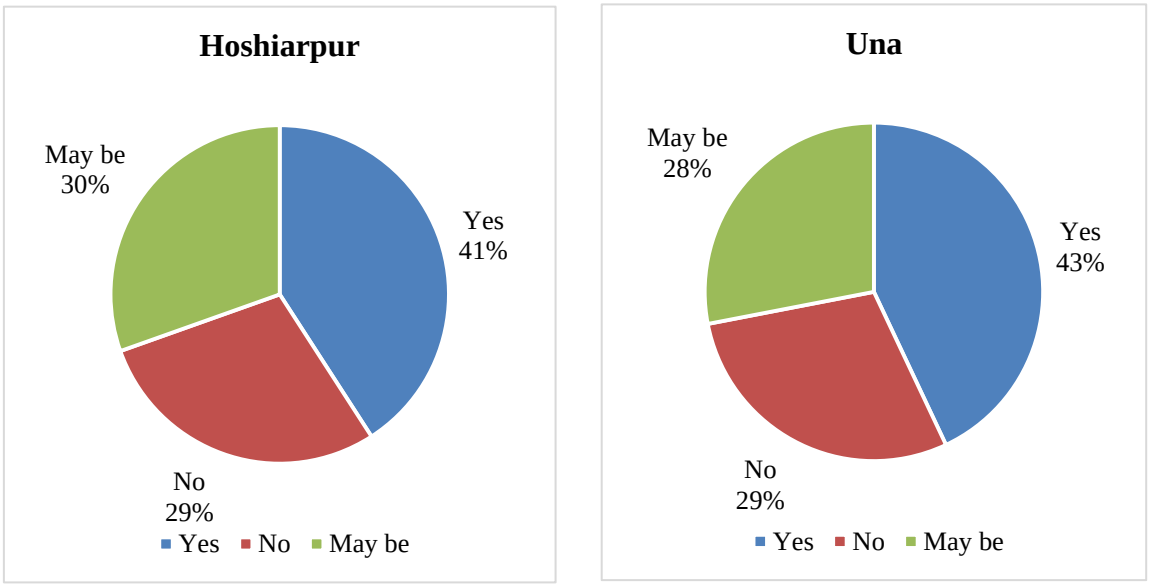
The General public/Litigants of both the district under study are asked the question Whether your advocate has suggested you to resolve your dispute through mediation and conciliation. 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

Table 103

		Whether your advocate has suggested you to resolve your dispute through mediation and conciliation?			Total
		Yes	No	May be	
District	Hoshiarpur	47	33	35	115
	Una	46	31	30	107
Total		93	64	65	222

In Hoshiarpur the General public/Litigants responded Yes (41%), No (29%), and Maybe (30%). Similarly, we have for Una responded Yes (43%), No (29%), and Maybe (28%).

Figure 43



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.919) is > 0.05. Thus, it may be concluded that statistically there is no significant difference between them and the distribution of respondents doesn't vary across the district under study stating that the respondents' experience for Mediation and Conciliation is indifferent between the Hoshiarpur and Una.

Table 104: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	.170[a]	2	.919	.927		
Likelihood Ratio	.170	2	.919	.927		
Fisher's Exact Test	.185			.927		
Linear-by-Linear Association	.162[b]	1	.687	.689	.374	.059
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 30.85.

b. The standardized statistic is -.402.

10. Importance of mediation and conciliation

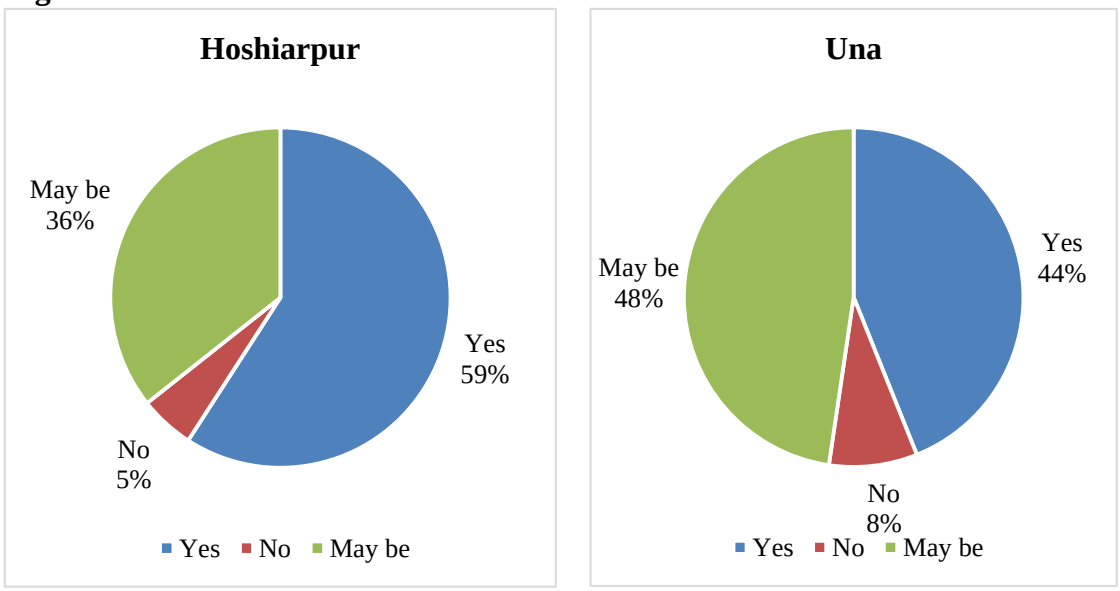
The General public/Litigants of both the district under study are asked the question Do you think mediation and conciliation is the best option available for married couples in your district (Hoshiarpur/Una) . 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

Table 105

		Do you think mediation and conciliation is the best option available for married couples in your district?			Total
		Yes	No	May be	
District	Hoshiarpur	68	6	41	115
	Una	47	9	51	107
Total		115	15	92	222

In Hoshiarpur the General public/Litigants responded Yes (59%), No (5%), and Maybe (36%). Similarly, we have for Una responded Yes (44%), No (8%), and Maybe (48%).

Figure 44



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.073) is > 0.05.

Thus, it may be concluded that statistically there is no significant difference between them and the distribution of respondents doesn't vary across the district under study stating that the respondents' perception for Mediation and Conciliation as the best option is indifferent between the Hoshiarpur and Una.

Table 106: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	5.240[a]	2	.073	.073		
Likelihood Ratio	5.261	2	.072	.076		
Fisher's Exact Test	5.221			.073		
Linear-by-Linear Association	4.435[b]	1	.035	.036	.021	.006
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 7.23.

b. The standardized statistic is 2.106.

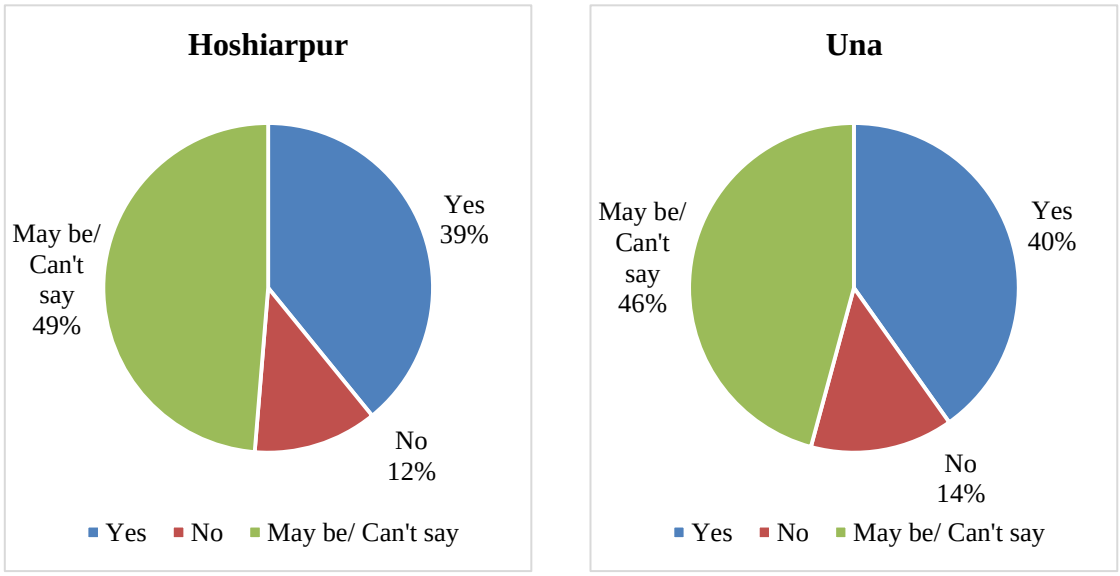
11. Mediators handling the parties

The General public/Litigants of both the district under study are asked the question Do you believe that mediators are unbiased and treats both the parties equally . 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

Table 107

		Do you think that mediators (parties) are fair, balanced and maintain integrity in the process of mediation and conciliation			Total
		Yes	No	May be/ Can't say	
District	Hoshiarpur	45	14	56	115
	Una	43	15	49	107
Total		88	29	105	222

Figure 45



In Hoshiarpur the General public/Litigants responded Yes (39%), No (12%), and Maybe/ Can't say (49%). Similarly, we have for Una responded Yes (40%), No (14%), and Maybe/ Can't say (46%).

A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.879) is > 0.05. Thus, it may be concluded that statistically there is no significant difference between them and the distribution of respondents doesn't vary across the district under study stating that the respondents' experience with the mediators is indifferent between the Hoshiarpur and Una.

Table 108: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	.259[a]	2	.879	.865		
Likelihood Ratio	.259	2	.879	.865		
Fisher's Exact Test	.282			.849		
Linear-by-Linear Association	.100[b]	1	.752	.773	.404	.055
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 13.98.

b. The standardized statistic is -.316.

12. Knowledge of process of mediation and conciliation

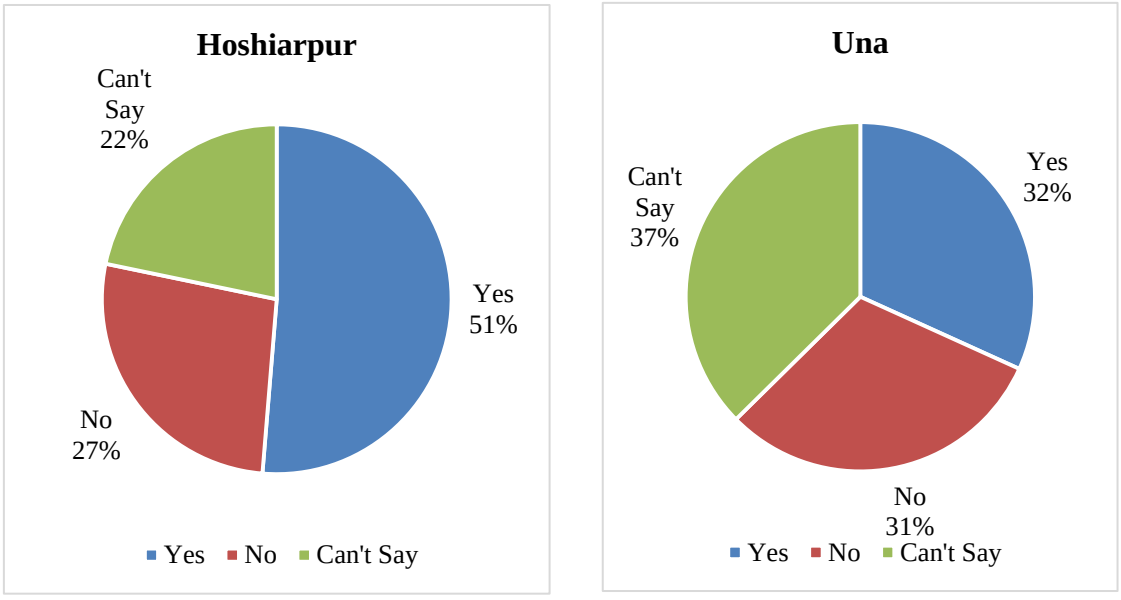
The General public/Litigants of both the district under study are asked the question Do you know the process of mediation and conciliation in the matrimonial matters . 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

Table 109

		Do you know the process of mediation and conciliation in the matrimonial matters ?			Total
		Yes	No	Can't Say	
District	Hoshiarpur	59	31	25	115
	Una	34	33	40	107
Total		93	64	65	222

In Hoshiarpur the General public/Litigants responded Yes (51%), No (27%), and Can't say (22%). Similarly, we have for Una responded Yes (32%), No (31%), and Can't say (37%).

