

Role of Mediation centers in dealing with domestic disputes

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in

Sociology

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Declaration

I hereby declare that thesis entitled “ROLE OF MEDIATION CENTERS IN DEALING WITH DOMESTIC DISPUTES” submitted for Ph.D in Sociology, Degree to Department of Sociology, Lovely Professional University is entirely original work and all ideas and references have been duly acknowledged. The research work has not been formed the basis for the award of any other degree.

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Declaration

This is to certify that Mrs. Simarpreet has completed the Ph.D sociology titled “ROLE OF MEDIATION CENTERS IN DEALING WITH DOMESTIC DISPUTES” under my guidance and supervision. To the best of my knowledge, the present work is the result of his original investigation and study. No part of this thesis has ever been submitted for any other degree or diploma. The thesis is fit for the submission for the partial fulfillment of the condition for the award of degree of Ph.D. in Sociology.

Signature of Supervisor

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Simarpreet

ABSTRACT

Mediation is a process of focused and systematic discussions conducted by a neutral third party with his or her unique communication skills and negotiation strategies. According to Christopher W. Moore, “Mediation is actually a conversation that involves a third party who has knowledge of effective negotiation processes and can help conflicting people to coordinate their activities and work effectively in their negotiations. Mediation is an extension of the negotiation process because it involves moving the discussion to a new format and using a mediator that provides new flexibility and strength to the opponent's performance.”

The mediation process is voluntary because the parties have a final say on the option that their dispute can be resolved through mediation. And they reserve the right to set standards for the settlement of disputes. Whether the dispute needs to be resolved through arbitration under the contract or by law or if the court has appealed the arbitration, the parties have the right to decide whether the dispute is resolved and the time for settlement. Redressal of dispute by mediation process therefore results in a settlement made by the parties themselves and is therefore acceptable to them. Any party has the right to withdraw from the mediation process, at any stage and without giving a reason, before its expiration. The parties directly and actively participate in the mediation process to resolve their dispute. They play an important role and are actively encouraged to explain the origins of the dispute, identify sub-issues and interests, offer consensus options and make a final decision regarding the settlement. Mediation is therefore a group-based negotiation process.

The mediation process itself is a systematic and formalized process with stages that can clearly identify, and the level of flexibility. The mediation process is not systematic in nature which means that this dispute resolution process is not governed by the rules of evidence and procedure. But at the same time it is not an

uncommon process, because as mentioned above, it has categories that can be identified.

Mediation is largely focused on the facts, the law and the underlying causes of conflict involving the interests of subordinate parties. Such group interests may be personal, commercial or social and may be related to family or community.

Arbitration centers assist in dispute resolution and mediation benefits are as follows:

- (a) In mediation the parties directly participate in the negotiations.
- (b) The parties regulate the arbitration. They have the right to decide whether to resolve the dispute or the terms of their settlement.
- (c) The mediation process is faster, more efficient and less expensive.
- (d) The procedure is performed in an orderly, friendly and conducive \ environment.
- (e) Confidentiality of mediation process.
- (f) The mediation process facilitates better and more effective communication between the parties.
- (g) Mediation helps to maintain, develop and restore relationships between organizations.
- (h) The arbitration process is voluntary because the parties are free to choose to withdraw from any category. If any party feels that the mediation process does not help, they may choose to opt out of it.
- (i) Profitable compensation is achieved through mediation.

- (j) The arbitration process always takes into account the long-term and interests of the parties at each stage of the dispute resolution process.
- (k) In the case of a court proceeding to arbitrate an appeal, a refund of court fees is permitted in terms of the rules.

1. DOMESTIC VIOLENCE AND ROLE OF MEDIATION CENTERS

Marriage is a community-based relationship between people in what is intended to be a strong, lasting relationship. It is the foundation of the family and the institution, defined by six social functions: sexual behavior control, reproduction, child rearing and protection, entertainment, production, exploitation, and the transfer of racially-assigned positions. Marriage and family depend on many beliefs, the most important of which is relationships. Marriage is not just a social event but also a legal commitment. The basis of a living marriage is tolerance, adjustment, and mutual respect. Tolerance of each other's faults to some degree must be present in each marriage. Life has great differences between individuals, groups, and nations. There are cultural differences, personality differences, differences of opinion and differences of status. Unresolved differences lead to disagreements. Disagreements can lead to problems. Unresolved disagreements become controversial. Unresolved disputes become conflicts. An argument that arises between couples in a marriage is known as a marital dispute. . The family as a small unit of a large community is often subject to repeated attacks of extinction, separation from all forms of conflict. The rapidly changing and social and family environment has embarked on new challenges, especially for the new generation such as the growing instability, the changing roles of husband and wife and the instability of rapid life. All of this has resulted in a lack of understanding between married people. The divorce rate in the world is alarming and is geometrically calculated. Stick weddings need help and attention. They are limp and require intensive treatment. Family or marital disputes were considered very

serious as an area that could be left out of the law or the opposing law of the current legal system which in its nature involved a lot of fraud on each side. Prosecution regarding family disputes requires a special approach.¹

Mediation has emerged as the most widely accepted way to resolve marital disputes. The problem arises when these include cases of domestic violence. While using mediation to resolve disputes of this nature, there are two opposing views in society. Proponents of her case have been working to make the actual transcript of this statement available online especially children in the face of the trauma of a traumatic process that tends to cling to a common divorce and provide immediate justice. While the critics of the mediation say the mediation does not work as the perpetrator escapes without being punished with formal State instruments. There are many benefits associated with mediating marital affairs such as confidentiality, cost effectiveness, illegal procedures, administrative power, complete freedom of parties to reject the result, compromise, etc. The most interesting and important thing is that it follows the goal of timely justice.² With reference to domestic violence cases, Section 12 of the Protection of Women from Domestic Violence Act, 2005 clearly lays down that a magistrate must dispose of a case under this Act within 60 days. However, this provision is rarely complied with. An Advocate, Dinesh Sharma stated, Cases of such nature are never wrapped up in the 60 days period unless parties reach a compromise.

The main reason for this delayed justice is the judge-population rate in India. According to the Law Commission Report, there are only 17 judges per million people compared to 107 in the USA per 1 million people. Justice V.V. Rao said, It could take 320 years for Indian law enforcement to clear millions of pending cases. Given the current state of the Indian courts, it would not be wrong

¹ Dastane NG, Dastane S. Modern Hindu Law. In: Nagpal RC, editor. Lucknow: Eastern Book Company; 2011. p. S337. 1975; 2 SCC 326

² Sharma I. Varanasi: Banaras Hindu University; 2009. Study of the Social and Legal Issues in Married Female Psychiatric Patients. PhD Thesis.

to assume that other dispute resolution mechanisms such as mediation could be an effective way for parties to seek independence.

The use of mediation in India is promulgated under the Mediation and Reconciliation Act, 1996 and the Code of Civil Procedure, 1908 (CPC). Section 30 of the Arbitration and Arbitration Act states that the Arbitral Tribunal may use arbitration to promote the resolution of disputes. Section 89 CPC states that courts may refer parties to a resolution if there appears to be a specific solution. As not to be included in the article, this Code only deals with public matters.³

2. RESEARCH METHODOLOGY

For the current study, the descriptive method of research was employed to study the views of victims of domestic violence and views of mediators working in mediation centers dealing with the problem of domestic violence. The study is conducted in the mediation centers of Tri City which are located in judicial courts of Chandigarh, Mohali & Panchkula .

The sample was comprised of the mediators who are working in mediation centers situated in Chandigarh, Mohali and Panchkula district courts and also victims of domestic violence who came to these mediation centers for their problems in relation to domestic violence. 70 mediators working in mediation centers in Tri-City are selected for purpose of the study to know their views about dealing of cases in relation to domestic violence were selected randomly. 200 victims of domestic violence who came to mediation centers for their problems of domestic violence were taken to know the nature of problems which are facing by the victims. So, the technique of sampling was random sampling.

³ Nambi S. Marriage, mental health and the Indian Legislation. Presidential address. Indian J Psychiatry. 2005;47:3-14

3. SCOPE OF THE STUDY

The objective which mediation sought to achieve is the reduction of disputes between the parties; but nevertheless, domestic abuse is quite a complex problem which is related with power and control. Mediation makes the assumption that both the parties stand on an equal footing, but in domestic violence cases the abuser tremendously more powerful than the victim. There cannot be a remedial of the disparity of power which is present between the parties in spite of the skills of the mediator, even in cases where the victim is assisted by an advocate or attorney. At the time of the mediation, the abusing party can easily take control of the victim by way of using of signals which are known only to the couple. In addition to it, if there exists a long history of domestic violence, then the victim is most of the times scared and unwilling in voicing her apprehensions.

The focus of the mediation is on the future behaviour, and most of the mediators do not give allowance to the victim to refer to the past matters of violence. The present study entitled "Role of Mediation Centers in Dealing with Domestic Disputes" will highlight the role of mediation centers in dealing domestic disputes for domestic violence against women in India.

4. PURPOSE OF THE STUDY

Our society has been largely plagued by the issue of domestic violence is, and it affects nearly fifty percent of all the heterosexual relationships; approximately twenty five percent of all women partnered with men are subjected to regular beatings. Roughly 95% of all domestic assaults in heterosexual relationships comprise of husbands beating their wives. The socialization of males in their cultures is done in such a way so as to have an expectation in their mind to gain control, especially in their relationships with women. Man most of the time sees the family as his private world which he can take control of in whichever way he deems fit.

The question which arises is that whether Mediation is an effective method to settle the disputes which are related to domestic violence? A number of scholars are of the belief that domestic violence cases come under the definition of disputes which can and should be addressed with mediation. It is believed by a number of practitioners that although the issues related to violence cannot be mediated upon but they can mediate upon all the other issues, like custody, visitation and property settlement. The supporters of the use of mediation say that mediation is one tool among many, the use of which may be made, that mediation gives encouragement to cooperation instead of litigation, community building instead of adversarial proceedings, empowerment instead of being made spectators in a court process. In short that it is restorative justice, instead of retribution justice. Thus, mediation centers can play an important role in the handling of domestic violence cases which will be represent in the present study.

5. OBJECTIVES OF THE STUDY

The main objectives of this study were :

- 1) To study the role of Mediation in handling domestic violence disputes.
- 2) To review the problems of victims of domestic violence who are taking help of mediators in particular area.
- 3) To analyze the reviews of officials regarding domestic disputes cases by handling through mediation centers
- 4) To suggest the measures for improving the working of mediation centers.

7. CONTRIBUTION FOR FUTURE RESEARCH

As it is well known that self-determination is the basic concept of mediation and the mediation process is voluntary. It is unorganized and focused on the future and the result is an acceptable agreement. Scope of Mediation is very promising in India by bringing equitable governance and a sense of justice and justice to society, mediation skills, especially non-discriminatory communication skills and

influential negotiation strategies to be included. Mediation builds power and at the same time promotes culture by providing conflict resolution to society. It helps to advance the resolution of the foundation between the organizations. At the same time, such a process brings about a dynamic and complete solution that is more and more appropriate, accordingly. Thus, the present study will throw the light on the concept of Mediation with various aspects and its effect on the violence against women suffering from marital problems or victims who came to mediation centers for help.

The prevalence of domestic violence in India especially against women is a cause of concern not only for society as a whole but also for the courts of law, upon whom the responsibility is cast to deliver justice in these cases. The excessive burden on the courts may be relieved through the use of alternative dispute resolution mechanisms such as mediation; however, this raises the question as to the concerns of using mediation in resolving domestic violence cases. Mediation can be a worthwhile and viable option when important relationships are in jeopardy (colleagues, employee / employer, clients, family and neighbours). Communication breakdown is frequently at the root of many relationship conflicts. Mediation can help people to openly and respectfully discuss their differences, look at the situation objectively and to try to understand the other person's perspective. This can lead to lasting, long-term solutions which meet the needs of the parties, usually at a fraction of the time and cost associated with more formal processes.”

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CHAPTER 1

INTRODUCTION

Mediation is a branch of the Alternative Dispute Resolution system that has become popular with time. In fact, the need to set up a separate Dispute Resolution mechanism has been widely appreciated in order to help the courts dispose of the other cases pending before them. Mediation as a tool for Alternative Dispute Resolution (hereinafter referred to as 'ADR') has been very successful since ancient times. Recognition of mediation for resolving matters can be found in the Phoenician and Babylonian commerce.⁴ Romans also recognized Mediation in Justinian Digest in 530-33 BC.⁵ These days, in some countries, especially in the USA, most cases are resolved through one of the mediation processes. From practical experience as a lawyer and arbitrator trainer, it has been seen by the researcher that the mediation institutions closely resemble, to some extent, the ancient dispute resolution system in which a mediator, an expert, manages a process similar to Salus in the traditional Indian civilization and the Panches system in the Indian Panchayati Raj.⁶ But unlike the old system, mediation has the sanction and authority of the law of the land.

Mediation is a method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties in reaching a mutually agreeable solution.⁷ Apart from this, 'Mediation' is defined as a broad and general concept to include all kinds of decision-making where the parties are assisted by a neutral person, a mediator, who can not only make a binding decision for them, but also assist them in their decision-making in various ways. It can be compared to those types of dispute resolutions where the outsider is the person who makes the legal decisions of the parties, such as arbitration, adjudication, professional determination and court process.⁸ Simply put, the Mediation Center is a platform that promotes problem-solving and is against the long haul of litigation. The process of mediating is a formal

⁴ Cyril Chern, *The Commercial Mediator's Handbook* 16 (Informa Law from Roulledge, Abingdon & NY, 2015).

⁵ *Ibid.*

⁶ Mediation: Its Origin and Growth in India, *available at* : http://www.arbitrationindia.org/pdf/mediation_india.pdf. (Visited on July 04, 2019).

⁷ Bryan A. Garner, *A Dictionary of Modern Legal Usage* 1003 (8th ed.2004)

⁸ L. Boulle and M. Nestic, *Mediation skills and techniques: Triangle of Influence* 58 (Bloomsbury Professional, Heywards Heath, 2010).

discussion which managed by a facilitator having the skill, training and experience needed to help the parties in reaching a solution to their dispute. The concept of mediation has key elements such as secrecy and direct involvement of the parties, that make it effective. Mediation mechanisms are very efficient and flexible. The session can be structured in such a way that the parties believe the process in which each party sends a brief statement to the mediator. ⁹

1.1 CONCEPT OF MEDIATION

According to Christopher W. Moore, Mediation is actually a conversation that involves a third party who has the knowledge of effective negotiation processes and can help the conflicting parties in coordinating their activities and work effectively in their negotiations. Mediation is an extension of the negotiation process because it involves moving the discussion to a new format and using a mediator that provides new flexibility and strength to the opponent's performance.

The mediation process is voluntary because the parties have a final say on the option that their dispute can be resolved through mediation. And they reserve the right to set the standards for the settlement of the disputes. Whether the dispute needs to be resolved through arbitration under the contract or by law or if the court has appealed the arbitration, the parties have the right to decide whether the dispute is resolved and the time for settlement. Redressal of dispute by mediation process therefore results in a settlement made by the parties themselves and is therefore acceptable to them. Any party has the right to withdraw from the mediation process, at any stage and without giving a reason, before its expiration.

The parties directly and actively participate in the mediation process to resolve their dispute. They play an important role and are actively encouraged to explain the origins of the dispute, identify sub-issues and interests, offer consensus options and make a final decision regarding the settlement. Mediation is therefore a group-based negotiation process.

The mediation process itself is a systematic and formalized process with stages that can be clearly identified, and have a certain level of flexibility. The

⁹ Mediation: An Overview of Alternative Dispute Resolution, *available at* : http://lawcommissionofindia.nic.in/adr_conf/Mediation%20Goodin8.pdf (Visited on July 05, 2019).

mediation process is not rigid in nature which means that this dispute resolution process is not governed by the rules of evidence and procedure. But at the same time it is not an unsystematic process, because as mentioned above, it has categories that can be identified.

Mediation is largely focused on the facts, the law and the underlying causes of conflict involving the interests of the subordinate parties. Such group interests may be personal, commercial or social and may be related to family or community.

During mediation the mediator helps the parties to come up with a solution to their dispute. He does not adjudicate disputes by deciding on the parties but rather works with the parties to facilitate the resolution of disputes. The role of mediator is that of a facilitator because he/she manages the interaction between the parties, encourages communication between them and manages their disruptions and explosions to help them and motivate them to reach an acceptable solution.