Figure 46



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.879) is > 0.05. Thus, it may be concluded that statistically there is no significant difference between them and the distribution of respondents doesn't vary across the district

under study stating that the respondents' knowledge for the process of Mediation and Conciliation is indifferent between the Hoshiarpur and Una.

Table 110: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	9.969[a]	2	.007	.006		
Likelihood Ratio	10.071	2	.007	.006		
Fisher's Exact Test	9.964			.006		
Linear-by-Linear Association	9.811[b]	1	.002	.002	.001	.000
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 30.85.

b. The standardized statistic is 3.132.

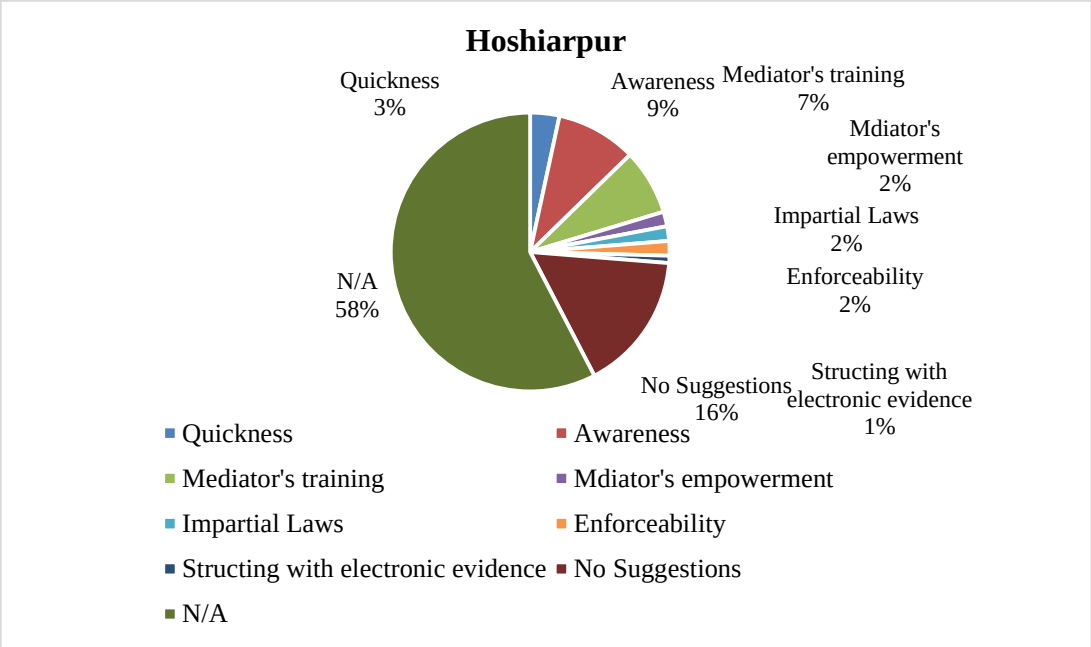
13. Perceived change expectation in mediation and conciliation

The General public/Litigants of both the district under study are asked the question if yes what type of changes you want in the process of mediation and conciliation. Comment . 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

Table 111

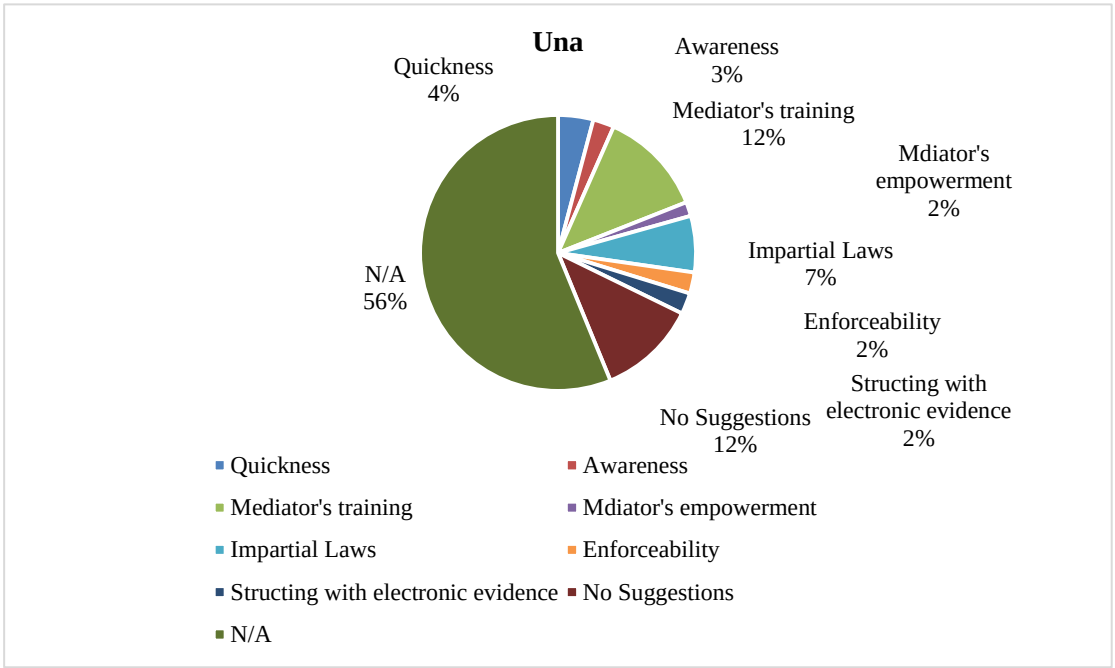
		Suggested changes to mediation process[a]									Total
		Quickness	Awareness	Mediator's training	Mediator's empowerment	Impartial Laws	Enforceability	Structing with electronic evidence	No Suggestions	N/A	
District	Hoshiarpur	4	11	9	2	2	2	1	19	68	118
	Una	5	3	15	2	8	3	3	14	68	121
Total		9	14	24	4	10	5	4	33	136	239

Figure 47



In Hoshiarpur the mediators/lawyer responded Quickness (3%), Awareness (9%), Mediator's training (2%), Mediator's empowerment (2%), Impartial Laws (2%), Enforceability (2%), Structuring with electronic evidence (1%), No Suggestions (16%), and N/A (58%). Similarly, we have for Una responded Quickness (4%), Awareness (3%), Mediator's training (12%), Mediator's empowerment (2%), Impartial Laws (7%), Enforceability (2%), Structuring with electronic evidence (2%), No Suggestions (12%), and N/A (56%).

Figure 47



It's noteworthy to mention that respectively 74% and 68% of respondents of Hoshiarpur and Una did not respond giving any suggestions in this regard. Also, it's important that a lot of participants have no knowledge of the process of mediation and conciliation in matrimonial disputes (58% and 56% respectively). At the same time another highlight of this analysis is the Mediator's Training suggestion for improvement. This provides ample insight for administrators and law makers to bring suitable policy changes to train and spread awareness about the process to make it more effective.

14. Mediator's ability to understand

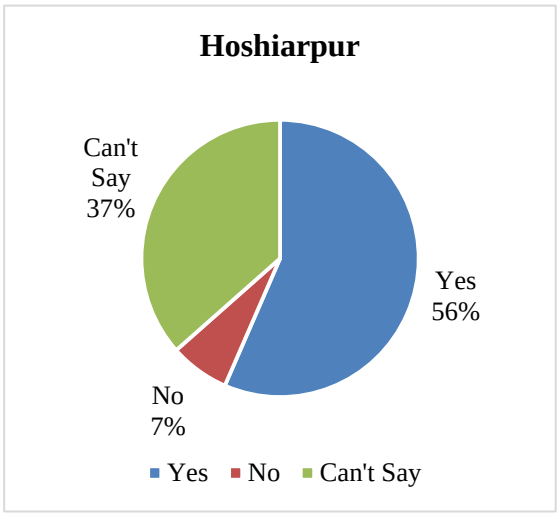
The General public/Litigants of both the district under study are asked the question Do you think mediator is able to understand the issues between both the parties . 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

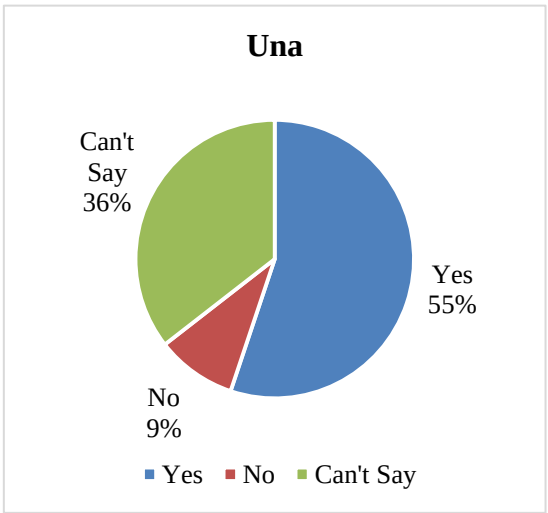
Table 112

		Do you think mediator is able to understand the issues between both the parties ?			Total
		Yes	No	Can't Say	
District	Hoshiarpur	65	8	42	115
	Una	59	10	38	107
Total		124	18	80	222

In Hoshiarpur the General public/Litigants responded Yes (56%), No (7%), and Can't say (37%). Similarly, we have for Una responded Yes (55%), No (9%), and Can't say (36%).There is a majority of respondents believe that the mediator is able to understand the issues between both the parties.

Figure 48





A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.809) is > 0.05. Thus, it may be concluded that statistically there is no significant difference between them and the distribution of respondents doesn't vary across the district under study stating that the respondents' perception towards the ability of the mediator to understand both the parties in the process of Mediation and Conciliation is indifferent between the Hoshiarpur and Una.

Table 113: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	.425[a]	2	.809	.838		
Likelihood Ratio	.425	2	.809	.838		
Fisher's Exact Test	.448			.838		
Linear-by-Linear Association	.001[b]	1	.976	1.000	.517	.057
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 8.68.

b. The standardized statistic is .030.

15. Perceived fairness of mediation and conciliation

The General public/Litigants of both the district under study are asked the question Do you think mediation and conciliation is a fair process when it comes to matrimonial disputes . 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

Table 114

		Do you think mediation and conciliation is a fair process when it comes to matrimonial disputes?			Total
		Yes	No	May be	
District	Hoshiarpur	52	7	56	115
	Una	48	11	48	107
Total		100	18	104	222

In Hoshiarpur the General public/Litigants responded Yes (45%), No (6%), and Maybe (49%). Similarly, we have for Una responded Yes (45%), No (10%), and Maybe (45%).

This also shows that majority of respondents are not confident about the fairness of the process. Which is certainly an impediment to be removed by the judiciary and administration to get the best out of the process?

A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.502) is > 0.05. Thus, it may be concluded that statistically there is no significant difference between them and the distribution of respondents doesn't vary across the district under study stating that the respondents' perception towards the process of Mediation and Conciliation as a fair means or not isindifferent between the Hoshiarpur and Una.

Figure 49

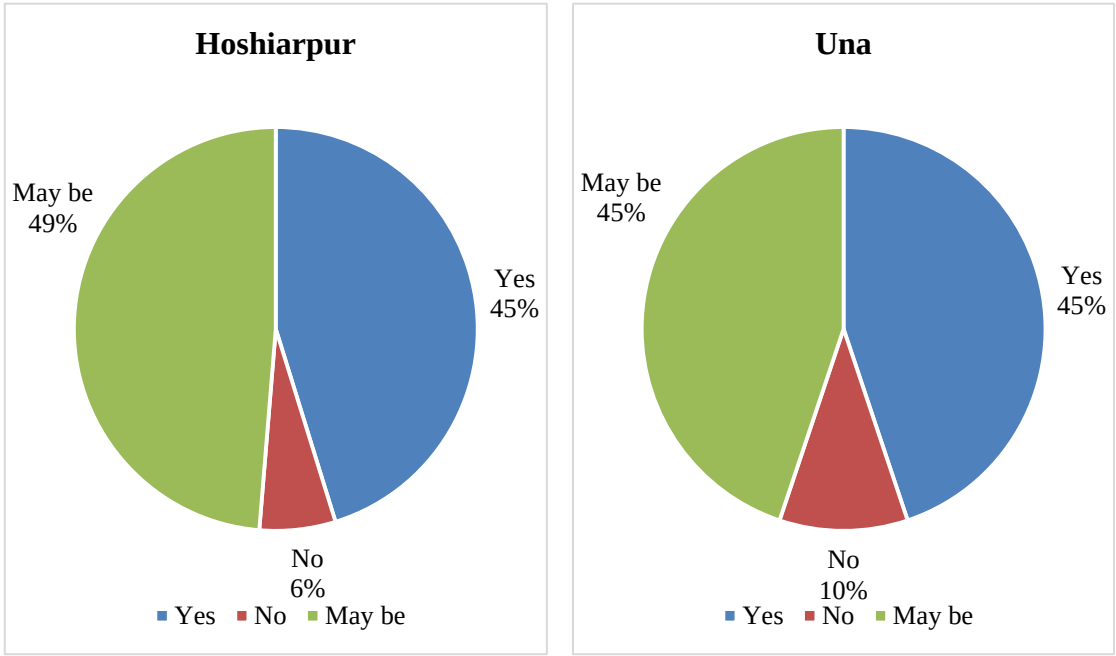


Table 115: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	1.378[a]	2	.502	.523		
Likelihood Ratio	1.384	2	.501	.523		
Fisher's Exact Test	1.367			.534		
Linear-by-Linear Association	.073[b]	1	.787	.834	.421	.054
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 8.68.

b. The standardized statistic is -.270.

16. Perception for legal enforceability of mediation and conciliation

The General public/Litigants of both the district under study are asked the question what do you think about the legal enforceability of mediation and conciliation with respect to matrimonial disputes . 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

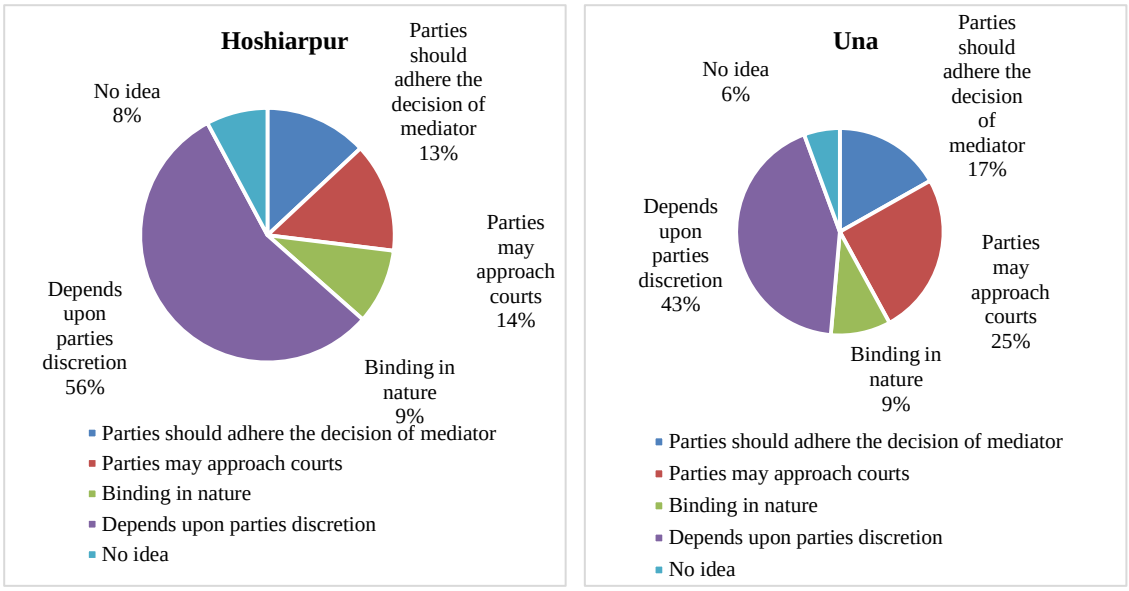
Table 116

		What do you think about the legal enforceability of mediation and conciliation with respect to matrimonial disputes?					Total
		Parties should adhere the decision of mediator	Parties may approach courts	Binding in nature	Depends upon parties' discretion	No idea	
District	Hoshiarpur	15	16	11	64	9	115
	Una	18	27	10	46	6	107
Total		33	43	21	110	15	222

In Hoshiarpur the mediators/lawyer responded Parties should adhere the decision of mediator (13%), Parties may approach courts (14%), Binding in nature (9%), Depends upon parties' discretion (56%), and No idea (8%). Similarly, we have for

Una responded Parties should adhere the decision of mediator (17%), Parties may approach courts (25%), Binding in nature (9%), Depends upon parties discretion (43%), and No idea (6%).

Figure 50



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=4 the computed significance (0.171) is > 0.05. Thus, it may be concluded that statistically there is no significant difference between them and the distribution of respondents doesn't vary across the district under study stating that the respondents' perception for legal enforceability of mediation and conciliationis indifferent between the Hoshiarpur and Una.

Table 117: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	6.400[a]	4	.171	.173		
Likelihood Ratio	6.441	4	.169	.178		
Fisher's Exact Test	6.390			.170		
Linear-by-Linear Association	4.654[b]	1	.031	.035	.018	.004
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 7.23.

b. The standardized statistic is -2.157.

17. Perception for freedom of parties to discuss personal issues

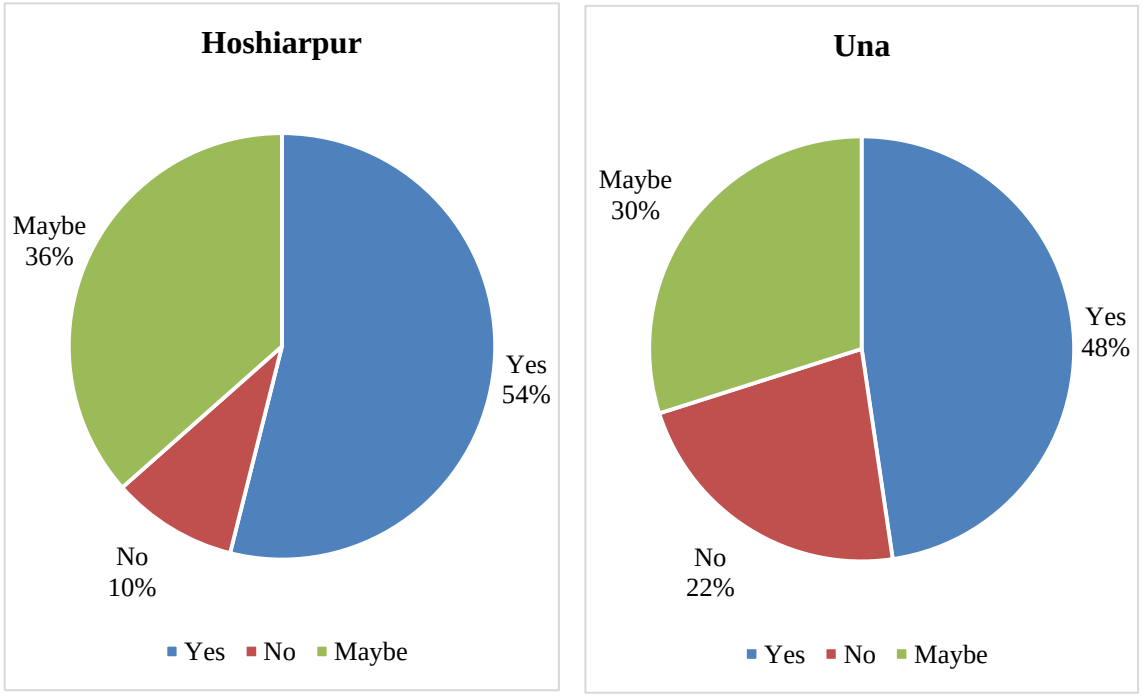
The General public/Litigants of both the district under study are asked the question Do you think that the parties feel free to discuss their personal issues in front of mediator . 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

Table 118

		Do you think that the parties feel free to discuss their personal issues in front of mediator?			Total
		Yes	No	Maybe	
District	Hoshiarpur	62	11	42	115
	Una	51	24	32	107
Total		113	35	74	222

In Hoshiarpur the General public/Litigants responded Yes (54%), No (10%), and Maybe (36%). Similarly, we have for Una responded Yes (48%), No (22%), and Maybe (30%).

Figure 51



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.031) is < 0.05.

Thus, it may be concluded that statistically there is significant difference between them and the distribution of respondents varies across the district under study stating that the respondents 'feeling to discuss issues freely at mediation is different between the Hoshiarpur and Una. And Hoshiarpur respondents seem to be more comfortable than their counterpart respondents of Una district.

Table 119: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	6.971[a]	2	.031	.030		
Likelihood Ratio	7.086	2	.029	.031		
Fisher's Exact Test	6.940			.031		
Linear-by-Linear Association	.001[b]	1	.976	1.000	.518	.059
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 16.87.

b. The standardized statistic is -.030.