Mediation is a way of negotiating a voluntary process where a third party is neutral in helping the parties to bring peace to their dispute. Parties are the focus of the mediation process and their effective and direct participation is encouraged in resolving their dispute. The purpose of mediation is to find a solution that is acceptable to all parties and that which adequately satisfies the needs, aspirations and interests of the parties. The mediator remains impartial, working in partnership with the parties to facilitate conflict resolution and as a result, the mediator uses specialized communication skills and negotiation techniques.

Mediation is a relatively secretive process by nature. The decision reached in the case of a mediator, must be made in writing and, after being signed by the parties, be submitted to a court for making it binding in nature. In case the mediation fails, the mediator's report does not state the reason for the failure but will only state that the issue has "not been resolved".

Considering the magnitude and importance of mediation and knowing that there may be a major arbitration process in resolving disputes, the Allahabad High Court took the initiative to open on October 06, 2006, the Allahabad High Court Mediation & Conciliation Center (AHCMCC). The center became operational on October 16, 2006. As an important step towards regional level action, 11 Mediation

Centers in Uttar Pradesh's Major Districts came into operation on February 01, 2009 and now Mediation Centers have been established in all District Courts across the State.

1.2 HISTORICAL BACKGROUND OF MEDIATION IN INDIA

The first detailed arbitration training was conducted in Ahmedabad in 2000 by American trainers sent by the Institute for the Study and Development of Legal Systems (ISDLS). This was followed by further training sessions conducted by the Institute for Arbitration Mediation Legal Education and Development (AMLEAD) Public Charitable Trust established by senior representatives of Ahmedabad. On July 27, 2002, the Chief Justice of India officially opened the Ahmedabad Mediation Center, which is reportedly the first mediation center run by lawyers in India. The Chief Justice of India convened a meeting of the Chief Justices of all the High Courts of India in November, 2002 in New Delhi to emphasize to them the importance of mediation and the need to implement Sec. 89 of the Code of Public Procedure. The Institute for Arbitration Mediation Legal Education and Development (AMLEAD) and the Gujarat Law Society presented, in January 2003, 30 studies for the Certificate of Intensive Training in Theory and Practice of Mediation. The Educational Foundation in India organized training sessions in Jodhpur, Hyderabad and Bombay in June 2003. The Chennai Mediation Center opened on April 9, 2005 and began operating on the premises of the Madras High Court. This was the first center of the Court-Annexed Mediation in India. Delhi Judicial Academy has organized a series of training sessions for mediators and opened a mediation center at the Academy and appointed its Deputy Director as mediator. Delhi High Court Mediation and Conciliation Center regularly organizes workshops for consultation and training sessions at Advanced Mediation Training.

The Mediation and Reconciliation Committee (MCPC) was formed by the then Chief Justice of India Mr. Justice R.C. Lahoti with order dated April 9, 2005. Mr. Justice Hon. Santosh Hegde became its first Chairman. It also consisted of other judges of the High Courts and the Supreme Court, the Attorney General and the Member Secretary of the NALSA. The Committee, in a meeting held on July 11, 2005, decided to launch a trial court in Tis Hazari. Its success led to the establishment of a mediation center in Karkardooma in 2006, and another in Rohini in 2009. Four

regional conferences were hosted by the MCPC in 2008 in Bangalore, Ranchi, Indore and Chandigarh.

The MCPC has been instrumental in developing policy issues related to mediation. The committee ruled that 40-hour training and 10 mediations were essential for a mediator. The committee is authorized to assist the Department of Justice with a mediation training program, a judge training program, an awareness program and a training program for coaches. With the above grant, the committee had until March, 2010, carried out 52 awareness programs and 52 training programs in various parts of the country. About 869 people have been trained for 40 hours. The committee is in the process of finalizing the National Mediation Plan. Efforts are also being made to coordinate its activities and to turn it into a major body of training programs in the country.

The Supreme Court of India reaffirmed the constitutional reform of the Salem Bar Association's case and appointed a committee headed by Judge Jagannadha Rao, chairman of the Indian Law Commission, to propose and amend the rules for signing, if any, new legislation and the implementation of court mediation procedures. The Law Commission prepared consultation papers on Mediation and Case Management and the Modified and Distributed Model Rules. The Supreme Court accepted the model laws and ordered the entire Supreme Court to set them up. The Indian Legal Commission organized an international conference on Arbitration, Reconciliation and Mediation in New Delhi on May 3 and 4, 2003, which was a great success. Delhi Regional Courts invited ISDLS to train their judges as mediators and to assist in establishing a court-ordered mediation center. The Delhi High Court established its own law firm that owns a mediation center. The Karnataka High Court has also established a court-based mediation center and trained its mediators with the help of ISDLS. Mediation centers have now been set up with court-martial courts in Allahabad, Lucknow, Chandigarh, Ahmedabad, Rajkot, Jamnagar, Surat and many other districts in India. ¹⁰

Court-authorized mediation is now subject to legal penalties. Court-Annexed Mediation and Conciliation Centers have now been established in several courts in

¹⁰ Law Commission Reports on various components of the Criminal Justice System.

India and courts have begun to prosecute such institutions. In Mediation-Annexed Mediation the mediation services are provided by the court as part of the same justice system as the litigation to the Court of Appeal, in which the court simply refers the matter to the arbitrator. Another aspect of court-related arbitration is that judges, lawyers and plaintiffs become involved in it, thus giving them the impression that the negotiated payment is reached by all three players in the justice delivery system. When a judge transfers a case to a court-annexed mediation service, it maintains complete control of the process, and no one feels that the system leaves the case. The judge referred the case to a mediator within the order. The same attorneys from the case keep their details and continue to represent their clients before mediators in the same setting. Parties are given the opportunity to play their part in resolving disputes. This also creates public acceptance of the process as the same long-tested court system, which has gained the public's trust due to integrity and impartiality, maintains its control and provides additional service. In court-ordered mediation, the court is the central dispute resolution center. When ADR procedures are administered by a court, at least in those cases appealed to the courts, the quest for justice may be well coordinated.¹¹

ADR services, under the control, guidance and administration of the court will have a fair and smooth acceptance. It will confirm the feeling that arbitration is consistent and not competing with the court system. The system will receive good and determined support from judges who will accept mediators as an integral part of the process. When it comes to mediation in court through a mediation service, the mediation process will be faster and more consistent. It will also encourage the speed of trial between the court and the mediator. Also, it will help to address some of the issues in mediation leaving others to be tried in appropriate cases. The court-based communication will give the impression that the court's own interest in reducing its load to a manageable level is further facilitated by mediation and therefore the reference to mediation will be a positive indication. Mediation connected to the court thus will provide an additional tool for the same system that provides continuity of the

¹¹ P.M. Bakshi, "The Obligation of Secrecy in Mediation", in P.C. Rao and William Sheffield (Eds.), *Alternative Dispute Resolution* 292 (Universal Law Publishing Company Pvt. Ltd., Delhi, 1997).

process, and above all, the court will remain the central character of the system. This will also establish a relationship between the court and the public. The popular feeling that the court is working in partnership with arbitration agencies will produce satisfactory and immediate facilities.¹²

1.3 TYPES OF MEDIATION

There are two types of mediation:

1.3.1. Court- Referred Mediation

It applies to cases pending in Court and which the Court would refer for mediation under Sec. 89 of the Code of Civil Procedure, 1908.

1.3.2. Private Mediation

In private mediation, qualified arbitrators provide their services privately, in exchange for court fees, to members of the public, members of the commercial sector and in the public sector to resolve disputes through arbitration. Private mediation may be used in connection with disputes pending before the Court and in pre-trial disputes.

1.4. THE PROCESS OF MEDIATION

Mediation is a flexible process in which the arbitrator assists the parties to negotiate a settlement of their dispute. In doing so, the mediator uses four categories of mediation work, namely, (i) Introduction and Opening Statement (ii) Joint Session (iii) Alternative Session and (iv) Closing. These stages of operation are used in a systematic and flexible manner to make the mediation process more efficient, following a predictable course.¹³

1.5 COMPOSITION OF THE MEDIATION PROCESS

The foregoing negotiation strategies and communication skills may be structured in wide variety of ways. As currently practiced in most parts of the world, mediation exhibits several definable stages; however, this does not mean that variations from this basic structure undermine the mediation process. The structure

¹² V.A. Mohta & Anoop V. Mohta, *Arbitration, Conciliation and Mediation* (Manupatra, Noida, 2nd Edn., 2008)

¹³ P.M. Bakshi, "The Obligation of Secrecy in Mediation", in P.C. Rao and William Sheffield (Eds.), *Alternative Dispute Resolution* 292 (Universal Law Publishing Company Pvt. Ltd., Delhi, 1997)

creates an efficient convention for mediators and parties to follow in multiple rehearsals; however, adjustments may be desirable, indeed even necessary in many cases. It is considered desirable to conduct a mediation in one continuous proceeding. This assumes that the primary participants have full and independent authority to settle the matter in hand. In contrasting social, economic, or bureaucratic settings, whether in family, business, or government cases, the participants may lack this full authority: the spouse has to consult his parents; the manager has to consult the CEO; the civil servant has to consult the Minister; etc.¹⁴ Those who have conducted many mediations in India report the frequent need to conduct mediations in a series of shorter sessions (in contrast to one long session). Nonetheless, it may be useful to outline the major stages of the mediation process (however differently they may be sequenced or separated): preparation, introduction, joint sessions; private caucusing; and the agreement phase.

IMPORTANCE OF MEDIATION IN SPEEDY JUSTICE

The importance of prompt justice in the success of the justice system was illustrated by the fact that when a young couple in their 20s file for divorce that lasts for 15 years when they reach adulthood and find it difficult to have another suitable partner for their choice which forces one to think there is something wrong with the system.¹⁵ There is some inherent problem in the prevalent system as the litigation attained finality after the decision of the higher courts.

In the words of Adrian Loke The court judgments may end law suits but they do not resolve the disputes and the inherent hurt marked by those decisions. The mediation can prove to be a unique tool for alternative dispute resolution process. The process of mediation as a process of negotiation where third party with his natural assistance negotiates to solve their disputes has been recognized.¹⁶

¹⁴ Justice Rao's consultation paper addresses this concern in Rule 3 of the Consultation Paper on ADR and Mediation Rules, at 1-2.

¹⁵ Relevance of Mediation to Justice Delivery System in India, *available at*: http://highcourtchd.gov.in/sub_pages/top_menu/about/events_files/NCMediationNewDelhi.pdf. (Visited on July 06, 2019).

¹⁶ Christopher W. Moore, *The Mediation Process* 237 (Jossey Bass, San Francisco, 2014).

1.6 ROLE OF MEDIATORS

Mediation is a process in which an impartial third party, a mediator, facilitates the resolution of a dispute without suggesting a solution. It is an informal and non-controversial process that aims to help opposition parties reach an acceptable solution. The role of the mediator is to remove barriers of communication, to assist in problem identification and to evaluate options and to make mutually acceptable agreements to resolve disputes. However, the final decision rests with the parties only. The mediator may not compel a party to make a decision or otherwise it would violate or infringe upon the party's right to self-determination.

1.7 FUNCTIONS OF A MEDIATOR

The functions of a mediator are to -:

(i) To facilitate the process of mediation

A mediator facilitates the process of mediation by-

- creating a conducive environment for the mediation process
- explaining the process and its ground rules
- facilitating communication between the parties using the various communication techniques
- identifying the obstacles to communication between the parties and removing them
- gathering information about the dispute
- identifying the underlying interests

(ii) To assist the parties to evaluate the case to arrive at a settlement

- helping and guiding the parties to evaluate their case through reality - testing.
- assisting the parties to evaluate the options for settlement.

1.8 QUALITIES OF A MEDIATOR

It is necessary that a mediator must possess certain basic qualities which include:

- i. complete, genuine and unconditional faith in the process of mediation and its efficacy.

- ii. ability and commitment to strive for excellence in the art of mediation by constantly updating skills and knowledge.
- iii. sensitivity, alertness and ability to perceive, appreciate and respect the needs, interests, aspirations, emotions, sentiments, frame of mind and mindset of the parties to mediation.
- iv. highest standards of honesty and integrity in conduct and behavior.
- v. neutrality, objectivity and non-judgmental.
- vi. ability to be an attentive, active and patient listener.
- vii. a calm, pleasant and cheerful disposition.
- viii. patience, persistence and perseverance.
- ix. good communication skills.
- x. open mindedness and flexibility

1.9 MEDIATION PROCESS AND TECHNIQUES

To achieve the objectives discussed above and to resolve disputes between the parties, the mediator must take action by adhering to them within the limits of ethics and the rules established by the authorities. The mediation process usually follows the seven steps outlined below :

1.9.1 Introduction/Opening Statement

The introduction section is the starting point for this process. Groups are greeted and given a seat so that they feel comfortable talking in detail at the mediation center. The mediator should introduce himself to the parties and take the parties to a comfortable place. New groups often assume that mediation follows a court structure but it is the mediator who brings them out of that mindset and takes them out of the world of the ideal state under his control. There is a great need to create an informal environment so that the parties find themselves mentally comfortable so that they can communicate effectively about their problems. Confidentiality testing and other important facts for groups that may raise doubts about process impartiality and mediation are required. The parties have a right to know the interests of the mediator (if any) in the dispute. If the mediator is affiliated with any party in any way or is interested in the matter in any way, he or she must inform the parties. It is up to the parties to decide whether to retain him or her as a mediator. If the parties have a

grievance they can inform the court or mediator and they can agree on the appointment of any other mediator. If the parties are satisfied with the mediator's neutrality they can proceed with the process. The mediator should explain the basic rules to the parties with regards to when to speak and in what language to speak. Initial discussions are an opportunity for a critical lawyer to learn important details about the mediator and his or her actions.¹⁷ Therefore, the mediator should keep his opening statement as much simple as he can. The language used by him gives as acute idea of the experience and discernment of the mediator. That's why the usage of proper language and gestures to welcome the parties and advocates are very significant to indicate others about his capabilities. On the whole, opening statement can be termed as a fundamental part of mediation .¹⁸

The mediator must give the bird's eye to the parties as to why a referral has been made to a mediation center. Reference may be made to section 89 of the Code of Public Procedure. Other aspects of the mediation process such as its voluntariness, privacy, and its benefits should also be explained to the parties in the opening statement. Basic rules need to be defined so that the parties can follow them to get the best results. The mediator is the process controller and can guide the parties to keep deliberating and stop distractions during the process.

1.9.2 Gathering Information

The crux of the dispute is provided by the court in the memorandum prepared and submitted by the parties.¹⁹ The mediator takes the central idea of the matter in dispute from this memorandum. The nature of dispute must be clearly understood. Thereafter, the mediator may choose any party but preferably it is always the plaintiff or complainant. The parties brief the mediators from their own point of view. It is the mediator who has to listen actively and to sieve the facts as appropriate and inappropriate. Notes are to be prepared to refresh the mind every time.²⁰ Sometimes,

¹⁷ Truehar and Mary, "Harm's way? Family Mediation and the Role of Attorney Advocate" 23 *Golden Gate V.L. Rev.*, 717-793 at 743 (1993).

¹⁸ Blankenhip and John T., "The Vitality of the Opening Statement in Mediation: A Jumping off point to consider the Process of Mediation" 9 *Appalachian J.L.*, 165-190 at 181 (2209-2010).

¹⁹ Rule 14, Mediation and Conciliation (Punjab & Haryana High Court) Rules, *available at*: [http://highcourthd.gov.in/sub_pages/left_menu/Rules_orders/adr_rules/mediationrules.p](http://highcourthd.gov.in/sub_pages/left_menu/Rules_orders/adr_rules/mediationrules.pdf) df (Visited on July 22, 2019).

²⁰ Cornblatt and Alex J. "Matrimonial Mediation" 23 *J Fam. L.Q.* 99 (1984-1985).

the behavior and the body language speak more than the words. Mediators assess the acceptability of the process through the behavior of the parties and he/she can put forth the views accordingly. ²¹

Information can be collected in a private session and in a shared session. But often this first part should be done carefully to show the parties the mediator's neutrality. The parties may make allegations against each other in the heat of the moment but the mediator must control the process. This part of the session shows the mediator about the parties' attitudes and helps him/her in understanding their social behavior, communication ideas, feelings and expectations. ²²

1.9.2.1 Private session/Caucus

To know about the actual and confidential information, the mediator calls the parties in the private session. The private session or caucus was acknowledged by Moore in 1987 in family mediation. ²³ Initially the caucus was not in very much use but with the passage of time its widespread usage forced the mediators to adopt it in the process. Jacob in 1991 acknowledged it as beneficial in recognizing the blockages and to assess the actual nature of conflict. ²⁴ Thereafter, Bowen in 1999 allocated equal time to each party during the private session. A mediator can include a caucus stage as many times according to the mediation model adopted. ²⁵ Caucus can be used in a pre- and post-participatory session as required by the mediation process. There is no hard and fast rule like when it will be governed by the caucus process but it is always best to use the caucus when the dispute seems complicated and unlikely to be resolved only in a joint session. In a private space the parties are more straightforward and confident. The Caucus is used to assess the real problems, and it provides opportunities for seeing the problems and distractions. Apart from examining the issues, it also builds trust between the parties and the mediator. The exercise is performed to achieve a peaceful settlement by working on the terms of the agreement. The mediator can detect weak points and can convince the parties to leave unnecessary

²¹ Joanne Fuller & Rose Mary Lyons, "Mediation Guidelines" 33 *Willamette L. Rev.* 905 (1997).

²² Mihael Noone, *Mediation* 118 (Cavendish Pub., London, 1996).

²³ Don Bowen A critique in Private Sessions in Family Disputes, *available at*: <http://journals.sagepub.com/doi/pdf/10.1177/2158244013478950> (Visited on July 23, 2019).

²⁴ *Ibid.*

²⁵ Parkinson L, *Family Mediation* 81 (London, England, Sweet & Maxwell, 1997).

firmness. The mediator can hold the parties' attention to the actual issues that are needed to be resolved.²⁶

1.9.2.2 Joint Session

A joint session is a joint meeting of all the parties to a dispute with a mediator. The mediator collects information and identifies the nature of the dispute in the session. Parties may experience exacerbations at times but the mediator controls the process. The mediator examines the nature of the parties and of the dispute on the basis of the statements made by the parties. A joint session may be called before or after the caucus as the mediator deems it to be appropriate.²⁷

The joint session helps the parties to understand each other's ideas and feelings. The interests of the parties can be exposed. They can understand each other's needs. It creates a bridge between the parties for overcoming the obstacles. As we have seen earlier that the mediator must control the process before he loses control of the process, he must deal with this situation.²⁸ In order to bring about the maximum output from the process, a mediator can adopt the following strategies to control such things:

1.9.2.3 Restate

This includes just a repetition of the statements made by the parties. This method can help the mediator to extract more from the parties. With a nod, the mediator shows the group to listen actively and the party can move forward with its ideas. It saves the mediator from expressing his or her views on the matter and saves him or her from any conflict.²⁹

²⁶ Mihael Noone, *Mediation* 98 (Cavendish Pub., London, 1996).

²⁷ Joint Sessions: More Arrows in the Mediation Advocacy Quiver, *available at*: <https://www.mediate.com/articles/BenZviD3.cfm> (Visited on July 23, 2019).

²⁸ Why you should consider joint sessions in your next Mediation, *available at*: <https://www.starkmediator.com/why-you-should-consider-joint-sessions-in-your-next-mediation-2/> (Visited on July 23, 2019).

²⁹ Sriram Panchu, *Mediation-Practice and Law* 81 (Lexis Nexis, Gurgaon, 2015).

1.9.2.4 Rephrase

This includes redefining the strategy of converting a negative statement into a positive one. Mediator is a link between the parties. To improve the quality of communication, the mediator is responsible for rephrasing the statement made by the parties so that the other party listens to the problems carefully and tries to understand the feelings. There is no doubt that no one would want to listen to these negative comments and suggestions about him. Therefore, the mediator should get the best out of all hopeless thoughts and should re-create the structure of negative statements into positive ones. With this strategy only mediator can transfer group focus to speakers. The mediator can reduce the emotional tension which is a natural result of the reflex action of suspicions and arguments. Conflict can arise at any time. The ego of the parties can be filled with many past actions. The mediator should transfer the focus of the parties' from the past to the future so that the parties can think about future goals and emphasize their relationships so that it can be saved and continue in the future. It is only possible by finding position-based adherence to risk and converting it into interest-based negotiations. ³⁰

1.9.2.5 Reflect

Looking at the statements in a dramatic way is another way to show the parties that the mediator listens attentively and understands their feelings. Communicating by using the right signals the mediator can ask the necessary questions. In addition, the mediator can show empathy but not sympathy as sympathy can lead to negative feelings in the minds of the other party with regards to the mediator.³¹

1.9.3 Problem Identification

After the above mentioned exercise, the mediator has enough information to reach to the roots of the problem. Now the need is to verify this assessment from the parties. Mediator needs to ask the parties to identify the issue. Mediator has to assist the parties in realizing and reorganizing their real issues. Only after having realization

³⁰ *Ibid.*

³¹ *Ibid.*

of the real issues, the parties may priorities their demands and needs. The scope of agreement and disagreement over the priorities can be assessed at this stage. The agenda of the meeting is settled at this stage.

1.9.4 Generating the Alternatives

Examining options on an established agenda is not a process of mediation. The mediator thinks outside the box and helps teams explore more and more options. It helps the parties generate options so that the agreement can be reached by any or all of them. Choices are naturally based on party priorities. The mediator reminds them of their priorities so that the parties can participate in examining the options with greater determination. The focus of the parties should be drawn to their needs and interests. This is a brainstorming session that summarizes each option and uses questionnaires to establish a bond between the parties and the problem-solving process. The efforts of the parties are needed for coming to a mutually acceptable solution. The mediator can conduct a private Caucus, if necessary, to help the parties recall their issues and their best solutions. A temporary agreement can also be established to try the best options at hand and to eliminate the practical flaws that have crept in over time. The number of opportunities for resolution is directly proportional to the number of options produced by the parties.³² Mediator helps the parties to recognize their target point. The target point takes off the process to a settled direction till the resistance point doesn't interrupt it. After meeting a resistance point the mediator helps the parties to alter the target points of the parties so that the resistance point may be removed from the path of conflict resolution process.³³

1.9.4.1 BATNA-WATNA

The Best Alternative Technique to Negotiated Agreement (BATNA) was developed by Roger Fisher and William Ury to create a more effective alternative in the event of existing negotiations. BATNA is a powerful force in the hands of the mediator to explore other best practices and also make use of the Worst Alternative Technique to Negotiation Agreements (WATNA). BATNA ensures the right balance

³² Christopler Moore, *The Mediation Process: Practical Strategies for Resolving Conflict* 115 (San Fransisco, Josey Bass Publishers, 1996).

³³ *Ibid.*

of ideas, time and money. It focuses on both the quality and quantity of some of the best alternatives to be accepted.³⁴

1.9.5 Selection of Option

After making the choices and accepting the best ways to negotiate some of them, the process goes into the final stage of Bargaining. Discussions are held during the selection process. In some cases, BATNA demonstrates a successful outcome and an agreement reached between the parties directly. But sometimes some disagreements still remain. Parties usually make little agreement during the negotiation process. The mediator needs to maintain patience and take small steps for achieving the desired goals. The mediator must play his or her role as a coordinator between the parties to promote cooperation for achieving the desired goals and avoiding exploitation.³⁵

Negotiation is a broader term than conversation. Negotiation is a form of negotiation in which the buyer and seller of goods and services can negotiate the price, quality and quantity of goods. But in negotiations the parties can discuss any problem beyond the quality of prices and quantities of goods. Negotiations also change the views on pricing and performance of contracts. In mediation, there is always a need for broader and narrower strategies. That is why the words negotiation and compromise are used interchangeably.³⁶

Mediation is a facilitated negotiation and nowadays the most prevalent method for resolving the disputes. Evaluation of the options done with the consensus of the parties and trained mediator needs the best alternatives to reach the desired goals with the negotiating methods. Two types of negotiating methods can be used which are as under :

1.9.5.1 Positional or Adversial Method

This is a great negotiation strategy to be used by the mediator. The negotiating position approach holds a concept or position determined by setting aside the causal interest. An example can be taken from a buyer and seller when the second party is not ready to sell goods under a lower price and the buyer is not ready to buy goods at a given price. Both parties adhere to their goals in the situation. In this way

³⁴ Roger Fisher, William Ury, *et al.*, *Getting To Yes* 95 (London, Penguin Books, 2011).

³⁵ *Ibid.*

³⁶ *Ibid.*

the main purpose of the mediator is to make the parties comfortable with their small agreement until they reach a final settlement.³⁷

1.9.5.2 Interest Based Method

An interest-based approach can resolve disputes that end up targeting the interests of the parties. The wishes, expectations and needs of the parties are met to create a win-win atmosphere. This approach is very important as it saves the relations of the parties by building a mutually accepted agreement on each aspect of the dispute. Egos are satisfied and problems are buried by the complete satisfaction of the parties.

The mediator assists the parties in the two ways outlined above. Parties can create a gap in the status quo by not moving from their place to their intended destination. The mediator can convert the status quo into an argument based on interest to show the true path to peace and profitability. This is how an argument can be turned into a win-win situation. The mediation mentioned by Bush and Joseph Folger also referred to the same situation. In their culture the empowerment of the relationship was given priority. It creates a new and better understanding between the parties which helps them to make their own decisions. When effective, parties go beyond mediation to resolve their dispute by building alternatives themselves.³⁸

1.9.5.3 Styles of Bargaining

The mediator helps the parties through negotiating the alternatives and achieving the best options out of the worst. The negotiation methods include the difficult types of bargaining tactics which are as under :

1.9.5.3.1 Soft Bargaining

Soft bargaining means that the parties give into the demands of the other parties by understanding their needs and expectations.³⁹

1.9.5.3.2 Principled Bargaining

This type of bargaining aims at the objective criteria and a win-win situation for both the parties while taking into consideration all the alternatives.⁴⁰

³⁷ The Art of Negotiation, Positional v/s. Interest based Bargaining, *available at:* <https://medium.com/swarm-nyc/the-art-of-negotiation-positional-vs-interest-based-bargaining-c1931ce9ab4b> (Visited on July 23, 2019).

³⁸ Transformative Mediation, *available at:* https://en.wikipedia.org/wiki/Transformative_mediation (Visited on July 23, 2019).

³⁹ *Ibid.*

1.9.5.3.3 Positional Bargaining

As mentioned above, the negotiation of positions arises from the conclusions of the status quo. The parties remain attached to their positions in the hope that the other party will lose ground.⁴¹

1.9.5.3.4 Hard Bargaining

It is an inflexible approach of bargaining and the parties bargain only about their own demands.

1.9.5.3.5 Distributive Bargaining

The parties try to distribute the substance in issue between them. In this type of bargaining whatever one party loses the other party gains. But this bargaining is possible only where the value of the substance is fixed.

1.9.5.3.6 Interest based Bargaining

As discussed above, in the interest based bargaining, there is the bargain of the real interest, values, expectations and all the core things which can dissolve the root cause of the dispute.

1.9.5.3.7 Integrative/Collaborative Bargaining

Where the mediator helps the parties to move towards the interest based bargaining from positional bargaining, the bargaining is called integrative bargaining. It usually increases efficiency and output.⁴²

1.9.6 Impasse and Strategy to deal with

Impasse is a condition in which no progress can be made, due to inconsistencies, which are disruptive. The parties are so stubborn that they think the mediation process is ineffective and time consuming. It enters the minds of the parties that they have always been willing to bow down but the other party does not compromise on any issue. It may also work in the minds of the parties that the opposition party uses mediation as a tool to delay the actual process. The mediator

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.*

finds this as a situation where the parties run out of alternatives and he/she has to think outside the box.⁴³

Before devising a strategy to eliminate this tension, a mediator should keep his/her best way in mind. The mediator should anticipate the intensity of the session as it is a natural consequence of tension between the parties. From the beginning of the session until the agreement is signed, the impasse can appear at any time and any number of times. The mediator should always be optimistic and always try to influence the parties. He/She can highlight the progress which has been achieved during the session till the point of the impasse. Positive approach would instill confidence in the parties that there is still ample opportunity for reaching an agreement. The parties should be recognized as being in a better position and that their position will improve further during the course of resolving their disputes.

1.9.6.1 Strategies to Overcome Obstacle

A picture of good relations in the future and especially without conflict between them can be shown to the parties. The parties should try to focus on their own interests rather than looking at their different positions. The mediator should remind the parties of the benefits of mediation. There are other strategies as well which can be used to break down barriers.⁴⁴

1.9.6.2 Block Identification

The mediator is the process controller and is well connected to the progress made during the process. He/She is aware of the negotiation style of the parties and also their expectations. The mediator should assess the expectation gap. Else, the mediator should ask the parties about the fact as to what is holding them back. When the real blockage is understood by the mediator, the right solution can be found accordingly.⁴⁵

⁴³ Joanna Turnbull, Diana Lea, *et.al.*, *Oxford Advanced Learner's Dictionary* 778 (Oxford University Press, New York, 8th ed., 2010).

⁴⁴ Niranjana Bhatt, J.P Singh *et.al.*, *Theory and Practice of Mediation* 23 (Unpublished Compilation, Punjab Legal Services Authority, Chandigarh, Part-II, 2014).

⁴⁵ *Ibid.*

1.9.6.3 BATNA-WATNA

As discussed above, the mediator has to find out the Best Alternative to Negotiated Agreement. Moreover, MLANTA i.e. Most Likely Alternative to Negotiated Agreement can prove to be a more realistic alternative. MLANTA is a midway of BATNA and WATNA. ⁴⁶

1.9.6.4 Legal Realism⁴⁷

Complaints often go to court to find cases having higher authority than their case. The mediator can show them the real picture but in a less complicated way. The mediator may ask the parties to inform themselves of the strong facts of the opponents. This strategy can help parties to assess their position in the legal battle. Similarly weaknesses of their facts can also be questioned.

1.9.6.5 Problem solving method

An open approach to looking at the issues is important. A less skilled mediator does not see the issues involved apart from monetary issues. A less focused approach can blind the mediator in not looking at the hidden needs of the parties in the case. The problem-solving approach always provides a framework for dispute resolution. ⁴⁸

1.9.6.6 Perseverance

At every stage of life, persevering in the face of adversity is a real success in itself. In an effort to achieve peace in the mediation process, participants must overcome similar difficulties⁴⁹. Further, unwillingness is a big element which frustrates a mediator. Many clients come half-heartedly but after private and group discussions many of them start realizing that there is a possibility of settlement which can further save the relations. The parties, who try a second chance after impossibility and impasse, usually have more chances of achieving success in mediation than those

⁴⁶ *Ibid.*

⁴⁷ Mertz, Permetier, *et.al.*, *Semiotic Mediation: Socio Cultural and Psychological Perspectives* 271 (Academic Press Inc., Florida, 1988).

⁴⁸ Herald I. Abramson, *Mediation Representation: Advocating as Problem Solver* 4 (Wolters Kluwer Law and Business in New York, New York, 3rd ed., 2013).

⁴⁹ Settlement is not Success, Impasse is not Failure: It is the Perseverance in Mediation that Counts, *available at*: <http://mediationblog.kluwerarbitration.com/2018/02/17/settlement-not-success-impasse-not-failure-perseverance-mediate-counts/> (Visited on July 24, 2019).

parties who have given away any kind of hope. Pursuing the avenues continuously towards a settlement to preserve the relation and mediation is an essential aspect of a successful mediation.⁵⁰ Conclusively, the perseverance is a secret for settlement in mediation.⁵¹

1.9.6.7 Six Thinking Hats

Six Hats of Thought is a program developed by Edward De bono. Thinking out of the Box, De bono had an examination of the thought process in six different ways. In his view, one can think of six ways and find a variety of solutions to their problem. This idea has also been tried in mediation. The six ways of thinking were represented by six different colors such as :

- (i) **White-Hat Thinking:** It means to push. Initially, a mediator needs information to proceed in a proper manner. Without criticizing and judging, the mediator should see what information he has and what he needs and from where it can be collected .
- (ii) **Red-Hat Thinking:** It deals with natural responses. How the party felt at that time? It allows the parties to express their feelings, exploring and understanding.
- (iii) **Yellow Hats Thinking:** Means a good test. Opportunities and benefits should be considered. What is good must be considered? What are the benefits of the selected options? What are some of the best options? Making a choice is done while wearing this hat
- (iv) **Thinking of a Black Hat:** A negative assessment of the risk of lying in your options is associated with a black hat. It checks as to why the things don't work. How does this fail to satisfy the interests of the parties? What are the difficulties of use? This Hat officially sets the standards and importance of disaster risk monitoring and management.

⁵⁰ Why Mediation Works and Why it does not: One Mediator's Perspective, *available at:* <https://www.buchalter.com/wp-content/uploads/2013/09/Why-Mediation-Works.Seigel.pdf> (Visited on July 24, 2019).

⁵¹ Secrets of Mediation: How to Succeed in Mediation, *available at:* <https://www.mediate.com/articles/WeissSecrets.cfm> (Visited on July 24, 2019).