18. Perceived psychological benefits of mediation and conciliation

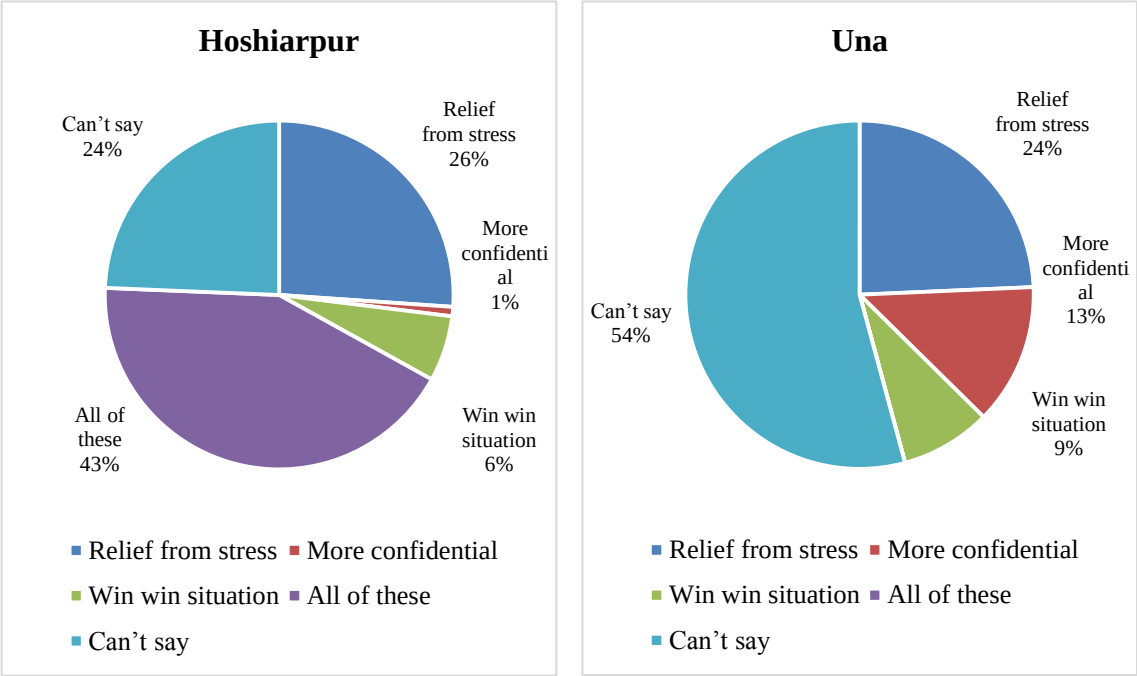
The General public/Litigants of both the district under study are asked the question What are the psychological benefits of mediation and conciliation in matrimonial matters . 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

Table 120

		What are the psychological benefits of mediation and conciliation in matrimonial matters?					Total
		Relief from stress	More confidential	Win situation	All of these	Can't say	
District	Hoshiarpur	30	1	7	49	28	115
	Una	26	14	9	0	58	107
Total		56	15	16	49	86	222

In Hoshiarpur the mediators/lawyer responded Relief from stress (26%), More confidential (1%), Win win situation (6%), All of these (43%), and Can't say (24%). Similarly, we have for Una responded Relief from stress (24%), More confidential (13%), Win win situation (9%), and Can't say (54%).

Figure 52



Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=4 the computed significance (0.000) is < 0.05. Thus, it may be concluded that statistically there is significant difference between them and the distribution of respondents varies across the district under study stating that the respondents 'perceived psychological benefits of mediation and conciliationis different between the Hoshiarpur and Una. And Hoshiarpur respondents seem to be more comfortable than their counterpart respondents of Una district.

It is interesting to note here that, about a quarter of the samples for both the districts perceive the process to a stress reliever. A minor section of the samples finds it as a win-win and evidently there are large parts of the society needs awareness and exposure as a lot of respondents remain non responsive to the question.

Table 121: Chi-Square Tests

	Value	Df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	71.072[a]	4	.000	.000		
Likelihood Ratio	92.312	4	.000	.000		
Fisher's Exact Test	86.642			.000		
Linear-by-Linear Association	.148[b]	1	.700	.712	.366	.030
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 7.23.

b. The standardized statistic is .385.

19. Perceived satisfaction with the role of mediator

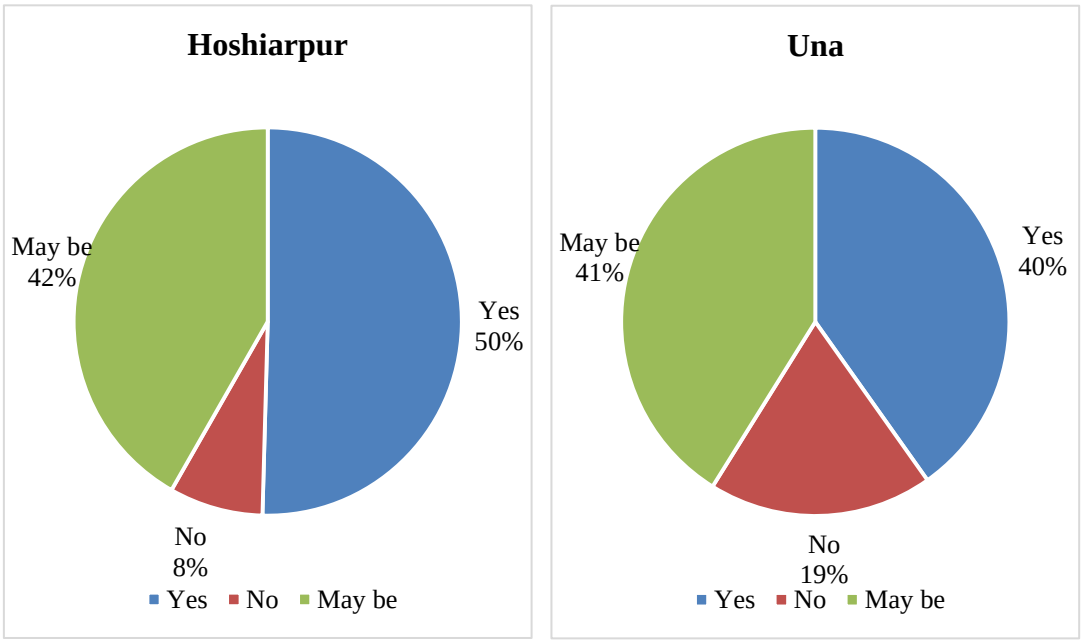
The General public/Litigants of both the district under study are asked the question Are you satisfied with the role of mediator in settlement of matrimonial disputes in your district . 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

Table 122

		Are you satisfied with the role of mediator in settlement of matrimonial disputes in your district.			Total
		Yes	No	May be	
District	Hoshiarpur	58	9	48	115
	Una	43	20	44	107
Total		101	29	92	222

In Hoshiarpur the General public/Litigants responded Yes (50%), No (8%), and Maybe (42%). Similarly, we have for Una responded Yes (40%), No (19%), and Maybe (41%)

Figure 53



A Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.043) is < 0.05. Thus, it may be concluded that statistically there is significant difference between them and the distribution of respondents varies across the district under study stating that the respondents 'perceived satisfaction with the role of mediatoris different between the Hoshiarpur and Una.

Table 123: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	6.294[a]	2	.043	.042		
Likelihood Ratio	6.400	2	.041	.041		
Fisher's Exact Test	6.254			.042		
Linear-by-Linear Association	.590[b]	1	.443	.472	.243	.043
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 13.98.

b. The standardized statistic is .768.

20. Importance of mediation and conciliation

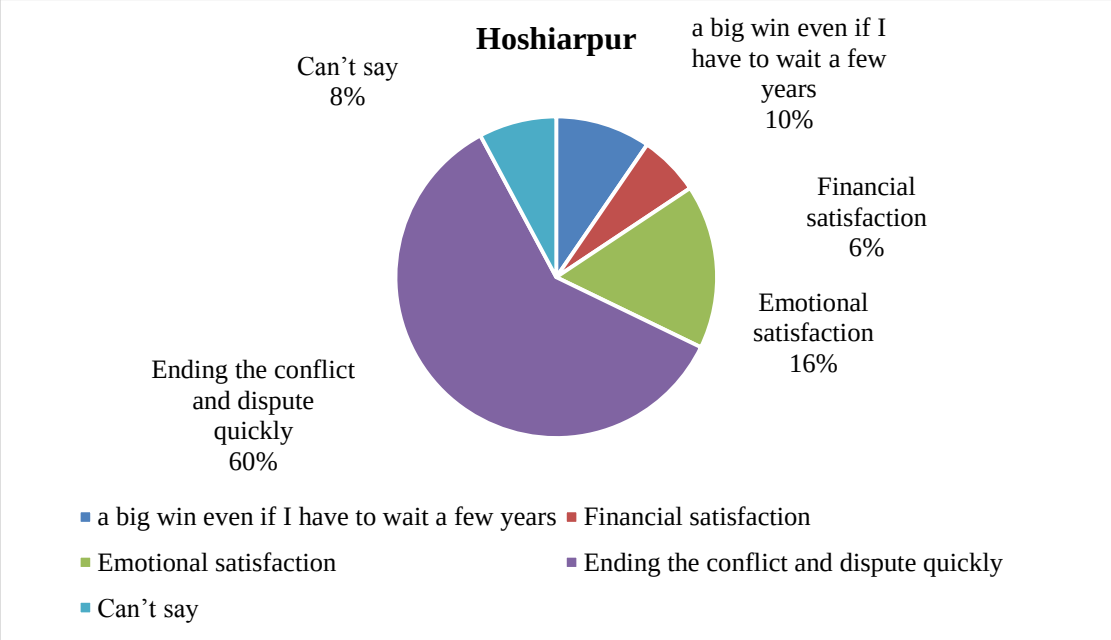
The General public/Litigants of both the district under study are asked the question Please indicate which of the following statements are more important to you with respect to mediation and conciliation in matrimonial matters . 115 Responses from Hoshiarpur and 107 responses from Una are recorded for both the districts. The responses are presented below.

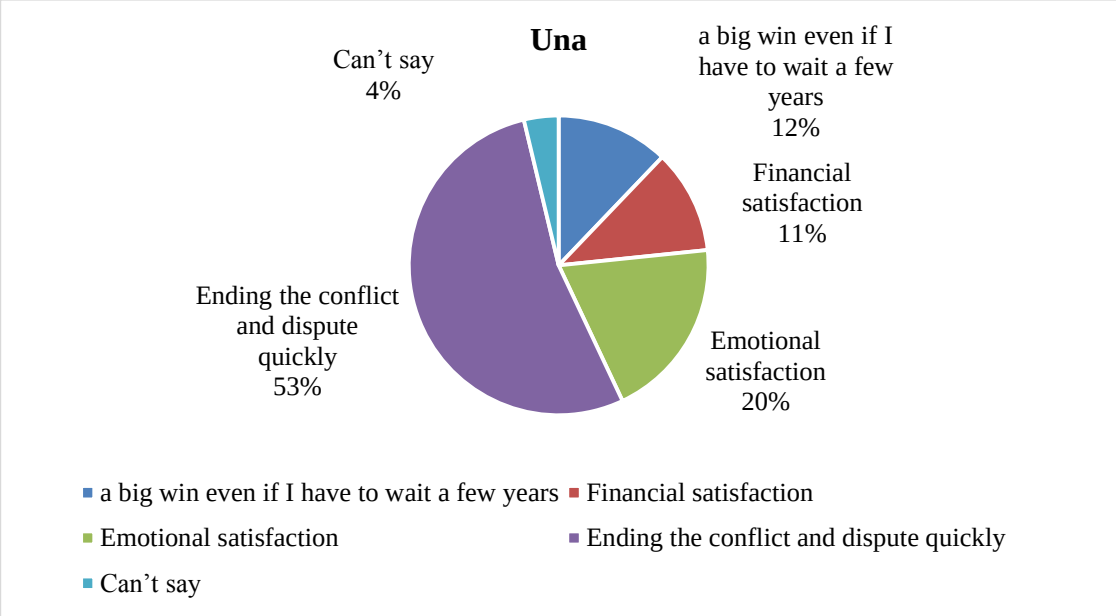
Table 124

		Please indicate which of the following statements are more important to you with respect to mediation and conciliation in matrimonial matters.					**Total**
		A big win even if I have to wait a few years	**Financial satisfaction**	**Emotional satisfaction**	**Ending the conflict and dispute quickly**	**Can't say**	
District	Hoshiarpur	11	7	19	69	9	115
	Una	13	12	21	57	4	107
Total		24	19	40	126	13	222

In Hoshiarpur the mediators/lawyer responded a big win even if I have to wait a few years (10%), Financial satisfaction (6%), Emotional satisfaction (16%), Ending the conflict and dispute quickly (60%), and Can't say (8%). Similarly, we have for Una responded a big win even if I have to wait a few years (12%), Financial satisfaction (11%), Emotional satisfaction (20%), Ending the conflict and dispute quickly (53%), and Can't say (4%).

Figure 54





Chi-square test is performed in order to find out if the respondents perceive differently or in the same manner across both the concerned districts under study. At 5% level of significance and df=2 the computed significance (0.359) is > 0.05. Thus, it may be concluded that statistically there is no significant difference between them and the distribution of respondents varies across the district under study stating that the respondents' perceived importance of different outcomes in the end of matrimonial dispute is indifferent between the Hoshiarpur and Una.

Table 125: Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	4.366[a]	4	.359	.364		
Likelihood Ratio	4.428	4	.351	.367		
Fisher's Exact Test	4.296			.369		
Linear-by-Linear Association	2.987[b]	1	.084	.095	.048	.011
N of Valid Cases	222					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 6.27.

b. The standardized statistic is -1.728.

CHAPTER-7

CONCLUSIONS AND SUGGESTIONS

In many nations going to court to safeguard one's rights is still the most common method of protection. The court, as the highest court in the land, is not necessarily the most effective means of resolving an issue for the disputants. Trial in court includes high legal fees, the removal of a significant sum of money from the money turnover, and the potential for damage to the parties' commercial and personal relationships. Furthermore, it is the source of the courts' severe overwork, which has a negative impact on their efficiency.

The highest level of the legal system is that of judges. However, despite the respect and strong public reputation that this type of employment enjoys all over the world, judges face numerous challenges in today's environment. There is no work in the world that requires more self-reliance than that of a judge. As a result, judges are under constant pressure to maintain their objectivity and impartiality, as well as to follow and exceed legal rules. Frequently it appears that they bear the brunt of numerous social blunders and they are held responsible for everything. They are the profession with the lowest level of public awareness. Judges are rigid, formal, and unavailable. They enforce the law laboriously, don't allow anything that isn't related to the law and don't consider the emotions of those involved.

People nowadays always go to the courts to settle their disagreements. As a result the courts are overburdened with cases and judges at least in major courts are unable to resolve conflicts in a timely manner due to the enormous number of litigations. Nobody ever talks about the number of judges in relation to the population but no one ever talks about the number of cases in relation to the number of judges or the general public. They are appalling when compared to the number of cases per judge in European countries for example nowadays one of the consequences of our courts' overcrowding is an avalanche of claims for compensation for cases not resolved within a reasonable time frame, threatening additional litigation that are, at the very least, unnecessary.

Judicial mediation, in our opinion is a superb alternative to the blind instrument of contentious litigation in cases that have already been tried. It combines the flexibility

and adaptation of mediation with legal and moral authority proceedings. Thus, it is a reassessment of the role of courts and judges in the administration of justice, not just a qualitative jump in conflict resolution efficiency.

Mediation is a method for resolving conflicts that differs from traditional methods. The method can be used to settle conflicts at any moment, whether before they go to court or after they have been filed. It can also be used if the losing party has filed or intends to submit an appeal after the decision has been rendered. It can also be employed while execution proceedings are in progress. Even if one of the parties has prevailed in court, if he is dissatisfied with the outcome he might seek mediation. Thus any other alternative dispute resolution system, such as arbitration, Lok Adalat, Conciliation, or court settlement, cannot replace mediation because mediation is a procedure that is unique. Additional alternative dispute resolution systems are equally excellent, but each of them can be utilized in different types of cases.

Mediation is frequently perceived as having the potential to become an alternative in and of it. When parties try mediation but it fails the participants are fully aware of the reasons and causes for the failure. It may have failed for a variety of reasons. The parties return to court after that. They understand that mediation is a better fit for them. If the court or lawyers recommend that they try the alternative dispute resolution system of mediation again at that point, they will undoubtedly do so. Then they'll try to figure out why mediation failed in the first place. Once they've gained control, they'll start negotiating. The lesson of life has been imparted to them through the experience of judicial delays. They've grown wiser as a result of their experiences. They wanted to settle down, and now they have the chance to do so. In such situations, mediation is almost certain to yield positive results. Mediation has shown to be the most adaptable approach of alternative dispute resolution. In this dispute resolution process, procedural norms and regulations are not to be carefully followed. The mediator and the participants might design their own procedure based on their specific needs and preferences. They can gather on weekends and address issues in the morning, noon, or nighttime. Even when the mediation proceedings are in progress they might take appropriate time to explore a solution with their families and advisors. They have the ability to make offers, withdraw them, change them, replace them, and make the same offer again.

In mediation, anything is possible unless it is illogical. The participants can also decide where the mediation will take place and then modify it for the next session. In mediation, anything that is acceptable to both the litigants and the mediator is acceptable. Mediation is the only way to do this because it is a non-binding practice. No one is bound by a settlement agreement unless and until all parties sign it. However, a professional mediator keeps a close eye on the proceedings to ensure that the participants are not wasting time but rather investing it in a beneficial resolution of their disagreement.

What happens if the matter is resolved through mediation or not? The burden of the court is lightened when a disagreement is resolved. The courts are suffocating under the weight of their workload. There could be a variety of reasons for this but every person has a responsibility to consider them and to contribute to the solution of this major issue. It is not enough to simply point the finger at someone at the end of the conversation; genuine efforts must be made. If a litigant known to any of us in court is blaming the system it is our responsibility to help and assist him, as well as to encourage him to seek shelter in one of the alternative conflict resolution options, particularly mediation.

Mediation is really beneficial, but it is not mandated in our nation; nonetheless, it is nearly mandated in Western countries, and the benefits are astounding. In many nations, mediation only takes four to five hours to produce outcomes. The success rate in many nations is more than 80% to 90%. They are developed countries that they are acquainted with the value of time and perceive the benefits of time savings. Our country is also making strides in the right direction. It is past time for us to recognize and grasp that the delay in the resolution of court matters is costing the country money. It is our responsibility to suggest our friends and relatives to try the mediation procedure before going to court because mediation is a straightforward, easy, cost-effective, and quick method of resolving their issues.

Nothing is truly over until it is truly over: Mediation entails discussions and negotiations, offers and counter-offers, offer correction and rectification, offer rejection and invitation to make a new offer, mediation entails brainstorming by parties and their associates, mediation entails an attempt to solve your problem yourself, and mediation entails a motivation for peace and prosperity. Mediation is a

mental exercise. The process of thought never stops till one dies. Deaf, stupid, blind, and idiotic as well as the mentally and physically disabled, think, think, and think some more.

Mediation is a procedure in which everyone tries to think positively for the benefit of all parties involved. If two litigants benefit, the society will benefit as well. Peace is the only option, but peace promotes growth. Happiness is the result of peace. Peace enhances both mental and physical capabilities. It generates wealth. As a result, the mediation procedure's cognitive process continues even before, during, and after the mediation. In the process, the mediator works as a catalyst. He does not abandon his efforts to resolve the conflict at any point. His training has taught him that even when the mediation is on the verge of failing, a single notion can breathe new life into the negotiations and help the conflict is resolved.

As the loser will continue to harbor a grudge against the winner, adjudicatory conflict resolution through litigation usually develops to bitterness, hatred, and enmity between the parties to the lies. The boasting of the victor also adds to the tension. Parties are expected to accept the court's verdict with grace in a civilized society, yet this rarely occurs.

The benefit of a negotiated settlement is that there are no victors or losers at the end of the day, and the outcome is agreeable to all. To summarize, the adjudication process kills relationships and creates permanent adversaries, whereas a negotiated settlement develops allies. It is thought that instead of resorting to arbitration, several developed countries incorporated the clause for going to mediation i.e. mediation taking the place of arbitration, is included in the contract.

As a result, it is expected that India, as a result of the modifications, will become a center for international commercial arbitration. While mediation has been widely embraced in Western countries, only a small percentage of the Indian populace is aware of it. The public's awareness plays a critical role in expanding the benefits of this effective distribution technique. There is a lack of effort on the side of the government or anyone else in these instances to take up the cause of motivating and educating the general public. This issue of reaching out to the public is rarely addressed by court-assisted mediation facilities. The Malimath Commission's advice did address some parts of the opening up of various justice delivery channels, which

have a significant impact on settling and reducing disputes amongst ordinary people. This is to maintain the institution's good reputation, which is necessary for its survival.

The success of the Mediation Centre would inevitably follow the success of the mediators in whom the people can put their trust when it comes to resolving disputes. The Mediator should be chosen by consensus from the local community in which he will be serving. It would be ideal to have an elder who the people of the community trust as a mediator. The sole purpose of such mediators is to help the parties in reaching an agreement. He should act as a neutral, neither imposing conditions nor making observations on the disagreement in front of him. In the first instance the Mediation Centre and the Mediators selected shall go about to various localities to locate instances that need to be resolved. This can be accomplished by a socio-legal survey that identifies current and potential conflicts. Based on the results, the Mediators will decide to settle the disagreement through mediation with the cooperation of the parties involved. Because this is a community-based procedure, the communities' consent and encouragement are crucial to the mediation's success. Any attempts by the community to avoid or avoid turning to Mediation to settle disagreements should be dealt with respectfully.

Until now, alternative dispute resolution was only used by organizations and institutions in the insurance, banking, and trade communities, among other fields. It is necessary to encourage and provide mandatory arrangements for ADR in particular. The term "mediation" should be used as a nomenclature. Population awareness must be addressed at the general public, with extensive coverage in various media. For this great concept to work, the entire community must be involved. To do this, people or community-based projects must be identified in the community who are willing to champion the cause of popularizing mediation among households. There may be collaboration with efforts like Kudumbhashree, which has had a lot of success in Kerala. This would go a long way toward bringing social harmony to India through alternative dispute resolution, particularly mediation oriented at society development.