- (v) Thinking of the Green-Hat: This Hat symbolizes ingenuity and new opportunities. What are some ways to find a solution? It involves the deliberate development of new ideas and new solutions to the problem.
- (vi) Thinking of the Blue-Hat: This hat shows the planning of a problem-solving strategy. It examines problems that are being tried to solve. What kind of problem are you trying to solve? What should be tried first and second regularly? This hat thinks about analyzing the situation and deciding on a strategy and subsequently it accordingly identifies the priorities, resources as well as the issues.

In this way, the model of the six imaginative hats is very suitable in some cases of traditional methods that help in decision making.

1.9.6.8 Apology

The strategy of apology seems to be a sorry figure but it can be a great tool to break the impasse. Feelings and emotions are not a part of legal proceedings nor are they the basis of any pleadings in the court of law but it may have a great impact in dispute resolution to satisfy the egos of the parties which can overawe any dispute. A single word of sorry can sometimes do a miracle.

1.9.6.9 Ranges

A wide range of numbers can form a bracket where conflicts can be resolved. The mediator may ask the parties to resolve a dispute such as six or seven figures; when the problem starts to break down, the distances can be changed to as low as six numbers or as high as six. This route can bring the parties closer. ⁵²

1.9.6.10 Joint Session

As discussed earlier, the joint session at this stage can also prove to be an effective impasse busting techniques. Mediator only needs to focus on the discussion. The discussion held in the joint session may prove to be the problem-solving aspect required.

1.9.6.11 Conditional Offer

⁵² Mediation Impasse-Busting Techniques, *available at*: <https://www.law.com/sites/brucefriedman/2015/05/07/mediation-impasse-busting-techniques/?slreturn=20180223025626> (Visited on July 24, 2019).

The conditional offer is like a closed technique and used where the party does not show the responsibility of the specific offer. The mediator can ask a party to offer a fixed amount to the other party. In case this technique fails, even then, it may give the idea of bottom line of the offers of the parties. ⁵³

1.9.6.12 Mediator's Proposal

This is also a type of closed strategy that should be used by the mediator alone. The mediator may assign a certain amount to the parties separately and if applicable can open his card to the parties and enter into an agreement. ⁵⁴

1.9.7 Wrap-up

Wrap usually means the end of the process. However, it can be done at any stage either before or after the final agreement. Wrapping well before entering the next stage is also a good way to mediate. The following can be done:

1.9.7.1 Conclusion in each Session

The mediator should tie the open threads of the session to the end to build it into a solid foundation and then he/she can judge the feelings and situation that has changed after giving time to the mediation. Progress can be summarized to the parties for strengthening their belief in the mediation process. Temporary promises made between the parties can be reminded to them so that they act accordingly. The time and place of the next session should also be confirmed to the parties. ⁵⁵

1.9.7.2 Wrap-up in case of Non- Settlement

In case, the mediation process faces big hurdles that create never-ending impasse and all the tactics fails to bust it, then the mediator has to wrap up the proceedings in a proper way. The mediator is required to discuss the achievements of the parties and the important developments which have been made in their relations. Sometimes this gesture may force the parties to move out from their adamancy and rejuvenate the process. Otherwise, the decision of the parties should be respected. Their achievements during interim agreements and their efforts should be complimented.

⁵³ *Ibid.*

⁵⁴ Steven G. Mehta, *112 Ways to Succeed in Any Mediation: Secrets from a Professional Mediation* 170 (Author House, Bloomington, 2009).

⁵⁵ *Ibid.*

1.9.7.3 Wrap-up before Agreement

In case of a positive outcome, wrap up in a proper way is very much required before entering in the final agreement. The final terms settled between the parties should be discussed and verified again. The connected terms should be discussed to give the agreement an effective shape. The time factor and duties of the parties should be cross checked and discussed accordingly. The parties and their counsels must be greeted and complimented for their positive role and active participation.

1.9.8 The Settlement Agreement

The payment agreement is based on the agreement reached by the parties themselves. It is completely different from a contract agreement. All payment agreements differ in certain aspects because they are made by parties and they are binding only upon them. It is an understanding of the interests, needs and activities of each other. It describes the roles of the parties to the agreement. Therefore, the payment agreement must be in writing, taking into consideration the following essentials :

1.9.8.1 Identify and form groups

It should confirm the identity and authority of the person to sign the agreement. If the party is a natural person then he must not go through the whole process. His/her identification is not a major problem but if it is a juristic personality such as an organization or company, then the identification of the corporation must be confirmed by the mediator. The authority to negotiate and the authority to resolve the dispute ultimately are different authorities and this fact must be taken into account.

1.9.8.2 Draft Agreement

The framework of the agreement is the technical expertise in mediation. It is always related to the parties' arguments and decisions but should not go into the details of the conflict history. It should specify the correct position by pointing to the problem. The interest of each of the parties should be disclosed which is usually seen by the parties to the agreement. A statement regarding the participation of the parties must be made to clearly indicate that the agreement is a product of their decision. The payment agreement binds the parties to the duties that they must perform. Therefore,

ambiguous words should be avoided and such terms must be used which would clearly indicate when, where, by whom and how the tasks are to be performed. The validity of these terms must be confirmed by the mediator because they must ultimately be accepted by the court that referred the parties to the mediation center. If the rules do not match the legal framework then the court may refuse to accept the agreement or the parties that may face legal consequences in the future. If the terms resolved by the parties are subject to the approval or acceptance of any third party their consent may also be obtained before proceeding. All important details should be reviewed by the parties before giving their consent.

1.9.8.3 Establish a sequence of points

The sequence of points in the agreement is also important to avoid confusion. The initial obligation and responsibilities must be adhered to. This is followed by other common words based on this principle. Conditional or unconditional apologies must continue with other terms. The proscriptions and their functions should follow the rules. It must be structured in such a way that neither party should be at risk.

1.9.8.4 Tongue

Language should be simple, clear, comprehensive and unambiguous. The actual names of the parties must be indicated.

1.9.8.5 Revision

Revision of the points is must before drafting the other points to make sure that no point has been left out and the particular term has covered all its related wings.

1.9.8.6 Reading the Agreement

The clause of the agreement must be read to the parties at the same time so that the parties can assure themselves that nothing is hidden and excluded and all agreed terms are included. The parties must ensure that all their intentions are affected by the agreement.

1.9.8.7 Host Signing

Acceptance of the parties by signing the agreement must indicate that all the terms of the agreement are included and they understand all the terms of the

agreement. The counsels, if they agree with the parties, must certify the signing of the parties to accept that the person signing has the real authority to decide and sign the agreement.

1.10 ROLE AND ETHICS OF A MEDIATOR

The mediator will try to facilitate the resolution of disputes by parties, and convey the views of each party to each other to help them resolve their issues, reduce misunderstandings, clarify interpretations, explore compromises and make choices in an effort to resolve the disputes. In the mediation process, the consent of the party and the mediator is crucial for an effective resolution as the parties cannot be compelled to resolve disputes arbitrarily.

The role of the mediator is to increase the chances of an acceptable agreement. It is the mediator's responsibility to assess the risk and to find a solution and resolve the case. The mediation process also affects the parties. If the chances of a settlement are low even then mediation can help in resolving the dispute. Lawyers and judges should be committed to pre-trial mediation. With the right strategies used, parties can ensure that they are preparing for success.⁵⁶

Trust is the key to mediation. The entire mediation process is based on the reliability of the mediator during the mediation. Only through his conduct can a mediator gain the trust of the parties. So maintaining good adornment and good manners reflects his non-judgmental behavior. If any party has any doubt in their minds with regards to the credibility of the mediator then it would damage the process. Any deficiency can break the back bone of the process and eliminate it permanently. Therefore, the mediator should adhere to the highest moral standards.⁵⁷ A mediator can maintain the ethics in following ways :

1.10.1 Apprising the Parties about Important Facts

A mediator should tell the parties about the facts, if any, which may break the trust of parties. If the mediator is connected to the dispute in any manner or having any

⁵⁶ Take a Realistic Approach to Settlement Strategy and Mediation, *available at:* <http://www.newyorklawjournal.com/id=1202721577676/Take-a-Realistic-Approach-to-Settlement-Strategy-and-Mediation> (Visited on July 24, 2019) .

⁵⁷ Why you should consider Joint Sessions in your next Mediation, *available at:* <https://www.starkmediator.com/why-you-should-consider-joint-sessions-in-your-next-mediation-2/> (Visited on July 24, 2019) .

personal interest not known to the parties, then the mediator must inform about it to the parties and the final decision be left with the parties whether to go ahead or not.

1.10.2 Ensuring Impartiality

A mediator should ensure the impartiality during the mediation process. There should be no prejudice or bias in the mind of the mediator. There can be following types of bias which should be dealt properly :

1.10.2.1 Self-serving Bias

It is the tendency of the person where he thinks that he performs better than the others. The step where the bias comes to the mind of person, it will definitely influence the case evaluation process and affect the mediation process in one or the other way. ⁵⁸

1.10.2.2 Over-confidence

The over confidence of a mediator is always fatal for the process. The expectation of correctness of belief about the views leads to the inaccuracy in their case evaluations and the estimation of the problems. ⁵⁹

1.10.2.3 Endowment Effect

An excessive “mining” rate is called a payoff effect. It can be on both sides. Parties may measure a claim relating to their ownership and also mediator may rate the continued success of the proceedings only as their own. The mediator should control the effect on both sides to get the best results.

1.10.2.4 Quick access to information

Easily accessible information or easily identified problem can be a major snare for the mediator. It may prevent him from accessing information. There can be misconceptions of facts and it may take up the mind of the mediator.

⁵⁸ How our Subconscious Bias Impacts Negotiations and the Mediation Process by Hunter R. Hughes, available at : <http://www.americanjournalofmediation.com/docs/REFORMATTED%20-%20HOW%20OUR%20SUBCONSCIOUS%20BIAS%20IMPACTS%20NEGOTIATIONS%20-%20Hunter%20Hughes.pdf> (Visited on July 24, 2019).

⁵⁹ *Ibid.*

1.10.2.5 Emotional Marking

The emotional aspects of a particular party can create prejudice in the mind of the mediator. The suffering of the mediator himself that arises from the same types of situations or his class-like bias can affect his mind. This type of emotional marking should be tested first and should be prepared in advance to handle it carefully.

1.10.2.6 Pattern Recognition

An experienced mediator compares the problems and solutions of an impugned dispute to their past experiences and similar cases. It can affect their minds and prevent them from thinking outside the box to find better ideas and ways to solve problems. The rational judgment they receive from their experience may discriminate against them on the basis that nothing is possible or that the issue can only be resolved if a party leaves office. This type of bias should be dealt with carefully.

1.10.2.7 Legal Advice

The mediator is the facilitator and must refrain from giving any legal advice. At the very least he can just inform the parties of their weak and strong points and that is only to show them the mirror to see that the mediation process is the best way to get a win-win outcome. ⁶⁰

1.10.3 Preventing Misuse of the Process

If it appears that the party or parties are attempting to misuse the legal process for their own hidden benefits or misusing the process to delay legal matters, the mediator should take immediate steps to stop the abuse of the process.

1.10.4 Termination of Procedure

It is possible in rare cases that the process can damage party relationships. Emotions can be damaged there and can further cause many problems. If such a situation arises then the process should be stopped immediately.

⁶⁰ Why you should consider Joint Sessions in your next Mediation, *available at*: <https://www.starkmediator.com/why-you-should-consider-joint-sessions-in-your-next-mediation-2/> (Visited on July 24, 2019) .

1.10.5 Third Party Interests

Sometimes the interests of any third party are linked to the conflicts between the parties. The mediator must be careful in such matters. If the interests of any third party affect the agreement, the mediator must contact the party concerned during the arbitration process otherwise it may result in further litigation.

1.10.6 Energy inequality

The mediator must ensure fair and equitable treatment at the mediation table. If either party tries to override the other party, the mediator must intervene and control the process. Power imbalances have to be avoided during mediation.

1.10.7 Quality of process

Mediator is a service provider appointed by the authorities to ensure fairness, equity and impartiality. The mediator is responsible for keeping the decorum in the process. He should be diligent as well as hardworking. He has to work with an impartial mind. The mediator should not fall into illegal acts. If the mediator maintains faith in the process it will be reflected in his personality and the parties will follow.

1.10.8 Principles

The mediator's code of conduct states that anything said or written during the mediation must be kept confidential. Confidentiality is an important part of mediation and the success of the mediator depends on it. Reconciliation should be when there is a conflict between confidentiality and the presentation of certain facts in order to reach an agreement. ⁶¹

1.11 ROLE OF A LAWYER IN MEDIATION

Adjudication and mediation appear to be inconsistent, especially in divorce cases, but it is recognized that attorneys accept mediation as it is a quicker way of dealing with the issues involved. Lawyers who do not need to lose control can find a good platform to understand the issue with clients. ⁶²

⁶¹ Mediation: Confidentiality and Enforceability, *available at*: <http://www.law.com/sites/kimberlytaylor/2015/04/06/mediation-confidentiality-and-enforceability/>, (Visited on July 24, 2019).

⁶² McEwen, Craig A. Richard *et.al.*, Lawyers, Mediation and the Management of Divorce Practice, 28 *Law & Socy's Rev.*, 149-186 at 149 (1999).

The parties' case may or may not be represented by their attorneys in the mediation process. Sometimes the party enters without a lawyer but later he/she is properly represented and sometimes lawyers play the role of reviewing the terms of the agreement and directing his/her client. If the party is represented by an attorney at the mediation center he or she must encourage the parties to resolve the dispute at the mediation center. The attorney must honestly help the party and explain the nature of the mediation process. He/she should help the party to choose the best possible alternative. Most importantly, the attorney can anticipate the interests of the third party involved in the case so that he or she can properly direct the parties to prevent multiplicity of cases. The counsel knows the weaknesses of the case and can help the parties to identify them and resolve the dispute in the best possible way. An attorney can help solve the problem as the parties tend to trust and follow their advice. Group counseling can prove the party's authority to resolve the dispute. ⁶³

With the passage of time, the practice of mediation has become part of the legal framework. In many places the concept of mediation is included in the legal curriculum. Nowadays, lawyers are not new to the process as they have studied it as part of their studies. To achieve improved access to justice, almost every global system is moving towards reconciliation. This is actually a cultural change around the nature of lawyers. Attorneys have a responsibility to maintain confidentiality, honesty and good conduct for clients in mediation. In accordance with the obligation they are responsible not to mislead the parties by mediation for any reason. Therefore, the role of the attorney goes beyond the basic role of the attorney in providing legal advice and is governed by ethical guidelines and responsible dress code. The lawyer should look beyond the legal problem and should think outside the box. He is required to identify the real issues and help the mediator see the same for the best results. Mediation is a commendable service that should be given sincerely. Attorneys must share the mediator's responsibility to resolve the dispute amicably. ⁶⁴

⁶³ Role of Advocate in the Mediation Process, *available at*: <http://www.lsk.or.ke/Downloads/James%20Mangerere%20%20-%20Paper.pdf> (Visited on July 24, 2019).

⁶⁴ The Role of Lawyers in Mediation: Insights from Mediators at Victoria's Civil and Administration Tribunal, *available at*: https://www.monash.edu/__data/assets/pdf_file/0015/232530/douglas.pdf (Visited on July 24, 2019).

They should update themselves on the current situation and explore the various options. They may also consult with their clients in advance to be prepared for some of the best options available. They can help the parties identify the real issues and deal with them appropriately to achieve the best outcome in the mediation process. Lawyers can transform themselves into advocates for solutions from traditional court cases. This is a preliminary mediation phase and if possible, the attorney should give their client mediation advice to resolve the issue. They should tell the parties about the benefits of mediation. The role of the attorney is therefore of paramount importance in the mediation process as it begins at the beginning of the litigation and ends after the mediation is wrapped up. ⁶⁵

1.12 ROLE OF REFERRAL JUDGES IN MEDIATION

The commitment of legal professionals to provide justice in court cases in the shortest time period is the basic aim of the justice delivery system. Justice must be provided in a cheap way. The solution provided should be acceptable to the parties. This commitment can only be achieved if there is active participation of the parties in the process. In court-annexed mediation, judges refer cases to mediation centers where they participate in the decision-making. The appellate judges must determine the type of cases to be referred to mediation. Only appropriate cases that are eligible for mediation should be referred to mediation. The appellate judge only informs the parties about the legal options available to them under section 89 and orders X rule 1A of the Civil Procedure Code. They can help the parties choose the right reconciliation platform that fits the facts of the case. The most appropriate stage of referral is after pleading and before fencing the matter but nothing prevents the court from referring the case later. However, sometimes allegations against each other continue to undermine relations between the parties which are is the judges can refer the cases immediately after appearing in court or after service of summons. ⁶⁶

The consent of the parties for referral of cases to the reconciliation modes under section 89 of the code is not mandatory. However, the agreement is necessary between the parties for arbitration but it is not mandatory for the reference of cases to

⁶⁵ *Ibid.*

⁶⁶ Mediation Training Manual for Referral Judges, *available at:* <http://www.sci.gov.in/pdf/mediation/Mediation%20Training%20Manual%20for%20Referral%20Judges.pdf> (Visited on July 28, 2019) .

mediation, conciliation and lok adalat. It was held that the reference of case to the mediation without the consent of the parties does not vitiate the basic feature of voluntariness as the parties remain free to make their own decision in the mediation process. The referral judge must take the time limit in consideration to complete the process of mediation and to prevent the unnecessary delay in the trial of the case.⁶⁷

Referral judges should reassure the parties to participate in the mediation process. Judges can tell them the concept of mediation and the benefits that go with it. Judges can dispel unspoken doubts about the authority of the mediator. In addition, if the case is not suitable for mediation the judge may seek a specific problem that can be resolved by mediation with the consent of all the concerned parties.

The judge will issue an appropriate order to refer the decision. A date will be set for appearing before the mediator. Orders must contain all important details such as court name, case id, name of the parties, date of filing, case type case category at the time of transfer, name of counsels of the parties and contact numbers of the parties.⁶⁸

The judge plays an important role after the mediation process. If the mediation process fails, the judge will remand the case in the pending trial before being transferred to a mediation center. The judge will not enter into any negotiations with the mediator as to the reasons for the failure of the mediation process. Even during the trial, the judge will not question the reasons for the failure of the mediation process from the parties involved. To maintain confidentiality, the judge will allow the parties or their attorneys to disclose the reasons or other facts discussed in the mediation process.

In case there is a positive outcome to the mediation, the judge will review the terms of the payment agreement to see if it is valid and appropriate. If any term of the agreement is found to be invalid or unenforceable the judge will notify the same to the parties. Illegal names may be removed or amended after the parties' joint application on their agreement. The court may grant its consent if all the terms are clear and acceptable to the parties. The court shall convey the declaration accordingly in terms of Rule 23 of Code. In the case of a non-dispute matter the court may take the route of

⁶⁷ The Role of Lawyers in Mediation: Insights from Mediators at Victoria's Civil and Administration Tribunal, *available at*: https://www.monash.edu/__data/assets/pdf_file/0015/232530/douglas.pdf (Visited on July 28, 2019).

⁶⁸ *Ibid.*

section 74 of the Mediation and Reconciliation Act or section 21 of the Legal Services Authorities Act which will govern the payment.

1.13 ROLE OF PARTIES IN MEDIATION PROCESS

The mediation process is only for the benefit of the parties. The mediation revolves around the parties and their legal issues. It takes the opposing parties in one place and enjoys their relationship by resolving their disputes amicably. Consent of the party may not be available at the time of reference to the mediation center but the final decision-making role remains in the hands of the parties. Although the help of a mediator is always available in this process, the final word on the settlement agreement is of the parties.

To begin with the process the parties must understand the concept. They should take the opportunity with an open mind. They should learn the basics of mediation such as harmony, confidentiality, effective participation of parties, relationship saving, time saving and cost savings. After that they should give the process a fair go as it is a risk-free process. Parties should actively participate in the process. They can test at first as to whether it works or not but still they do not have to rush it. After the appointment of a mediator the parties need to change their attitude. All parties have the right to express their views. That is the reason why each party needs to learn to hear from the other party. Listening to the other party is just as important to them.⁶⁹

The parties should approach the mediation centre with an intention to negotiate. They must know that what will be the benefits of mediation and they would not have to face lengthy process of litigation. Thus the success of the process of mediation is dependent upon the parties themselves.⁷⁰ The parties must openly and honestly discuss their issues at the mediation table. They have the right to keep the discussions within the four walls of the room. They can step out at any time. The

⁶⁹ Sriram Panchu, *Mediation-Practice and Law* 69 (Lexis Nexis, Gurgaon, 2015).

⁷⁰ The Role of Each Party in Mediation, *available at*: <http://www.legalline.ca/legal-answers/the-role-of-each-party-in-a-mediation/> (Visited on July 28, 2019).

parties should keep the time limit given by the court for mediation in mind and should support the process to their full extent to generate alternatives.⁷¹

1.14 MEDIATION VIS-À-VIS LITIGATION

Constant litigation is considered to be an excellent and powerful tool for resolving disputes. The monarchs had a special power to settle disputes and the same could not be denied as it was the universal law that the King did nothing wrong. From the researcher's point of view, in the long run, in the same pattern, the court system underwent many changes such as the right of appeal. Nowadays legal disputes have to go through various processes before a final solution can be found. It costs a lot of money and is not comfortable. In some cases the abuse of the defendants may be apparent. Delays in the justice delivery system are common. Reasonable communication requests are a part of several cases of alleged harassment against an opposition party. It takes months and sometimes years to decide the application in the end. Reviews and appeals of appealing orders take a lot of time to find a place in the high court lists of hearings.

There is no doubt that filing charges breeds new rules but it is also a way to change the case as it is rightly said in the corridors of the court that a case is immortal. Some civilized people consider cases to be closed to them as it causes them to lose their reputation by staying outside courts from morning till night throughout their trial. Most importantly, in the case of litigation, one party wins and the other loses which ultimately bites the heart and soul of the loser and in some way, results in the intention of revenge. This is a never-ending process.

Mediation is a negotiation process in which a third party helps in negotiating to resolve their disputes. The mediator never puts his or her decision before the parties. During mediation the parties find their solution with the help of a mediator. The mediator only provides a means of communication between the parties. Its emphasis is on co-operation and future communication rather than on the previous game of suspicion and defeat results. The focus is on long-term interests to strengthen relationships and not to sue. The parties raise their issues which ensures that the parties have the 'right to make decisions'. The mediation process is informal and

⁷¹ Role, Rights and Responsibilities of the Mediation Participants, *available at*: <https://www.otc-cta.gc.ca/sites/all/files/was/Mediation-Roles-EN.pdf>(Visited on July 28, 2019)

confidential, the parties do not produce witnesses, the mediator does not disclose its findings regarding facts and the law as a judge and above all the process is controlled by the parties themselves. Mediation can be more helpful than a lawyer's game as the first one is cheaper than the other.

1.15 DISTINCTION BETWEEN MEDIATION AND OTHER MODES OF SETTLEMENT

The concept of mediation is different from other forms of dispute settlement such as arbitration and conciliation. The arbitration process is almost the same as conciliation as both have their roots in the UNCITRAL model but the arbitrator has a more important role to play than the conciliator as the conciliator will not make recommendations to the parties. The meaning of the word mediator in India is similar to the United Nations Commission on International Trade Law and Reconciliation Laws in the UK and Japan. ⁷²

Regarding the enforceability of settlement agreement in conciliation and mediation proceedings the Hon'ble Supreme Court⁷³ interpreted Arbitration and Conciliation Act, 1996 and held that when it appears to the conciliator that here exist the element of 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 the observations of the parties, the conciliator may reformulate the terms of a possible settlement in light of such observations. In that case, if any such formulation could not be found, the conciliator may reformulate the terms of a possible settlement in the light of such observations. If the parties reach agreement on a settlement 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. When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively. The conciliator shall authenticate the settlement and furnish a copy thereof to each of the parties and if the signatures were not taken, the requirements of section 73 are not

⁷² *Ibid.*

⁷³ *Harsh Dayaram Thakur v. State of Maharashtra*, (2000) 6 SCC 179.

complied with and the agreement shall not be binding.⁷⁴ On the similar pattern the different rules and statutory laws related to the mediation are taking place.

“The distinction between mediation and conciliation is widely debated among those interested in ADR, arbitration and international diplomacy. Some suggests that conciliation is a ‘a non-binding arbitration’ whereas mediation is merely ‘assisted negotiation’ but others put this in a different way: conciliation involves a third party’s trying to bring together disputing parties to help them to reconcile their differences, whereas mediation goes further by allowing the third party to suggest terms on which the dispute might be resolved. Still others reject these attempts at differentiation and contented that there is no consensus about what the two words mean- that they are generally interchangeable. Though a distinction would be convenient, those who argue that usage indicates a broad synonymy are mostly accurate”.⁷⁵

1.16 ADVANTAGES OF MEDIATION

Mediation centers assist in dispute resolution and the other benefits of mediation are as follows:

- (a) In mediation the parties directly participate in the negotiations.
- (b) The parties regulate the mediation. They have the right to decide whether to resolve the dispute or the terms of their settlement.
- (c) The mediation process is faster, more efficient and less expensive.
- (d) The procedure is performed in an orderly, friendly and conducive environment.
- (e) Confidentiality of mediation process.
- (f) The mediation process facilitates better and more effective communication between the parties.
- (g) Mediation helps to maintain, develop and restore relationships between organizations.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

- (h) The mediation process is voluntary because the parties are free to choose to withdraw at any time from the process. If any party feels that the mediation process does not help, they may choose to opt out of it.
- (i) Profitable compensation is achieved through mediation.
- (j) The mediation process always takes into account the long-term interests of the parties at each stage.
- (k) In the case of a court-annexed mediation, a refund of court fees is permitted in terms of the rules.

Richard Hill⁷⁶ summed up the importance of mediation like this:-

“Two people have a formal claim in an orange but neither of them is willing to accept half an orange. If the dispute is resolved in accordance with the adjudication process, one of them will receive a portion (probably not) of the orange, and the other will receive the remaining portion. But then a mediator is called: who asks each person what they intend to do with the orange. The first person responds that he intends to use a rind to make perfume, and the second responds that he intends to use a rind to make orange juice. Therefore, the arbitration process produces better and better solutions that satisfy the interests of the parties than any dispute based on the disputed process.”⁷⁷

Pointing out the advantage of mediation, the Supreme Court observed that there is always a difference between winning a case and seeking a solution. Via mediation, the parties will become partners in the solution rather than partners in problems. The beauty of settlement through mediation is that it ensures a just solution which is to the satisfaction of the parties and acceptable to all the parties to the dispute, thereby achieving a win-win situation. ⁷⁸

1.17 INTERNATIONAL PERSPECTIVE

The sheen of mediation increases over time. Nowadays judicial corridors are interested in advancing this process further to reduce the burden on the courts. India is not the only country that uses the concept of mediation. We, the people of India, are

⁷⁶ A lawyer from Switzerland who was highly skilled in arbitration matters

⁷⁷ “*The Theoretical Basis of Mediation and Other Forms of ADR: why the work*”, published in *Arbitration International Volume 14 No. 2 (1998) page 181*

⁷⁸ *Vikram Bakshi v. Sonia Khosla; 2014 (6) SCALE 514*

not the only victims of vicious persecution or lengthy criminal proceedings. In 1910, Roscoe Pound held a conference with lawyers and other scholars. The Roscoe Pound dialogue is popularly known as the 'Pound Conference.' In the conference Pound said :

1. The judges decide matters according to the rules of the game and what the advisers ask for. They do not research the truth .
2. The question is 'what does the law of firmness and justice require'? But the perceived problem is, "are the rules of the game strictly enforced ?
3. The witness box has become a notorious slaughter-house⁷⁹.

In this way the Pound conference suggested to adopt the ADR Methods especially mediation to resolve conflicts and it suggested the government to take the measure to make laws and rules in this direction. Thereafter, the process of mediation got the international accords which are as under :

1.17.1 Hague Convention

Hague convention on private international law⁸⁰ adopted the mediation on the tunes of its previous convention⁸¹. The body's 'best practice' guide defines the words 'Mediation', 'Mediator', 'Direct' and 'Indirect Mediation' etc. In view of family disputes, custody and agreements, the term 'Indirect Mediation' has been defined as the process where the parties do not meet with a mediator at the same time but meet at different times and places. The definition of 'Direct Mediation' expands the scope of the mediation process as it involves the interaction of groups with the mediator through telephone / video conferences that enhance the mediation process. The provision of multilingual and bilingual mediation was reserved for a better understanding of the views of the people associated with the relevant interest organizations during the 'Caucus'. The agreement is binding on the parties and member states to implement the resolution in accordance with their existing legislation.

⁷⁹ Sriram Panchu, *Mediation Practice & Law the Path to Successful Dispute Resolution* 330 (LexisNexis, Second Edition, 2017).

⁸⁰ 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 (Visited on July 12, 2019).

⁸¹ Convention on the Civil Aspects on International Child Abduction, *available at*: <https://assets.hcch.net/docs/e86d9f72-dc8d-46f3-b3bf-e102911c8532.pdf> (Visited on July 12, 2019).

1.17.2 International Intellectual Property Organization (WIPO)

In 2007, arbitration rules were also adopted by the 'Intellectual Property Organization' which states that, when the arbitration agreement provides for arbitration under the 'WIPO Arbitration Rules', these Rules will be regarded as part of that arbitration agreement. Unless the parties agree otherwise, these Rules will come into effect on the first day of mediation.⁸²

1.17.3 European Union

To preserve and develop a place of freedom, security and justice, the UN parliament and the European Union set out their goals in their vision. Earlier, the European Council in Tampere offered preferential treatment for additional judicial functions to facilitate access to justice. In 2000, it promoted alternative means of resolving civil and commercial disputes. Continuing with the historical movement, a green paper was introduced that spoke on 'Different Solutions to Dispute in Economic and Commercial Matters.'⁸³

In time, mediation was seen as an effective way to resolve conflicts peacefully because of its suitability and features such as volunteerism, cost-effective and fast-paced acquisition. The work of formal framework was done and instructions were accepted. The European Parliament and the European Union on May 21, 2008, passed European Union mediation directives with the aim of facilitating access to alternative dispute resolution mechanisms and promoting conflict resolution by promoting the use of mediation and ensuring a balanced relationship between mediation and judicial proceedings.⁸⁴

⁸² WIPO Mediation Rules, *available at*: <http://www.wipo.int/amc/en/mediation/rules/> (Visited on July 12, 2019).

⁸³ Green Paper on Alternative Dispute Resolution in Civil and Commercial Law, *available at* : <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52002DC0196&from=EN> (Visited on July 14, 2019).

⁸⁴ 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, *available at*: <http://eur-lex.europa.eu/eli/dir/2008/52/oj> (Visited on July 14, 2019).

1.17.4 USA

To promote the use of mediation and to ensure that parties may have easy recourse to mediation, the Act of 2003⁸⁵ passed by USA which provides for the court annexed mediation. It also provides for an administrative agency and arbitrator reoffered mediation. To benchmark the standard of the mediation process, the model of American Arbitration Association (AAA) was adopted in 2009. In this, there is no need of keeping a written record.

1.17.5 Singapore

The Singapore Mediation Center (to be called SMC) was established under the Singapore Mediation Center Mediation Service Small Case Commercial Mediation Scheme Mediation Procedure, 2015. Under this action, any party wishing to resolve a dispute through this facility must complete a form and file an SMC. The parties are required to sign a contract as per the SMC model and it has a binding effect on the parties. The SMC appoints a mediator (s) as required. The parties reserve the right to oppose this nomination for good reason. Mediator helps parties reach an agreement and no video recordings are allowed in this process. There is no written record that further confirms the confidentiality of the arbitration process. The agreement must be in writing and signed by the parties and the arbitrator binding the parties. ⁸⁶

1.17.6 Hong Kong

Hong Kong International Arbitration Centre (hereinafter called HKIAC) was set up in Hong Kong by some corporate houses with the aid of Hong Kong Government in 1985. It was set up to provide the services of Arbitration to Mediation in Asia. These days it has become an autonomous body which is regulating its own affairs and funds itself⁸⁷. To promote mediation the Hong Kong Mediation Council

⁸⁵ Uniform Mediation Act, 2003, *available at* : http://www.uniformlaws.org/shared/docs/mediation/uma_final_03.pdf (Visited on July 14, 2019).

⁸⁶ SMC Mediation Service Small Case Commercial Mediation Scheme Mediation Procedure, *available at* : <http://www.mediation.com.sg/assets/business-services/SCCMS/07-SCCMS-Mediation-Procedure-6-Nov15.pdf> (Visited on July 15, 2019).

⁸⁷ Hong Kong International Arbitration Council, *available at* : https://en.wikipedia.org/wiki/Hong_Kong_International_Arbitration_Centre (Visited on July 15, 2019).