As a strategist, the mediator is constantly ready and able to adapt the mediation process to what is actually happening between the parties on the day the mediation is taking place. Mediation's success is always contingent on goodwill and a willingness

to work out differences. Its informal and voluntary nature allows parties to assess their progress in resolving their disagreement and to depart an ineffective exercise; litigants and arbitrators do not have this opportunity. Regardless of the limitations that limit mediation's effectiveness, it remains a powerful weapon in the hands of participating institutions for devising a mutually acceptable and viable debt re-scheduling in potentially tense situations.

Mediation, on the whole, works well, and human dedication and involvement in finding solutions may be more beneficial than court mandates. Despite the fact that there is no specific qualification to be a mediator, many different groups are becoming involved in the development of mediation, partially by setting up services themselves and partially by attempting to influence how the entire field is formalized and taken over by professionals. Some say that, because of their training and adversarial mentality, attorneys are not the best candidates to be mediators, and that mediators should be drawn from the caring/facilitating professions, which have training more equivalent to what is required in mediation. Although there are no standard qualifications for acting as a mediator, many organizations now require that those who function as mediators have completed some sort of training programme. Formal credentials and professionalization in this field of work are unquestionably on the way which has its advantages and disadvantages.

Codes of conduct and ethical guidelines are on their way... When innocent victims are unaware that options like as mediation and conciliation exist within the legal framework, it is heartbreaking. For example an unwitting housewife may be unaware that she can seek the services of an arbitrator or mediator to resolve a conflict outside of court. Many individuals are unaware that, under the Constitution, a Court of Law's proceedings and judgments are directed towards the fair execution of its law, and that it is the government's responsibility to supply a lawyer in the event that one does not have one or does not know how to obtain one. Even the existence of Consumer Courts, as well as how to contact them, is not widely known.

A facilitated negotiation is what mediation is. The moderator, master of ceremonies, evaluator, questioner, persuader, and dealmaker are all roles that a mediator can play. Mediation is the ideal alternative to litigation for overcoming legal difficulties, a burdensome legal system, huge expenditures, and also as a technique for relieving the

courts of their case backlog. Mediation has numerous benefits, while the drawbacks are few. So let us hope that the years ahead will be filled with mediation rather than litigation. Legal luminaries have been issuing periodic wake-up calls to the legal profession to address the monumental challenge of dealing with increasing arrears, which has resulted in massive pendency. It is past time for us to address the docket crisis in our country, which now has over three crore cases awaiting adjudication. Many prominent people have proposed various remedies to the colossal problem of unresolved court cases. They are all in agreement that, in order to maintain the rule of law, this issue must be accorded top national importance. Alternative conflict resolution measures have been proposed by a few. A national initiative is needed to promote this alternative conflict resolution system. It is past time for us to heed the jurist's advice, lest we grieve, in the words of French thinker Andre Gide Everything has been stated before, but no one listens, so we must constantly begin again. Legal luminaries have been issuing periodic wake-up calls to the legal profession in order to deal with the monumental challenge of dealing with increasing arrears, which has resulted in massive pendency.

When attempted before litigation in marriage matters, matrimonial counseling produces better results. Pre–litigation therapy occurs before polarization occurs. The accusations leveled against each other are frequently ambiguous at this point. The parties are more likely to forgive and forget at this time. They are perhaps more hopeful of a solution at this point, and so willing to make more sacrifices and modifications. The desire to be sharp and focused when the litigation begins causes the parties to be acute in their allegations, which are frequently exaggerated. False stories are woven into the petitions to make them appear more believable, resulting in increased hatred. The exchange of pleadings frequently leads to the parties reaching a point of no return. As a result, every attempt should be done as a plan before the case really begins. As a result, at all access points, a check must be performed to prevent additional litigation as a result of post–litigation issues.

Litigations for maintenance and police reports are the earliest indicators of a marriage disagreement. The police must approach the situation with tact, wisdom, and patience. The treatment of marriage conflicts that are classified as crimes under Section 498 A of the Indian Penal Code, 1860, must be handled differently. The accused in these circumstances cannot be treated the same as those charged with theft, dacoit, or

cheating. The defendants are not criminals in the usual sense. If the investigating officer can determine how much of the complaint is factual and how much is exaggeration, he may be able to play a key part in preventing the litigation from growing. On the other hand, if he uses the same rod that he was given for dealing with other offenders to deal with the parties in a marriage dispute, he could make a huge problem. It is at this point that the parties should be advised to be more patient in their pursuit of their cases without jeopardizing their separate claims. The counseling centre linked to the Delhi Police's Crime against Women Cell is doing its part. Although there is need for improvement and much has been made about their efficiency, their contribution should not be overlooked totally.

Court-annexed mediation should be made a requirement in all civil cases, whether they are for maintenance or divorce, under section 125 of the Code of Criminal Procedure, 1973. For the time being, magistrates are attempting to reach an agreement in the narrow realm of maintenance on their own. The courts that deal with criminal cases under Section 498 A try to reach a comprehensive settlement on their own. The matrimonial courts share this sentiment. Due to the judicial officer's limited time, it is always thought that the task of counseling/mediation at various levels should be handled by a trained counselor or mediator. The fundamental difference between a police officer, a judge, and a mediator/counselor is that a police officer is trained to frame or prove a charge, a judge is trained to focus on right or wrongdoing and a mediator/counselor is trained to focus on restoring equilibrium while remaining nonjudgmental throughout. The mediator must resist the urge to disparage or elevate one party above the other.

As previously said, the marriage mediator/counselor's initial responsibility is to diagnose the problem. Following the diagnosis, the counselor or mediator must determine whether to try to reconcile the couple or to try to separate them. Some of the aforementioned issues require an immediate separation solution. Separation, on the other hand, may not appear to be easy for the parties at times. Although society is increasingly accepting of the reality that marriages fail, the effects of divorce require a great deal of care and cannot be left to them. In such cases, the counselor's initial task is to assist the parties in reaching a decision to end the marriage. It could be simple at times, but it could also be difficult. Following that, the mediator must consider the

divorce's terms and circumstances, which may include issues such as child support, child custody, property division, and so on.

Some issues may necessitate the assistance of medical professionals, such as a psychologist or psychiatrist, a sexologist, or a doctor. These professionals may be able to assist not only in diagnosing but also in resolving issues. Similarly problems that occur as a result of circumstances necessitate situation adjustment. The parties must provide the necessary resources for such modifications. The mediator's job then becomes to assist the parties in identifying the true issue and developing solutions. Behavioral problems necessitate behavior changes, which can often be achieved with the help of a skilled mediator/counselor. The same can be said about the difficulties of constant confrontations caused by injured egos on one side or the other, or by one party being too responsive or quick-tempered.

Because the Judge's legal and social obligations require that a sincere attempt at reconciliation be made, the first part of the mediation sessions must be devoted to that effort. This necessitates patience on both the mediator's and the couple's parts. One must realize that, unlike in corporate mediation, a family mediator or counselor cannot be completely detached. Despite the fact that the parties must reach a resolution, the mediator is free to advise and even insist on a certain solution. A real mediator should have some leeway in coaxing the parties, as this type of assertive approach by a mediator has been shown to be effective in the past. What strategies will be employed in each case depends on the circumstances in each case, and there is no one-size-fits-all answer. However, once the problem has been identified, finding a solution may not be difficult. The treatment will begin automatically after the diagnosis is made. Perhaps two different techniques are required for the same type of problem in two separate circumstances. The marriage counselor's technique will be completely unique to him, based on his view of the problem and treatment preference.

Without a doubt, the practice of mediation is quickly expanding in modern times as the number of cases increases. It rapidly settles the conflict. Because the solution is not the result of a legal action, it brings friendly solutions to the dispute. However, there are still issues that arise during the mediation process. Parties must make a commitment to settle the disagreement. To begin with, the parties are unaware of the benefits of mediation and hence do not choose to use it.

The mediation proceedings are unknown to people living in remote areas. There is a lack of awareness among rural residents. Neutrality and impartiality are important aspects of the mediation process, and the phrases are frequently interchanged in mediation agreements. Despite the fact that human nature is fundamentally judging, the prevalent philosophy about mediation holds that the Mediators must be absolutely unbiased. Due to a lack of skill, using judgmental language, the mediator's bad behavior, encouraging only one party and choosing his side, and unequal opportunities, the mediator do not always act as a neutral person, resulting in bias among the parties.

Hypotheses testing:

$H0_1$: The institutional framework in India is not sufficiently catering to the dispute resolution mechanism of matrimonial issues.

The out-of-court settlement mechanisms such as arbitration, conciliation, judicial settlement including Lok Adalat settlements and mediation are various ways to deal with disputes. As per the collected data shows about 19.91% Una district and about 23.37% in Hoshiarpur district of all cases referred to mediation and conciliation are being settled. This provides substantial evidence that the process has not been quite successful in dealing with the matrimonial disputes. Further, in search of empirical evidence the data so collected from all the respondents of both the districts are analyzed. Table-1 below shows that about 40% of the respondents perceive that the framework is not sufficient to satisfy the needs of the litigants. This also portrays a firm indication that only about 20% of the respondents finds the current system to be satisfying. Which matches with the settlement rate obtained from the secondary sources of data? Since there is about another 40% of the study sample is of respondents without a clear perception, to find statistical significance of this finding, a one-tailed *z* test at 10% level of significance is performed assuming that $\geq$ 50% of the population are satisfied. The z probability is calculated using MS Excel. The computed p=2.7569E-38 is smaller than 0.1. So, the null hypothesis is accepted concluding that not even 50% of the population is considering the existing mechanism is satisfying.

So, the null hypothesis of the research that the institutional framework in India is not sufficiently catering to the dispute resolution mechanism of matrimonial issues can’t

be rejected. We may conclude that the institutional framework in India is not sufficiently catering to the dispute resolution mechanism of matrimonial issues.

Table-1 Do you believe that the current system satisfy the needs of the litigants.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	85	19.2	20.1	20.1
	No	171	38.7	40.5	60.7
	Maybe	149	33.7	35.3	96.0
	Can't Say	17	3.8	4.0	100.0
	Total	422	95.5	100.0	
Missing	System	20	4.5		
Total		442	100.0		

$H0_2$: The speedy disposal of family disputes through mediation can be increased by providing awareness to the general public.

The well-known situation awareness model by Ensley distinguishes three levels of situation awareness: 1) perception of relevant elements in the environment, 2) comprehension to understand their significance, and 3) projection towards future states of the environment. Thus, in order to make the ADRs effective it is necessary to understand the status of awareness in the society towards various aspects of the mechanism. As the awareness leads to knowledge and knowledge guides the behavior. And it's eventually the collective behavior of the society makes a system work in a particular manner. The current research asks the target audience three different segments of stakeholders of the subject matter about their perception with respect to various aspects of mediation and conciliation process. The testing of hypothesis that the speedy disposal of family disputes through mediation can be increased by providing awareness to the general public is an analysis of various secondary data and primary observation of different perceptions at various concerned segments of the society of the districts under study.

Table-2 Role*$Reason avoiding mediation Cross tabulation

		Reason for avoiding mediation[a]						Total
		Tired of similar means	**Instigation from others**	**Revengefulness**	**Lack of belief**	**Ego issues**	**N/A**	
Role	Judge	1	1	3	1	5	11	22
	Mediator/ Advocate	9	11	16	49	37	119	241
Total		10	12	19	50	42	130	263
Percentage		**3.80%**	4.56%	7.22%	**19.01%**	15.97%	**49.43%**	

Table-2 portrays how the legal professionals perceive about why litigants avoid mediation. Combining responses to Tired of similar means and Lack of belief there is a distinctive pattern that may be deducted. 23 % of total of 263 multiple responses from the professionals believe that it is not due to lack of awareness that make them to avoid mediation rather they consider mediation as one of the similar failed methods earlier tried by them and they don't have the confidence on the system that their dispute will be settled in a very efficient and effective manner. **This also shows even about 50% of the professional respondents found to have belief that there is no avoidance by the litigants in the first place. Similarly, in the table below the primary data shows that about 73% of the total 222 responses found to be aware of the Mediation and Conciliation.**

Table-3

	Have you heard about Mediation and Conciliation?			**Total**
	Yes	**No**	**May be**	
Total	163	32	27	222
Percentage	73%	14%	12%	100%

Evidence is shown in the table below, which depicts that not only the litigants and general public are aware of Mediation and Conciliation but also, they are (58%) more inclined to have their disputes resolved by this method.

Table-4

	Would you like to resolve your matrimonial disputes through mediation and conciliation			Total
	Yes	No	May be	
Total	129	22	71	222
Percentage	58%	10%	32%	100%

The data in table below provides more insights as the majority of respondents (42%) found to have awareness and knowledge about the process of mediation and conciliation in the matrimonial matters.

Table-5

	Do you know the process of mediation and conciliation in the matrimonial matters?			Total
	Yes	No	Can't Say	
Total	93	64	65	222
Percentage	42%	29%	29%	100%

The Advocates and Mediators responses also reveal that Literacy/Lack of awareness of parties is not one of the obstacles of handling matrimonial matters. In this regard only about 2% (not substantial) of respondents (6 out of 247) indicate that lack of awareness of parties is one of the obstacles.

Table-6 Role*$Reason Cross tabulation

			Reason of failure[a]							Total
			N/A	Lack of Awareness	Attitude & Behavior of Parties	Workload in courts	Lack of Enforceability	Distrust on the system	Not under the same roof	
Role	Judge	Count	9	5	4	1	1	1	0	21
	Mediator/ Advocate	Count	153	4	31	0	16	15	9	228
Total		Count	162	9	35	1	17	16	9	249

In **Table-6** out of 249 multiple responses given by the professionals only 9 (3.6% approx.) have indicated the lack of awareness is one of the reasons of failure of mediation in matrimonial disputes.

In the light of all evidences of the study it may be concluded that the hypothesis is rejected concluding that the speedy disposal of family disputes through mediation can't be increased by providing awareness to the general public. Thus the system must work on other factors that are substantial in influencing the success or failure of the mediation process.

Suggestions and Recommendations

1. Mediation is a dynamic, complicated, and growing process that is still in its formative years in India. It requires ongoing evaluation and updating in order for people to have faith in it.

2. There is currently, no process or statutory provision in place to govern the enforceability of a mediation result, even though parties are free to go to court after the procedures if they are not satisfied with the settlement. This negates the fundamental goal of mediation, which is to provide a quick and cost-effective resolution of disputes, non-enforceability causes additional time and money to be spent during the mediation process, as well as in subsequent court processes. As a result, there is a for an effective system for enforcing decision, which must have a binding effect on the parties and also prohibit the parties from arguing in court on the same cause of disputes.

3. The court-administered mediation has grown in popularity and trust among the parties involved. Court reference is the first stage in court-administered mediation. Courts must take the initiative in referring them to mediation centers. At the outset of the mediation process, it is the court that instills a sense of trust in the litigants by appropriately guiding them. As a result, in order for the court-annexed mediation to be successful, the courts must take a more active role. The number of times the court refers to the mediation centers should be raised. There should be no need to set targets for the court reference because the references should be so genuine. The cases that are sent to mediation centers must be appropriate and suitable for mediation. There must be no legal impediment to the mutual settlement of issues.

4. In court annexed mediation the mediator needs to have 15 years' experience which is too long. Nowadays, younger minds are so brilliant if the quality training is provided to younger mind, they can be a good mediator.

5. Increased backlogs, pending cases, and an insufficient number of mediators at these centers reveal administrative flaws that must be remedied. Mediation is meant to be a quick alternative to traditional dispute resolution, thus it's critical that the infrastructure and administrative facilities at these centers keep up with the growing number of referrals so that backlogs and delays don't become systemic problems. Nowadays, infrastructure is a big hindrance for the smooth functioning of mediation at district level. Parties feel uncomfortable sitting in open room to discuss their personal issue. So, to increase the success rate of mediation is only possible with better infrastructure.

6. The increased demand for mediator will spur the need for strong mediator training programmers. In order for mediation to grow, well trained, strong mediator who can mediate effectively online as well as face to face are an essential focus for next coming years.

7. Every lawyer must practice as a mediator during their career to develop a fresh approach towards mediation and conciliation.

8. In our legal system especially in alternative dispute resolution mediator's opinion should be considered by the parties as well as by the courts if it does so then the parties would not have to approach the courts otherwise this mechanism has no worth in spite of this if cases go for courts decisions.

9. The process of mediation and conciliation should be reached to every corner of our nation, it should be approachable to all, and people should make aware about the advantages of this process.

10. A person selected as a mediator should not be allowed to practice. This is due to the fact that the lawyer cannot show his sincerity to both at a time: to practice and to mediation. So, mediation should be developed as a separate professional identity.

11. Nowadays, the procedure to be followed by the mediator is not specific It should be altered and make it more specific, certain and unambiguous. Otherwise there arises the problem of bias towards a particular party by the mediator. It will destroy the very foundation of mediation. So, there should be a standard and responsive system of handling the complaint where there are allegations of unusual mediator behavior.

12. Live demonstration can be provided to trainees. This will give opportunity to trainee to sit with senior mediator and watch and gain the knowledge and skills.

13. There must be regular audit of court annexed mediation centers with regards to the number of cases referred and resolved in a particular center.

14. More focused system will need to be established at national and international level to monitor and maintain the quality of profession.

15. Alternative Dispute Resolution processes in India are governed by Arbitration and Conciliation Act 1996. Unfortunately, mediation is not covered under this Act. The lack of standalone legislation on mediation that protects the fundamentals concepts of Confidentiality, Voluntariness and self-determination as well as gives enforceability to a mediated settlement agreement has stood in the way of mediation gaining the necessary confidence. The growth of private mediation has also been impacted by the lack of strong legislation giving legal validity and enforceability to a mediated settlement agreement.

16. Most of the mediators have identified themselves as advocates and during the mediation process, they forget about their designated neutral role as mediator. This also shows that mediators may be very often transgressing limits. To be aware of these fact necessary and sufficient steps need to be taken to see that mediators do not forget their designated neutral role as mediator.

17. Despite several attempts has been made in recent past years to spread consciousness awareness about mediation and its inclusion as a part of legal education, curriculum knowledge of mediation is solely lacking among the masses. Which do not sub serve the very basis of its origin. Even the parties

are aware of mediation a major threat is the lack of incentives for them to endeavor mediation.

18. A mediator's qualification should be changed; who is to be appointed as a mediator must have knowledge of social customs, religious sentiments, psychological insight, and the ability to determine the rights and liabilities of the parties in a socio- economic context. A mediator must also be sensitive enough to understand the emotions of the parties before him and be able to diffuse tensions between parties. There must be specific framework in place for the appointments of the mediators, as well as appropriate training for them to cope with any situation that may emerge.

19. There is also need of sending writs for mediation and that would also decrease huge amount of pendency.

20. Awareness of Pre litigation mediation is the Key. Apart from matrimonial cases where some amount of Pre-litigation Mediation happens, it is to be pushed for civil cases as well. Until this option is not promoted Pre-Litigation remains in letter and not in spirit. Considering advocates themselves are not aware of this option. Let alone parties having a knowledge of such an option being available.

21. There is a scarcity of trained mediators in district-level mediation centers. If there aren't enough mediators at mediation centers, the scenario will be similar to traditional courts in terms of judge-to-population ratio. The referral cases are also causing the mediation centers to become overburdened. This problem is only becoming worse because there are fewer mediators. As a result, the number of mediators appointed should be raised in light of the rising number of referrals in a given district.

22. Academics in law schools should include mediation training. 'ADR' is commonly seen as a part optional subject. Furthermore, when teaching 'Alternative Dispute Resolution,' only the most important aspects of arbitration are presented, and the concept of 'conciliation' is given second priority. It should ensure that mediation is included in the curriculum so that law students gain an understanding of how to reach amicable agreements in legal disputes. The foundation courses should lay the groundwork for the alternative conflict

resolution system that is now in use at the national level. Students from legal schools should be allowed to visit mediation centers. The visits will serve their own educational purpose and will give dedicated mediators with a specific mindset.

23. On a priority basis, the mediators' ethics must be strengthened. Mediators must remember that they are facilitators in the mediation process and must do all possible to help the parties resolve their disagreement. The mediator's role differs from that of the judges. Mediators, like judges, do not have the authority to rule on a case, but they can make a significant contribution to the legal system. They are merely facilitators, and they should act as such. During the research, it was also discovered that some lawyers are unwilling to transfer their clients to mediation centers in order to avoid losing them. This is a significant ethical concern. These are the types of errors that mediators should avoid. Sincerity and quality are both important factors. Sincerity and high-quality work will win you a name and a reputation. Although a mediator's misconduct may be dealt with under the Advocates Act, 1961, the associated provisions should be clearly included under the regulations and should be a part of the mediators' training modules. Ethics are critical in every sector that seeks to earn the public's respect and trust. As a result, this issue must be addressed first.

24. A law student's course should include mediation practice. Mediation moots can be organized by several law schools in addition to law school moot courts. Law students will learn the tactics and talents of mediators through national competitions in mediation moots.

25. To resolve the diverse nature of disputes and thus reduce case congestion in the courts, the government should develop legislative measures that will assist in the adoption of policies for alternative methods of dispute resolution, such as negotiation, conciliation, arbitration, mediation, and peaceful demonstration. To reduce the risk of court matters taking longer to resolve, the Chief Justice should hire more lawyers and judges. Police misconduct should be avoided by appointing attorneys and advocates as prosecutors.

26. The judiciary should take a more active role in encouraging mediation on an institutional level. Apart from regular training and sensitization programmers for judges and lawyers regarding the mediation process, the court must also work with governments to improve the spread of mediation information.

27. In India, the bulk of litigants are from the middle and lower classes. If mediation is established as a dependable mode of redress, they will feel enormous comfort. It goes without saying that this will result in a significant reduction in the number of cases reaching ordinary courts. The legal system will be more efficient as a result of such a scenario.

28. Mediation could be made widely available to the general public and used as an instrument of social justice, and it should be used to resolve all disagreements.