(hereafter called HKMC) was set up in 1994 under HKIAC⁸⁸. HKMC is organizing seminars as well as providing training to the mediators. It is dealing in Commercial, family, Construction and General mediation.⁸⁹

1.18 INDIAN PERSPECTIVE

The Indian system is an integrated system of standardized judging. Complaints must go through various stages of appeal for justice. This long process reduces the risk of irreversible error in the justice delivery system. Starting with the lower courts commonly known as the civil and judicial courts, it reaches the highest court through the district courts and the High Courts. The Law Commission was tasked with advising on legal reforms in order to remove the long-running criminal proceedings so that justice could not be denied to anyone because of their delayed tactics. The Law Commission presented its report recommending establishment of new courts for providing justice in a new way. The Law Commission in its report has recommended conciliation courts in accordance with the Himachal model pattern. Reconciliation courts were established in Himachal to resolve all types of disputes following parties' appeals. These courts were usually presided over by a judge who had no jurisdiction over the matter.⁹⁰ These courts gained popularity and success within reasonable span of time. The concept of conciliation courts was discussed by the Commission and it was further suggested that the hardships faced by these courts can be removed by an Amendment in order X of Code of Civil Procedure, 1908 (hereinafter called 'the Code of 1908) as :

“where a party ordered to appear before the court in person with a view to arriving at an amicable settlement of the dispute between the parties, fails to appear in person before the court without any reasonable excuse on the date so appointed, the court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.”⁹¹

⁸⁸ Hong Kong Mediation Council, *available at*: <http://www.hkiac.org/mediation/what-is-meditation/hong-kong-mediation-council> (Visited on July 12, 2019).

⁸⁹ *Ibid.*

⁹⁰ 129th Report on Urban Litigation Mediation as Alternative to Adjudication, 1988, *available at*: <http://lawcommissionofindia.nic.in/101-169/Report129.pdf> (Visited on July 19, 2019).

⁹¹ *Id.* at 50

After the presentation of this idea in various forums and conferences, it was found to be ineffective as it contradicted with the spirit of a different judicial process. In addition, changes to the Arbitration and Conciliation Act were a requirement which were considered to be impossible at that time and the issue was left for further consideration. The Legal Commission achieved its objective at the International Conference on ADR, Conciliation and Mediation. It was organized by the Law Commission in 2003 to scrutinize the wings of the dispute resolution program. With the active participation of the Judges and other prominent figures of the justice system, it became a great success.⁹² Thereafter the court-annexed mediation got the sanction from Supreme Court in the case of *Salem Bar Association*⁹³ where the process of mediation in judicial courts was termed to be constitutionally valid.

Mediation, conciliation and negotiation, in their ancient forms are historically older than the modern adversarial legal system. Various forms of mediation and resolution gained widespread popularity among businessmen during the pre-British period in India. The Mahajans were respectful, impartial, and intelligent businessmen who were accustomed to resolving disputes between merchants through mediation. They were readily available at business centers to mediate disputes between members of a class of businessmen. The decision in the Society's terms of contract made it a condition of dismissal of the seller if he turns to the court before referring the case to mediation. This process was particularly popular in Gujarat. This type of mediation did not have any kind of legal approval despite its common acceptance in the business world. The East India Company from the United Kingdom gained power over the Indian Administration and developed its seemingly commercial intentions into political rage. In 1753, India was transformed into a British Colony and British courts were established in India in 1775. The British ignored local customary judicial procedures and imitated the court system in pretty much the same way as it was prevalent in England. However, there was a conflict between British standards, which

⁹² Mediation Training Manual of India, *available at*:
<http://www.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf> (Visited on July 19, 2019).

⁹³ *Salem Bar Association, T.N. v. Union of India*, (2005) 6 SCC 344.

required a clear decision, and Indian standards, which encouraged the parties to resolve their differences in an amicable manner.⁹⁴

The British justice system gradually became a major justice system in India during the British rule of about 250 years. Even in England it was established during the time when the agricultural economy was in power. While India was still a colony, the system prospered and deepened its roots as a symbol of popular and unique justice. Traditional customs and community-based mediation processes and reconciliation processes that were successfully adopted by business organizations in western India were considered discriminatory and which deprived the defendants of their right to go to court.

The British courts started gradually becoming known for their honesty and trust. Even after India's independence in 1947, the Indian Judiciary has been proclaimed worldwide as a national pride. Until trade, commerce, and industry began to gain momentum in the 21st century, the British system of justice brought swift justice, while maintaining respect and dignity. Independence also brought about the Constitution, awareness of fundamental and individual rights, government participation in the growth of national enterprise, commerce and industry, the establishment of Parliament and state legislatures, state-owned enterprises, financial institutions, fast-growing global trade and public sector business. Great job opportunities were created. The outbreak of crime resulted in a series of court cases, an increase in the business opportunities beyond the borders of the area, population growth, several new laws creating new rights and new remedies and increasing popular confidence in the judicial forum. Inadequate infrastructure resources required for meeting the challenges have highlighted the inability of the system to handle a large number of cases. Instead of waiting in line for years and passing on assets, people tend to avoid prosecution and start using the alternative judicial remedies.⁹⁵

Almost all the democratic countries of the world have faced similar problems with court congestion and access to justice. The United States was the first to introduce drastic law reforms about 30 years back and Australia followed suit. The

⁹⁴ Jennifer P. Maxwell, *Mandatory Mediation of Custody in the Face of Domestic Violence: Suggestions for Courts and Mediators*, 37 FAM. & CONCILIATION CTS. REV. 335, 335 (1999)

⁹⁵ Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L. J. 1545 (1991)

United Kingdom has also adopted alternative dispute resolution as part of its legal system. The European Union also endorses mediation for the resolution of commercial disputes between member states.⁹⁶

The concept of mediation gained legal recognition in India for the first time in the Industrial Disputes Act, 1947. The mediators appointed under Section 4 of the Act are responsible for mediating and promoting the resolution of industrial disputes. Detailed procedures were set out for conciliation procedures under the Act.

Mediation, as a dispute resolution process was recognized in early CPC of 1879 which was replaced by the Civil Procedure Code of 1908. When the Arbitration Act was enacted in 1940, the provision for mediation, originally contained in Section 89 of the Civil Procedure Code, was repealed. The Indian Parliament took the lead in enacting the Legal Services Authorities Act, 1987 by establishing the National Legal Services Authority as the Central Authority and the Chief Justice of India as its Chairman. The Central Authority is assigned the task of performing, inter alia, the following tasks⁹⁷: -

- To encourage the settlement of disputes by way of negotiations, arbitration and conciliation.
- To lay down policies and principles for making legal services available in the conduct of any case before the court, any authority or tribunal.
- To develop legal training and educational programmes with the Bar Councils and establish legal services clinics in universities, Law Colleges and other institutions.
- To act in co-ordination with governmental and non-governmental agencies engaged in the work of promoting legal services.

The Indian Parliament passed the Arbitration and Conciliation Act in 1996, making extensive provisions for the settlement of disputes arising from legal entities, whether by agreements or not, and by all other procedures. The Act comprehensively lays the guidelines for the commencement of the mediation process, the appointment of mediators and the assistance of the relevant institution for the purpose of

⁹⁶ Douglas D. Knowlton & Tara Lea Muhlhauser, *Mediation in the Presence of Domestic Violence: Is it the Light at the End of the Tunnel or is it a Train on the Track?* 70 N.D. L. REV. 255, 276 (1994)

⁹⁷ H.K. Saharay, *Law of Arbitration and Conciliation* (Eastern Law House, Calcutta, 2001)

recommending the names of the mediators or the appointment of such mediators, the submission of statements to the mediator and the role of mediator.⁹⁸

In 1999, the Indian Parliament passed the CPC Amendment Act of 1999 inserting Sec. 89 of the Code of Civil Procedure 1908, which provides for the referral of pending cases in courts to ADR, including mediation. The Amendment came into effect on 1 July 2002. Since the introduction of India's economic liberalization policies and the adoption of legal reforms around the world, jurists are of the opinion that mediation should be the most appropriate solution to the problem of huge backlog of cases in the civil courts. In 1995-96 the Supreme Court of India under the leadership of the then Chief Justice, Mr. A. Ahmadi, took over the Indo-U.S., a joint study to find solutions to the delays in the Indian Civil Justice Delivery System and the entire Supreme Court was asked to appoint a research team for working in this regard with delegates from The Institute for Study and Development of Legal Systems (ISDLS), based in San Francisco. After collecting data from all states, the central team of researchers reviewed the data collected and made some concrete recommendations and came up with a proposal to introduce amendments related to case management in the Civil Procedure Code.

1.19. RESEARCH PROBLEM

The goal of mediation is to reduce conflict between the parties; however, domestic abuse is a complicated issue of power and control. Mediation assumes that both parties are equal, yet an abuser holds tremendous power over a victim. The imbalance of power between the parties cannot be remedied despite the skills of the mediator, even when the victim's advocate or attorney is present. During mediation, the abuser can easily control the victim through the use of signals known only to the couple. Additionally, if there is a long history of domestic violence, the victim is often afraid and reluctant to voice her concerns.

Mediation focuses on future behavior, and many mediators do not allow the victim to address past issues of violence. This furthers the victim's sense of personal responsibility for the abuse, and undermines the accountability of the abuser. The present study entitled "Mediation Center in Dealing Domestic Disputes" will highlight

⁹⁸ Fischer et al., *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU L. REV. 2117, 2169 (1993)

the role of mediation centers in dealing domestic disputes for domestic violence against women in India.

1.20. SIGNIFICANCE OF THE STUDY

Domestic violence is a common problem in our society, affecting up to fifty percent of all heterosexual relationships; twenty five percent of all women partnered with men are beaten regularly. Ninety five percent of all domestic assaults in heterosexual relationships involve men attacking women. Men are socialized in this culture to expect to be in control, especially in their relationships with women. The family is often still seen as a man's private world to control as he sees fit. Men batter to maintain their control and their power... and because they can; it is effective; it gets them what they want.

Domestic violence is a pattern of behavior in a relationship, as perpetrated by one partner against the other; it includes physical violence as well as emotional abuse, economic coercion, isolation, sexual abuse, threats and intimidation, use of the children, verbal abuse, damaging or destroying property, killing and abusing pets, and other forms of terrorism. Domestic violence is, therefore, not any particular, discrete incident or incidents, nor is it a dispute or conflict. It is never not present as a factor once a partner has been intimidated, terrified, threatened, coerced, beaten, slapped or otherwise put on notice by the abuser of his intent and capability to control her.

The question which arises is that whether mediation is an appropriate tool to resolve any of the issues between persons where domestic violence has been perpetrated? There are many who believe that mediation is a viable and reasonable tool for resolving disputes, and it includes domestic violence cases as "disputes" which can and should be addressed with mediation. Many practitioners believe that while they cannot mediate the violence however they can mediate other issues, such as custody, visitation and property settlement. Proponents of using mediation say that mediation is "one tool among many" that may be used, that mediation encourages cooperation instead of litigation, community building instead of adversarial proceedings, empowerment instead of being made spectators in a court process. In short that it is "restorative justice", instead of "retribution justice". Thus, mediation centers can play an important role in the handling of domestic violence cases which will be represented in the present study.

1.21 LIMITATIONS OF THE STUDY

1. The present study was delimited to sample of 70 mediators and 200 victims of domestic violence.
2. The present study was delimited to Mediator centers of Tri City only.

1.22 CHAPTER SCHEME

Chapter-1 “INTRODUCTION” discussed about the Concept of Mediation, Historical Background of Mediation in India, Types of Mediation, The Process of Mediation, Composition of the Mediation Process, Importance of Mediation in Speedy Justice, Role of Mediators, Functions of a Mediator, Qualities of a Mediator, Mediation Process and Techniques, Role and Ethics of a Mediator, Role of a Lawyer In Mediation, Role of Referral Judges in Mediation, Role of Parties in Mediation Process, Mediation Vis-À-Vis Litigation, Distinction between Mediation and other Modes of settlement, Advantages of Mediation, International Perspective, Indian Perspective, Research Problem and Significance of the Study.

Chapter-2 “DOMESTIC VIOLENCE AND ROLE OF MEDIATION CENTERS” explained about the General Understandings of Violence and Domestic Violence, Specific Understanding of Domestic Violence, Understanding the Causes of Domestic Violence and other Descriptive Models, Causes of Domestic Violence in the Indian Context, National Family Health Survey on Domestic Violence in India, National Institute of Justice on Domestic Violence, Other Global and Regional Estimates of Violence Against Women, Effects of Domestic Violence, Mediation as a Tool for Marital Conflict, Role of Mediation in Matrimonial Dispute, Successful Mediation In Matrimonial Disputes Approaches, Resources, Strategies & Management, Types of Matrimonial Problems - Diagnosis and Management, Identifying and recognizing Domestic Violence, Strategies for Women using Anti-Domestic Violence, Understanding of Partners get Stuck in Abusive Relationships and Interventions which help Mediation Programs deal with cases of Domestic Violence

Chapter-3 “REVIEW OF LITERATURE” revealed about the studies related to the topic of the present study i.e. “Role of Mediation centers in dealing with domestic disputes”. These studies throw the light on previous work done by various researchers

on the similar topics. These studies also provide the way to deal with the problem of Domestic Violence with the help of Mediators.

Chapter-4 “RESEARCH METHODOLOGY” presented the pictures of the methodology used in the present study by including Statement of the Study, Operational definitions, Method of the Study, Sample, Objectives of the Study, Tools used, Description of the tools Procedure and Statistical Technique Used.

Chapter-5 “STATISTICAL INTERPRETATION” depicted about the analysis and interpretation of data. The organization, analysis, and interpretation of data, the formation of conclusions, and generalizations are necessary steps for getting a meaningful picture out of the raw information collected. For the analysis and interpretation of deal with the objective material and subjective reactions of the material, the data has been used for deriving some inherent meanings in its relation to the problem. An analysis of data means studying the tabulated material in order to determine inherent facts or meanings. It entails breaking down the existing complex factors into simple parts, and thereafter putting those parts together in new arrangements for the purpose of interpretation

Chapter-6 “FINDINGS, SUMMARY, CONCLUSION AND SUGGESTIONS” summarized the whole thesis with Sociological insight for the Present Study, Sociological Significance of the Study, Findings of Perceptions of Victims of Domestic Violence and Mediators/Counsellors dealing with Problems pf Domestic Violence victims and Suggestions.

CHAPTER-2

DOMESTIC VIOLENCE AND ROLE OF MEDIATION CENTERS

Violence against women is a manifestation of historically unequal power relations between men and women, which have led to the maltreatment and discrimination of women by men and which has caused impediment to the full development of women. Violence against women is one of the most important social issues in which women are forced to be less powerful than men.⁹⁹ Violence against women is always legitimized by arguments of culture as no society is devoid of culture.

Patriarchal culture affirms violence as an acceptable, and desirable masculine quality which often undermines the status of women and all the attributes considered to be feminine and thus it intervenes in relationships. Old philosophical views on the role of women permeate all male-female relationships within the four walls of the home which are considered to be the abode of love, warmth and care.¹⁰⁰

Family forms the fundamental part of the social organization. It is an inevitable part of human society. The main center of any society is also formed by the traditional marriage of men and women, leading to the birth of an offspring. All families are used for their support and protection, because through them, societies are strengthened culturally and biologically. Therefore, family is a well-known unit of society in which the members are closely related to each other in terms of blood relationships, marital relationships, and law. The World Population Plan of Action, which came out of the 1994 World Summit, recommended that a) the family be protected by appropriate legislation, b) family ties to be strengthened by recognizing the importance of love and respect in the family sphere, and c) steps to protect the social and

⁹⁹ The U.N. Declaration on the Elimination of Violence against Women 1993, Art.1

¹⁰⁰ Sven Kachel, Traditional Masculinity and Femininity: Validation of a New Scale Assessing Gender Roles, *Frontiers in Psychology*, 9 (2016).

legal rights of spouses and children marriage by death or some other reason.¹⁰¹

All societies express full control over this unit by their determination of marriage and the definition of rights and obligations arising from marriage and subsequent birth. In this sense, women are made as wives and mothers, given the task of raising children and doing household chores. Husbands, on the other hand, are men, who are responsible for the financial well-being of the family. The gender based division of labor was closely related to the emergence of family income which resulted in the women being economically loyal to their husbands.¹⁰²

The emergence of the private sector i.e., the domestic sector and the public sector has been a natural result of the family perspective. The role of women within the home environment as wives and mothers was regarded as a natural product of their reproductive role. These ideas have fostered and strengthened social / private divisions. The family is understood to be more than just a state intervention aimed at curbing oppression of women in the domestic sector. Thus the framework of authority was considered to be that of the patriarchs. In a patriarchal society different aspects such as succession to family planning and life-long, family-oriented relationships are marked by an unequal gender-based relationship in power lines where a strong position of man and female subjection are recognized as a social norm.¹⁰³

2.1 GENERAL UNDERSTANDINGS OF VIOLENCE AND DOMESTIC VIOLENCE

The answer to the questions as to how domestic violence is defined, how it occurs, and how it begins in a family and how it manifests itself, go

¹⁰¹ Gunjan Jain, Significance of Marriage as Social Institution, Vidya Knowledge Park, Meerut.

¹⁰² Megha Thadani, Women Legal Rights in India, Every Married Women should be aware of, available at <https://www.shethepeople.tv/news/legal-rights-every-married-woman-aware>.

¹⁰³ In the Indian household, lines of hierarchy and authority are clearly drawn, and ideals of conduct help maintain family harmony. All family members are socialized to accept the authority of those above them in the hierarchy. The eldest male acts as family head, and his wife supervises her daughters-in-law, among whom the youngest has the least authority. Reciprocally, those in authority accept responsibility for meeting the needs of other family members. See Suranjita Roy, Understanding Patriarchy, B.A Programme; Foundation Course, "Human Rights Gender and Environment", University of Delhi (2009),p.8

deep into our understanding. Although much progress has been made, none of these questions have been resolved. Legal definitions therefore continue to vary, as do the definitions used by social scientists and health and social service providers. Different meanings also reflect different thinking and different emphasis on the scope of violence, especially domestic violence.¹⁰⁴

The motive for the evolution of human rights is the fundamental need for a dignified life in which the natural dignity of the individual is respected and well protected. There is no universal agreement on the definition of violence. The definitions reflect social values, which are subject to historical and cultural change. In addition, the definitions are influenced by philosophical, legal, social, and criminal discourses. Domestic violence is a global phenomenon, although its manifestations vary with respect to the social, economic, and cultural background.¹⁰⁵

It is one of the most subtle forms of violence against women, and the issue is often covered up in public. The Collins Dictionary defines violence as: (1) Behavior intended to injure or kill; (2) great force used to do something often because he is so angry; (3) words, actions or other forms of speech that are critical or harmful. The Oxford Dictionary describes violence as (1) a quality of violence; (2) violent behavior or treatment, anger, injury; 3 (a) illegal use of force; 3 (b) intimidation by the show of this. Roget's Thesaurus adds some dimension to the concept. It shows that nominal violence refers to violence, aggression, destruction of property, chaos, sharpness, brutality and the explosion. An adjective 'violent' is defined by words that are aggressive, charging, orderly, immoral, unbalanced, anarchistic etc.¹⁰⁶

Violence is usually a form of coercion to prove one's will over another, in order to prove or feel power. Violence is an act designed to bring down, silence, and keep someone under control with the intent to harm or humiliate the person. It can be manipulated by those in power against the

¹⁰⁴ Anne, L. Ganley (2002), Understanding Domestic Violence available at <https://andvsa.org/wp-content/uploads/2009/12/60-ganley-general-dv-article.pdf>

¹⁰⁵ *Ibid.*

¹⁰⁶ Shirin Kudchedkar, Sabiha Al-Issa (Eds.), Violence Against Women: Women Against Violence, Pencraft International, Delhi (1998) p.13.

weak, or by those who are powerless in retaliation against others, denying their power. State-issued powers are recognized as legal means of resolving the problem. One of the main causes of violence is that the coercion involved is not legally or socially acceptable. Any social organization system, in which there are large groups and subgroups, inevitably is accompanied by the abuse of the latter in various ways - subtle pressure, in the view of power, through a welfare system that rewards non-compliance and punitive - compliance and open power. Any person or group facing the threat of coercion or force to act in the manner required by another person or group is subject to violence. ¹⁰⁷

Domestic violence is violence in the family. The term domestic violence refers to violence among people who are often imprisoned by law, blood, or physical contact. Psychologists assert that people deal with their insecurities and diffidence by harassing and controlling the lives of others within the safe walls of their homes. The home environment makes victims very vulnerable and susceptible. Domestic violence has been a part of human society since ancient times. Domestic Violence may include beatings, rape or sexual assault, anything that interferes with a person's right to be treated as a human being. That violence which occurs within the confines of four walls of the house is domestic violence.

The word domestic violence is often likened to words such as beating a wife, beating a man, abusing a husband, abusing women etc. In recent times words such as beatings and thrashings are not widely accepted because they do not cover up other forms of violence other than physical abuse. These other forms of abuse have the potential to cause great mental and emotional harm to people that can lead to suicidal and self-destructive behavior. According to the myth of family sanctity, when peace and harmony in the family prevail, domestic violence exists as a real loathing. Given the economic dependence of women in the family in the existing patriarchal family, women become highly vulnerable to different aspects of violence.

¹⁰⁷ *Ibid.*

In contemporary legal definitions, the issues of power, domination, and control are also explored to discover the intent behind domestic violence.¹⁰⁸ The World Health Organization has defined partner violence as any behaviour within an intimate relationship that causes physical, psychological or sexual harm, including :

1. acts of physical aggression, such as slapping, hitting, kicking and beating
2. psychological abuse such as intimidation, constant belittling and humiliation
3. forced intercourse and other forms of sexual coercion; and
4. various controlling behaviours such as isolating a person from their family and friends, monitoring their movements, and restricting their access to information or assistance .¹⁰⁹

Domestic violence is an abusive behavior in any relationship used by one partner to gain or retain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological. This includes any behavior that is intimidating, deceptive, demeaning, discriminatory, intimidating, coercive, threatening, suspicious, hurtful, harmful or injurious to another person. ¹¹⁰

The work of advising and supporting family courts in Britain uses the term domestic violence to refer to a variety of abusive and violent behaviors in its domestic violence policy. It describes domestic violence as a behavior characterized by abuse of power and control over another person who are very close to one another or who have had a close relationship. ¹¹¹

The contemporary definition of domestic violence is multidimensional, space-neutral, and inclusive in nature. Laws are also increasingly defining domestic violence as a process of domination,

¹⁰⁸ Shahidullah, Shahid M. and Nana Derby, "Criminalization, Modernization, and Globalization: The U S and International Perspectives on Domestic Violence", 10(3), *Global Crime*,198 (2009)

¹⁰⁹ World Health Organization, *World Report on Violence and Health*, Geneva, 2002

¹¹⁰ Office of Violence Against Women, 'The Fact Sheets About the Office on Violence against Women Focus Areas' (2009), 1, <http://www.usdoj.gov>.

¹¹¹ <http://definitions on domestic violenceuk.org>.

exploitation, and dehumanization. This broader definition of domestic violence has gained ground in law.¹¹²

2.2 SPECIFIC UNDERSTANDING OF DOMESTIC VIOLENCE

In the following chapters, the terms 'domestic violence' and 'abuse', will be used to refer to the physical, emotional and / or sexual abuse of a woman by a man with whom she had an intimate relationship. Female victims are considered regardless of the role that they play in the house such as their sister, mother, daughter-in-law etc. Violence against women is considered to be violence in a man-woman relationship within the family home. Domestic violence is what happens between people in domestic relationships within the privacy of the four walls of the house. It includes physical, psychological, sexual, economic, emotional, and oral abuse of all kinds. Domestic violence is about power relations and the abuse of power in the family. It is done by one member or members in partnership with another to gain control. It leads to the violation of a series of human rights guaranteed by various international, national and regional human rights instruments.

As opposed to the general construction, domestic violence in the study refers to violence occurring within a man-women relationship¹¹³. While we recognize that some forms of violence deserve equal treatment, this study does not include violence against women by strangers outside the home - in public places such as the streets, workplaces or prisons, or in cases of civil war or violence against immigrant women.

The keyword 'family' used throughout this study refers to the local space where family members are associated and connected by blood ties,

¹¹² L. Waldorf, C. Arab, and M. Guruswamy, CEDAW and the Human Rights-Based Approach to Programming (United Nations Development Fund for Women (UNDFW), (2007), available at <http://www.unifem.org/>

¹¹³ Domestic violence has five salient features: Firstly, it is perpetuated by someone in domestic proximity and relationship to the victim, generally her life partner or some other intimate family member; secondly, it happens in domestic settings which are generally outside the law because the precincts are presumed by society to be sites of support and care and within private province and not for public discourse; thirdly, it is marked by a recurrence generally falling into a cycle; the abuse is followed by a lull or prelude after which tensions build up again precipitable as another violent episode; fourthly, the abuser uses domestic premises to control and coerce the victim; and finally the abuse leaves profound emotionally and psychologically harmful effects on the victim.

marital power and marriage (intimate relationship relationships) that symbolize Indian culture. The study does not make a distinction between the nuclear families that have emerged as a result of industrialization and the old joint families or extended families. In this Study, the use of the word Indian family setting refers to Hindu culture, the largest cultural group in India.

2.3 UNDERSTANDING THE CAUSES OF DOMESTIC VIOLENCE AND OTHER DESCRIPTIVE MODELS

Just as there is disagreement on the same definition of domestic violence, there is not a single view with regards to the root causes of domestic violence. Why a woman is at greater risk should be explained in relation to the particular social context that exists. It is often difficult for a woman to report violence, take legal action or end a relationship because of: fear for her or her children's safety, fear that her children will be caught or taken away by her husband if she is suspected of being an inappropriate mother, influence of her extended family or children. , insecurity and remorse, economic trust in the abuser, religious values or pressure from the cultural community, immigration of women, fear of deportation, social isolation and lack of support system, denial by the authorities, reduction of the estimate of the magnitude of violence and above all legal ignorance of victims' rights¹¹⁴.

Many descriptive models have been posted to explain domestic violence. Initially, internal-human models focused on the notion of violence arising from the perpetrator's psychological trauma and frustration because of the unmet expectation of family members, or the effect of dysfunctional family relationships. In contrast, social cultural models emphasize social structure, norms, and values as the dynamics that lead to the emergence of domestic violence. For example, the socio-learning approach to learning violence emphasizes the influence of variables such as job level and parental model. In particular, gender-sensitive approaches emphasize gender roles and

¹¹⁴ Maya Majumadar, *Social Status of Women in India*, Dominant Publishers and Distributors, New Delhi (2004),p.23

expectations and the reduction of women's work within and outside the home as critical to understanding domestic violence.¹¹⁵

The natural model combines these various elements in a systematic way. This model is based on the understanding that domestic violence is the result of a combination of social and human factors and can best be seen as four circles. The inner circle represents the biological and personal history that brings each person into a relationship. The second circle represents the context in which the abuse, family and / or intimate relationship occurs. The third circle represents formal and informal institutions and community structures in which relationships are embedded such as residences, workplaces, social networks, and peer groups. The fourth most distant circle is the economic and social sphere, including culture. The last two circles meet to include things like socio-economic status and level of education. In the environmental model, violence is often associated with more than one factor and is less obvious in certain behaviors but includes a wide range of physical, emotional and psychological behaviors that can harm a person in the home.¹¹⁶

Literature on domestic violence has extended a hand full of theories to explain the causes of domestic violence in a society¹¹⁷. The major theories that highlight the causes are :

1. ***Feminist theory:*** Giving much stress to gender and power, the theory states that domestic violence reflects the unequal power of men and women in the society and which is reflected in the personal relationships. The patriarchal structure of the society plays a dominant role in all most al the social institutions including the family.
2. ***Family system theory:*** The advocates of this theory highlight the sociological perspective emphasizing family structure as the cause of domestic violence. The family represents a unit of social relations

¹¹⁵ *Ibid.*

¹¹⁶ Domestic Violence in India- A Summary Report of a Multi- Site Household Survey: International Center for Research on Women and The Centre for Development and Population Activities, Washington, DC,(2000) pp.1-3

¹¹⁷ Sheeba S. Dharr, "Domestic Violence Against Women: A Conceptual Analysis", 31(1&2) The Academy Law Review 122 (2007).

with unique properties that make it a fertile ground for violence. The vulnerability of each of the members of the household is ascertainable and the membership in a family structure is not voluntary. The legal intervention in the familial domain is not acceptable. All these serve to cloak violence inside home .

3. ***Psychological and physiological theory:*** Individual problems are highlighted as the cause of domestic violence under this perspective. It concludes that a personality disorder or first experience of abuse puts some people in a domestic violence situation. People with such problems or disorders can choose partners who can imitate the dysfunctional relationships they had with their parents. This refers to the lower neuro-biological components of a person who has control over the health conditions of that person. This view refers to the behavior of the abuser in situations of domestic violence. It emphasizes such things as brain composition, chemical imbalances, malnutrition and hormonal factors as the main cause of violent behavior that needs to be addressed first in order to end such violent situations.
4. ***Socio-psychological theory:*** This theory stresses on external environment factors having impact on individual offender. Stressful situations or family interactional patterns are held as precursors to violence. This theory includes; frustration aggression theory, perversion theory, self - attitude theory, cycle theory of violence, theory of learned helplessness¹¹⁸ and survivor theory.¹¹⁹
5. ***Socio-cultural theories:*** These theories highlight macro level analyses of violence perpetrated against the household members in a family. These theories state domestic violence in terms of socially structured

¹¹⁸ This theory states that a women's experience of non-contingent nature of attempts to control violence would, over a period of time, produce learned helplessness and depression as the repeated violence diminishes her motivation to respond. Hence there will be passive acceptance of the exploitative situation .

¹¹⁹ Survivor theory views women are not passive victims but pro-active help seekers and survivors. This theory in contrast to the social helplessness theory credits women with the capacity to innovate newer strategies of coping and acknowledges the efforts of survivors in seeking help from formal and informal sources

inequality, socio-cultural attitudes and norms regarding anti-social behavior and interpersonal relations. It includes various sub theories like: structural–functional theory¹²⁰, resource theory¹²¹, patriarchal theory¹²², social learning theory¹²³ and exchange theory.¹²⁴

From the analysis of various scientific theories, it is clear that not a single theory can fully explain the causes of domestic violence. Rather than a single concept, a teaching method or integrated approach can explain the causes of all forms of violence related to domestic violence.

2.4 CAUSES OF DOMESTIC VIOLENCE IN THE INDIAN CONTEXT

The family and marriage are institutions in India where women and men are socialised to perform strictly defined gender roles. These institutions remain the foundation stones of the Indian society. At one end of the spectrum, the causes for domestic violence may be personal or individual but they also have roots in the political, economic, social and cultural arrangements. The probable causes are multiple and have to be explored in all its dimensions in the Indian cultural backdrop.

¹²⁰ It asserts that social groups differ in respect t their typical levels of stress, deprivation, frustration and in the sources at their disposal to deal with these stresses. Those individuals with low resources tend to be more violent, Stress can arise out of economic imbalance, bad housing, lack of job opportunities, frustrating work conditions etc. Men and women are particularly attached certain determined social roles and expectations

¹²¹ The theory assumes that family like other social systems rests on some degree of force and power which is necessary to control behavior of members. The family as per the theory has 4 set of resources to maintain stability such as economic variables, prestige or respect, love and force of threat of force. Violence is employed either to dominate the position of torturer or for dealing with imbalance in family interactions.

¹²² This theory is the product of historical pattern of systematic violence directed against females in the household

¹²³ This theory hold s that those who witness violence between parents or who themselves experience abuse as children are likely to resort to violence in adulthood. This problem refers to the ‘inter-generational transmission of violence’. It means an individual resorts to violence through imitation .

¹²⁴ This theory explains growth of anger and violence when the principle of distributive justice is violated. The theory describes violence on the basis of interaction between intimates that is guided by the pursuit of rewards and avoidance of punishment and costs. By applying the theory to the family violence, it may be said that people will use violence in a family if the cost of being violent does not out –weigh the rewards

2.4.1 Patriarchal engendering and shaped understandings

In a patriarchal society, such as India, women generally do not have access to and control of all resources, be it physical, financial, intellectual, or socially. The women are not given power to make decisions about work, fertility and sex and these decisions are left at the behest of the men in the family. Patriarchal attitudes and behaviors towards community parenting also restrict access to and control of ideas for women.

Indian culture promotes family sanctity and at the same time privacy in families. Women have the responsibility to maintain the dignity of the family. A woman who tolerates and suppresses her emotions and expressions is seen as fulfilling her duty to protect the 'honor' of her husband and family. And the idea that no one needs to intervene when a man is violent toward his wife, sister, or mother is commonplace. All of this ensures a free intervention for men to commit violence against women.