29. Separate and specific awareness activities should be conducted to promote mediation. Mediation is now a well-developed concept with distinct characteristics that should not be confused with other methods such as free legal assistance, Lok Adalat, or other forms of dispute resolution. The general public and litigants should have a thorough understanding of how mediation works. The main roadblock to mediation's effectiveness was a lack of awareness of the true knowledge of mediation. People should be aware that before going to court, they have the option of going to pre-litigation mediation. A positive attitude might work wonders in the legal arena, ushering in a new era of peaceful legal resolutions.

30. Courts need to encourage pre-litigative conciliation and Court annexed mediation in cases instituted in Court;

31. According to the nature of each case, attractive remunerations for mediators should be paid.

32. There is no distinct law in India that deals with mediation. Legislators must devise a comprehensive strategy for enacting a mediation statute.

33. A uniform programme with data for connecting all Mediation Centers around the country with the Mediation Conciliation Project Committee and State Mediation Centers be developed, which would benefit in future planning.

34. Advocates' engagement is required to encourage advocates, especially in post-litigation mediation. To make the mediation process more successful, motivation is required in this regard. An action plan is required for the awareness campaign, which should include Advocates in order for them to understand the advantages of mediation. Many advocates believe that the number of civil cases is decreasing, and that some courts do not have many civil cases, therefore mediation may rob them of their livelihood. In this situation, it is vital to raise awareness by informing them that early resolution favors civil litigation. Referral judges should meet frequently, and they should be informed on the importance of identifying the issues for the purpose of mediation, rather than mechanically referring the matter to mediation, which would waste valuable mediation time and court time. This sense of awareness must be instilled in the legal profession as soon as possible by encouraging discourse within the profession and between professional and non-professional organizations. A concerted effort must be made to educate members of the legal profession about the importance of mediation and the unique obligations that the mediatory process imposes on them.

35. To produce justice through mediation, there is a need for more bolster/group effort between the Bar and the Bench. The edifice of faith and trust was erected on foundations provided by the Bench by a sensitive and provocative Bar. They empower and inspire disputants to discover peace and harmony in their lives when they work together.

36. Section 21B of Hindu marriage Act provide special provisions relating to trial and disposal of matters that has to be concluded within six months and as per appeal is concern it has to be concluded within three months, but in real time scenario this is not happening which shows gross negligence on the part of courts. This dereliction of duty on the part of court provides an edge to mediation centers so it is hour of need to integrate alternative dispute resolution especially mediation into our justice delivery system.

END NOTE

The results of this study will be helpful for the policy maker, implementing agencies & judiciary to reform, the system in a better manner. It will also be helpful to find the

ways to create a culture milieu in favour of this system. This research work opens the doors for the legal fraternity, future researchers to generate more ideas, carry forwards discussion and suggest further reforms.

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- Have proposed mediation bar in all courts," Chief Justice Bobde, (2019) gives interview to Times of India.
- Supreme Court forms Committee to draft mediation law, will send to government (2020), The Economic times.
- Chief Justice of India S.A Bobde (2020)," Time is ripe for legislation containing compulsory' pre- litigation of mediation" in Economic times.
- Chief Justice of India NV Ramana (2021), Make mediation first step to settle disputes, Times of India.

E. Acts

1. The Arbitration and Conciliation Act, 1996
2. The Industrial Dispute Act, 1947
3. The Code of Civil Procedure, 1908, Section 89
4. The Code of Criminal Procedure, 1973
5. The Family Courts Act, 1984
6. Indian Penal Code, Section 498 A
7. Indian Penal Code, Section 406
8. The Hindu Marriage Act, 1955
9. Legal Services Authorities Act, 1987

LIST OF APPENDICES

Questionnaire for Judges in District Hoshiarpur (State of Punjab) and District Una, Himachal Pradesh

1. Do you believe that litigants are more inclined to resolve their matrimonial matters through Mediation and Conciliation other than Courts?
    - Yes
    - No
    - Maybe
2. If 'No' then what are the basic reasons for avoiding the mediation and conciliation in matrimonial matters.

   Comment-
3. Do you think that mediators are fair, balanced and maintain integrity in the process of mediation and conciliation?
    - Yes
    - No
    - Maybe
4. Have you ever played a role of mediator in matrimonial disputes?
    - Yes
    - No
    - Maybe
5. Have you ever suggested parties to the matrimonial disputes to resolve it through mediation and conciliation?
    - Yes
    - No
    - Maybe
6. Do you think that the most of cases which are being referred under section 89 of Civil Procedure Court got-?
    - Settled
    - Unsettled
    - Coming back to court

7. Do you think that it is the duty of judges to encourage parties to make use of mediation and conciliation in matrimonial disputes?
    - Yes
    - No
    - Maybe
8. Whether Judiciary is really successful in resolving matrimonial matters through mediation and conciliation.
    - Yes
    - No
    - Maybe
9. If' No' then what are the reasons for the failure of mediation and conciliation in matrimonial matters.

    Comment-
10. Are there any situations where judge can overrule a mediation agreement in matrimonial matters?
    - Yes
    - No
    - Maybe
11. If 'Yes ' under what circumstances judge can overrule the mediation agreement.

    Comment-
12. Do you think with the rise in divorce cases in India, is marriage losing its significance and sacredness?
    - Yes
    - No
    - Maybe
13. Can you please explain, on average how many matrimonial disputes you preside over a year?

    Comment-
14. In K. Srinivas Rao v/s. D.A. Deepa (2013)5 SCC 226, the supreme court discussed the idea of pre- litigation mediation in context of family disputes what is the relevance of the case in today's matrimonial matters.

    Comment-

15. With your experience, what advice can you give to young married couples who are going through differences.
    - To endure until the end
    - To involve the third party
    - To come to court for the counseling
    - To divorce
16. Do you think that there should also be specific law on mediation?
    - Yes
    - No
    - Maybe

Questionnaire for Advocates /Mediators for Hoshiarpur (State of Punjab) and District Una, Himachal Pradesh

1. According to you, why litigants are bringing their matrimonial disputes before the court.
    - No remedy is better than this
    - To seek Revenge
    - Inducement from Others
    - Other Reason
2. Do you believe that the current court system satisfy the needs of the litigants?
    - Yes
    - No
    - Maybe
    - Can’t say
3. If 'No' which is the primary reason makes you feel dissatisfied.
    - Delays
    - Costs
    - Time consuming
    - All of the above
4. Have you ever suggested/or will suggest in future any of your client to resolve matrimonial disputes through the Mediation and Conciliation?
    - Yes
    - No
    - Maybe

5. If 'Yes' how your client has reacted to your suggestion.
    - Willing to take part in Mediation and Conciliation
    - Unwilling to take part in Mediation and Conciliation
6. A person in legal fraternity. Have you taken any form of training in regards to mediation and conciliation?
    - Yes
    - No
7. According to your expertise are there any topics that couples usually avoid to discuss in mediation and conciliation.
    - Yes
    - No
    - Maybe
8. As per your belief, what skill do you need to be good mediator?
    - Friendly
    - Good listener
    - Empathy
    - All of the above
9. Do you think that mediation and conciliation is effective enough where spouses are not under the same roof or on talking terms?
    - Yes
    - No
    - Maybe
10. If 'No' then what is the basic reason in such situation. Comment.
    Short answer-

11. How long does mediation and conciliation in matrimonial typically take?
    - Three Months
    - Six Months
    - More than Six Months
12. Do you think mediation and conciliation actually reduce the domestic violence case?
    - Yes
    - No
    - Maybe

13. How do you see mediation and conciliation in matrimonial disputes particularly in Punjab?
    - Are the people accepting it?
    - Are they simply don't trust the process?
    - Can’t Say
14. Do you think that the trial court is in favor of ADR referral under section 89 of Civil Procedure Code?
    - Yes
    - No
    - Maybe
15. Do you think that parties to matrimonial disputes are fairly participate in process of mediation and conciliation?
    - Yes
    - No
    - Can’t Say
16. If ' No' then what should be basic reason for avoiding the process of mediation and conciliation Comment.

    Short Answer-

17. How much mediation will cost. Do your services include the preparation of filing of all court documents?

    Short Answer-

18. What type of obstacles being faced by you as mediator while handling the matrimonial matters?

    Short Answer-

19. How would you describe your mediation style?

    Short Answer-

20. Do the parties have right to file an appeal against mediator's decision.
    - Yes
    - No
    - Maybe

Questionnaire for General Public/Litigants for Hoshiarpur (State of Punjab) and Una (State of Himachal Pradesh)

1. What comes first in your mind when you think about litigation in traditional courts?
    - Time consuming
    - Unnecessary Delay
    - Costly
    - Unnecessary Harassment
    - Speedy Justice
2. How do you prefer to resolve your matrimonial disputes ?
    - Through Family
    - Through Courts
    - Through Alternative Dispute Resolution
    - Other Institutions, if any
3. If "Courts "are you satisfied with this system?
    - Yes
    - No
    - Maybe
4. If you have previously submitted a matrimonial case to court, how long did the entire process take to be resolve?
    - 6 months
    - Within 1 year
    - 1-2 years
    - If more than that please specify-----
5. Have you ever heard about Alternative Dispute Resolution System?
    - Yes
    - No
    - Maybe
6. Have you heard about Mediation and Conciliation?
    - Yes
    - No
    - Maybe

7. Would you like to resolve your matrimonial disputes through mediation and conciliation?
    - Yes
    - No
    - Maybe
8. If ' Yes' what factor would influence your decision in choosing mediation and conciliation in matrimonial disputes?
    - Cost Efficient
    - Speedy disposal
    - Client friendly
    - Any other
9. Whether your advocate has suggested you to resolve your dispute through mediation and conciliation?
    - Yes
    - No
    - Maybe
10. Do you think mediation and conciliation is the best option available for married couples in District Hoshiarpur, Punjab?
    - Yes
    - No
    - Maybe
11. Do you believe that mediators are unbiased and treat both the parties equally?
    - Yes
    - No
    - Maybe
12. Do you know the process of mediation and conciliation in the matrimonial matters?
    - Yes
    - No
    - Maybe
13. if yes what type of changes you want in the process of mediation and conciliation. Comment

    Short Answer-

14. Do you think mediator is able to understand the issues between both the parties?
    - Yes
    - No
    - Maybe
15. Do you think mediation and conciliation is a fair process when it comes to matrimonial disputes?
    - Yes
    - No
    - Maybe
16. What do you think about the legal enforceability of mediation and conciliation with respect to matrimonial disputes?
    - Parties should adhere the decision of mediator
    - Parties may approach courts
    - Binding in nature
    - Depends upon parties' discretion
17. Do you think that the parties feel free to discuss their personal issues in front of mediator?
    - Yes
    - No
    - Maybe
18. What are the psychological benefits of mediation and conciliation in matrimonial matters?
    - Relief from stress
    - More confidential
    - Win Win situation
    - All of above
19. Are you satisfied with the role of mediator in settlement of matrimonial disputes in Hoshiarpur? Punjab.
    - Yes
    - No
    - Maybe

20. Please indicate which of the following statements are more important to you with respect to mediation and conciliation in matrimonial matters.
    - a big win even if i have to wait a few years
    - Financial satisfaction
    - Emotional satisfaction
    - Ending the conflict and dispute quickly