This structured understanding leads to results in the founding of the patriarchal society. Women should be at a great loss if they do not conform to the beliefs and views of the society. The patriarchal vision is so obscure that women themselves become distributors.¹²⁵

Another common feature of patriarchs set in India is the love for a son. According to patriarchal tradition, the daughter is a *paraayadhan*, an outsider once married. She is a burden on the family until she gets married. It is a well-known concept that a son should look after his parents when they grow up. So there has always been wanting for a son in the patriarchal society. Dowry is a patriarchal oppression tool. As a result of socio-economic deprivation, women are brought up in a position that helps little but positively to improve the status quo.¹²⁶

They become used to the institutional legitimation of their low status and find nothing wrong in crimes and exploitations committed against them.

¹²⁵ Asad U, Najib K, Mussawar S and Farooq K (2017), Role of Patriarchal Norms in Deprivation of Women from their Political Rights in Pukhtoon Society, Department of Rural Sociology, available at <https://www.longdom.org/open-access/role-of-patriarchal-norms-in-deprivation-of-women-from-their-political-rights-in-pukhtoon-society-2332-0915-1000181.pdf>

¹²⁶ *Ibid.*

They bear the toll as their fate and duty to be chastised by male members and remain silent. Viewed in the light of the marital power theory¹²⁷, the patriarchal underpinnings in India are akin to the power process as described under the theory.

A collection of goods and resources that provide the foundations for a partner's dominance over another is given to the man in the family. The theory of marital power is combined with the concept of resources at this time, namely, the power to make decisions within a given family is found in the number of resources that each person brings to the relationship. This in turn leads to the process of making decisions by the male members in the family. Like-wise those powerless female partners are subject face domestic violence. These situations reinforce the notion of domestic violence.

2.4.2 Psychological dimension

According to psychological research, domestic violence can occur due to biological and chemical causes as well. Low serotonin, high dopamine, pre-existing dysfunction, low glucose dysfunction, brain dysfunction, seizures can lead to domestic violence. Disorders of personality such as anxiety, apprehension, frustration, submission, attitude toward sexual roles, a guilty conscience, jealousy, self-loathing can lead to Domestic Violence .

Domestic violence can also be caused by mental disorders e.g.¹²⁸.

In Freudian's view, everyone has a storehouse of natural forces where a violent object is a large object, suppressed or altered by the development of an ego object, which is part of the personality you know. If during the entertainment process, the ego can be properly developed, personality becomes flawed, and natural driving is clearly seen in the form of aggressive behavior. Violence can only be inflicted on the person who will not respond or consult the authorities. This cause of domestic violence naturally symbolizes the Indian society where family values dominate the background and women are considered submissive. Bio-psychosocial vision strengthens psychological

¹²⁷ Available at <http://wost201hdomviol.tripod.com/groupactionproject/id4.html>.

¹²⁸ Mark, W. Miller, Biological Correlates of Intimate Partner Violence, available at http://www.napsipag.org/PDF/NEENA_JOSEPH.pdf.

perception and integrates biological factors (testosterone levels, alcohol abuse), social factors such as social stress level, relationship quality, income and the amount of social support available; and psychiatry (tendency to social exclusion, hostility, involvement, need for satisfaction or attention) .

Violent arrest theory seeks to explain why Indian women live with abusive men. As power relations are separated over time, the powerless person in the relationship becomes increasingly dependent on the controller. In addition, the times between abuses are times when a positive expression of love and affection reinforces the legitimacy of a relationship that introduces a visual circle that leads the victim to see the world from the abuser's point of view. Thus, a culture of peace is produced when violence is overshadowed by fear of discrimination. ¹²⁹

2.4.3 Socio-Cultural Dimension

Outbreaks of domestic violence, poor family environment, alcoholism and drug addiction, poverty, poor motherhood, prostitution, unemployment, gangs can all contribute to domestic violence. All of the above highlight the potential causes of the issue of domestic violence against women in India. In conclusion, in simple terms, the plight of the victim of domestic violence in the Indian context is described by Rebecca J. Burns in the following words ¹³⁰:

“When I am asked why a woman doesn’t leave the abuser I say: Women stay because the fear of leaving is greater than the fear of staying. They will leave when the fear of staying is greater than the fear of leaving”.

That is to say, the average Indian woman has a tendency to bear the abuse inflicted on her either by her old family or by her husband and her family. In intimate male relationships within the house the average Indian housewife has a tendency to bear the abuse experienced by her husband and family.

¹²⁹ Stith SM, Smith DB, Penn CE, Ward DB, Tritt D. Intimate partner physical abuse perpetration and victimization risk factors: A meta-analytic review. *Aggression and Violent Behavior*. 2004;10(1):65–98

¹³⁰ *Ibid.*

Ideas found across the range from individual to social structure highlight the causes of domestic violence against women in society. The whole range of ideas in one way or another is the result of incidents of domestic violence that can be discussed in the Indian context and each theory needs to be well received to fully understand the problem. ¹³¹

The causes of domestic violence against women are a complex combination of socio-economic, cultural and legal factors that contribute to the increase in violence against women. Various reasons for domestic violence are given below.

Social causes of domestic violence against women include the low status of women due to the social norms, the formation of patriarchy, poor family status, lack of proper training, broken homes, overcrowding, severe parental interference, lack of discipline, lack of parental love, drunkenness, immorality, cruelty and the current state of relaxation, etc. Historical accounts show that the cultural and social practices of many societies around the world discriminated against women. In ancient times, women were generally treated as outcasts, socially and economically. In many countries, women are victims of cultural practices that violate human rights. The persistence of the problem is closely related to the fact that many of these harmful physical and psychological practices are deeply rooted in the cultural traditions of the society. In India, society is largely patriarchal, which controls the production of sex, the production of society characterized by certain cultural metaphors. ¹³²

2.4.4 Dowry demand

Dowry is demanded in marriage because it is considered to be a cultural right of the boy's family.

It is culturally acceptable and should not be challenged. If the husband goes to prostitute then it is considered to be the wife's fault. If he had started

¹³¹ Plichta SB. Intimate Partner Violence and Physical Health Consequences: Policy and Practice Implications. *Journal of Interpersonal Violence*. 2004;19(11): 921.

¹³² *Ibid.*

to become an alcoholic even before marriage then it was also his wife's job to get rid of his habit by her love and care. ¹³³

2.4.5 Moral and Psychological Environment

Rapid changes in the last few decades as a result of the social pressures of urban migration, forced migration have put the traditional Indian standards in melting and led to a very painful moral and psychological climate. Sacraments and family obligations diminish. There has been a disintegration of the joint families which earlier provided emotional security and physical support to all its members. It used to control its members and played an important role in teaching child basic values such as truth, honesty, tolerance, caring, etc. Each member received an appreciative audience in the family. There was no sense of separation. Relatives and neighbors offered to provide lifelong moral support. ¹³⁴

All of this has changed due to the economic needs that have forced men and women to work for a surviving. Humans have dismissed the idea of a simple life-style and a mind-set. They want more in life, an apartment, a colorful TV and Maruti etc. Wedding ads are for working wives. This situation leads to many problems. Nuclear families are characterized by working parents enduring a daily war between home and work. No mother-in-law or sister in charge of the children when the wife goes to work. The family looks inside them, rather than intensifying the emotional tension between the husband and wife and the parents and children. The family is completely dependent on their resources. The nuclear family is like a region full of electricity. A lobola is required. The result is misunderstandings, misconduct, conflict, and frustration that manifest itself in members' behavior and lead to an increase in crime rates, especially against women. ¹³⁵

While working parents spend a lot of money on children. They often end up ruining the care and time they need, not to mention the morals that

¹³³ *Ibid.*

¹³⁴ Agosin, Marjaric, *Women Gender and Human Rights: A Global Perspective*, Rawat Publications, Jaipur, 2003, p.293.

¹³⁵ *Ibid.*

should be taught in the early years of life. The children are left to fend for themselves or to be left with the maids or servants. Few are left in kindergartens/creches. Children need adequate time and attention. They want physical intimacy with their parents, and all these requirements remain unfulfilled. The kids are unloving and look elsewhere for company and friendship.

Working parents do not have time as they return home tired and often have a responsibility to serve. This leads to neglect of children. There is no parental control over children and no effective monitoring of their behavior or attitude by the parents. When children are left with servant, they forget that it is the most creative time in their lives. ¹³⁶

The decline in the status of women in the Indian society is clearly visible in the world of films pop-culture. Instead of working on acting skills the heroines are now determined to dump their pallus and expose their breasts and body for the starving sex spectators. A new trend among Hindi filmmakers is to portray sexual violence and crime, against with women along with violent scenes and foul language. ¹³⁷

2.4.6 Personal and Psychological

In an Indian family, husbands are considered as god. The wife's job is to look after him and his comfort. He is the whole world for the wife. If he was happy the whole family was happy; When he was upset there was an explosion. Women are being raised to be submissive and never question the husband's authority. Manu, the supreme lawmaker, ordered that the husband must be worshipped not taking into account that he is drunk, cruel or an unethical man. But now with a working woman the husband finds his position becoming inferior. Emergency services often force a husband and wife to live separately. This has reduced the wife's and physical dependence on her husband. She can live on her own and find herself, the psychological consequences of being recognized as a basic human rebellion. The husband

¹³⁶ Families have the most important role for ensuring the safety and wellbeing of their children available at <https://www.dcp.wa.gov.au/ChildProtection/Documents/ProtectingChildren.pdf>

¹³⁷ *Ibid.*

does not want his wife to be independent as there arise feelings of jealousy and suspicion. He uses force to see his wife fall or to make obstacles in her work to prove his superiority. These are the major causes of domestic violence and contribute significantly to the growing violence against women.

2.4.7 Unemployment and Poverty

Unemployment and poverty are a major cause of crimes against women. Some men cannot see other men doing well while they are unemployed. They find that it is easy to blame women for their failure, increasing their resentment and committing crimes against them. Unemployed men are found beating their wives over trivial household matters.¹³⁸

2.4.8 Alcoholism:

Many crimes are committed under the influence of alcohol or drugs. The harmful effects of alcohol lead to serious psychological and physical harm and lead to criminal tendencies. Excessive drinking causes family members to starve, attack and quarrel between husband and wife, between father and child and so on. Alcohol-related crimes show a lack of attention from time to time and under different circumstances.¹³⁹

2.4.9 Marital Maladjustment

Marital maladjustment is the cause of a large number of crime against women in matrimonial homes as well as outside. The maladjustment may arise both because of the personality characteristics of the husband as well as that of the wife and the environment in which the marriage functions.¹⁴⁰

2.4.10 Legal Causes:

The legal system is a reflection of the societal attitude towards women as it is non-responsive to her plight. The law enacted for the protection of women suffers from various shortcomings.¹⁴¹

¹³⁸ Indian express, May 16, 1992, Metro News, p.5

¹³⁹ Dr. Jung, C.G., Modern man in search of soil pp- 235-36

¹⁴⁰ *Ibid.*

¹⁴¹ Verma, Justice. 2013. PRS Legislative Report. January 18, 2013. [Cited: July 6, 2016.] <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>

The attitude of the court in interpreting these laws is conservative, rigid and traditional. The enforcement of these laws is so poor that the offenders seem to have lost all fear of authority. They grow bolder because they are not caught so they indulge in crime with impunity. The record of the police in preventing crimes has been very poor. The perpetrators indulge in crimes making police a part of the system. The judicial system is slow. It gives the wrongdoers time to wipe out all evidence of the crimes. Cases are often withdrawn from the courts without even farming the charge-sheet. ¹⁴²

2.5 NATIONAL FAMILY HEALTH SURVEY ON DOMESTIC VIOLENCE IN INDIA

NFHS (National Family Health Survey) highlight the status of spousal violence in India. According to NFHS-4 (2015-16), 20.6 percent women in India faced spousal violence. About 40 percent women in Bihar, 30 percent in Manipur, 36.9 percent in Telengana, 32 percent in Assam and 30 percent in Andhra Pradesh suffered from domestic violence.

Among ever-married women age 15-49 who have experienced physical violence since age 15, 83 percent report their current husbands as perpetrators of the violence and 7 percent report former husbands as perpetrators. For never-married women who have experienced physical violence since age 15, the most common perpetrators include mothers or step-mothers (60%), fathers or step-fathers (32%), sisters or brothers (26%), and teachers (15%).

NFHS-4 shows that sexual violence is most often committed by individuals with whom women have an intimate relationship. Among ever-married women age 15-49 who have ever experienced sexual violence, 83 percent report their current husband and 9 percent report a former husband as perpetrators. Among the never-married women who reported sexual violence, the most common perpetrators were “other” relatives (30%), followed by a current or former boyfriend (16%), their own friend or acquaintance (15%), and a family friend (13%). Non-trivial percentages of never-married women report strangers (6%) and teachers (5%) as perpetrators

¹⁴² *Ibid.*

Physical violence and sexual violence may not occur in isolation; rather, women may experience a combination of different types of violence. Twenty-five percent of women age 15-49 have experienced physical violence only, 1 percent have experienced sexual violence only, and 5 percent have experienced both physical and sexual violence. Overall, 30 percent of women age 15-49 in India have experienced physical or sexual violence. The percentage of women who have experienced physical or sexual violence ranges from 5 percent in Sikkim to 44-46 percent in Andhra Pradesh, Telangana, Tamil Nadu, and Manipur.

Of the acts of physical violence committed by the current or most recent husbands, the most common type is slapping, reported by 27 percent of ever-married women. Thirteen percent of women reported being pushed, shaken, or having something thrown at them; 11 percent reported having their arm twisted or hair pulled; and 8-9 percent each reported being punched with the fist or with something that could hurt them or being kicked, dragged, or beaten up. Two percent of women reported that their husband tried to choke or burn them on purpose and 1 percent reported that their husband had threatened or attacked them with a knife, gun, or other weapon. The form of sexual violence most commonly reported by women was that their husband used physical force to have sexual intercourse when they did not want to (6%). Four percent reported that their husband forced them with threats or in other ways to perform sexual acts they did not want to, and 3 percent reported that their husband forced them to perform other sexual acts they did not want to.

Women reporting emotional violence were most likely to report that their husband said or did something to humiliate them in front of others (10%), followed by their husband insulting them or making them feel bad about themselves (8%). Six percent of women said that their husband threatened to hurt or harm them or someone close to them.

The percentage of women who ever experienced one or more of the three types of spousal violence by their current or most recent husband declined in the 10 years since NFHS-3. Overall, women's ever experience of spousal physical or sexual violence declined from 37 percent in NFHS-3 to 31 percent in NFHS-4. However, there has been no decline in the percentage of women who experienced spousal

physical or sexual violence in the 12 months preceding each survey (24% in both NFHS-3 and NFHS-4). Women's ever experience of emotional violence declined slightly from 16 percent in NFHS-3 to 14 percent in NFHS-4.

2.6 NATIONAL INSTITUTE OF JUSTICE ON DOMESTIC VIOLENCE

The mission of the Violence against Women and Family Violence Research and Evaluation program is to promote the safety of women and family members, and to increase the efficiency and effectiveness of the criminal justice system's response to these crimes. This mission is being accomplished through the following objectives:

- **Estimating the Scope of the Problem** to understand the extent of violence against women and family members; describe the magnitude and characteristics of victimization and perpetration; and assess trends in levels of violence against women and family members over time.
- **Identifying Causes and Consequences** to identify the reasons violent behavior against women and within the family occur, and recognize risk and protective factors associated with reducing violence against women and family violence.
- **Evaluating Promising Prevention and Intervention Programs** to determine the effectiveness of interventions aimed at decreasing the incidence of violence against women and family members.
- **Communicating** to develop the infrastructure for compiling and disseminating research results quickly to the field using the most advanced existing technologies.
- **Partnering** to promote and facilitate collaboration, coordination, and cooperation among a wide variety of disciplines in conducting violence against women and family violence research and evaluation.

NIJ has often partnered with the Centers for Disease Control and Prevention (CDC) on the issue of violence against women, in particular by cosponsoring the National Violence Against Women Survey (NVAWS). The CDC's National Center for Injury Prevention and Control, which spotlights injury and violence prevention topics, defines four main types of intimate partner violence:

- **Physical violence** is the intentional use of physical force (e.g., shoving, choking, shaking, slapping, punching, burning, or use of a weapon, restraints, or one's size and strength against another person) with the potential for causing death, disability, injury, or physical harm.
- **Sexual violence** can be divided into three categories: (1) the use of physical force to compel a person to engage in a sexual act unwillingly, whether or not the act is completed; (2) an attempted or completed sexual act involving a person who, because of illness, disability, or the influence of alcohol or other drugs, or because of intimidation or pressure, is unable to understand the nature or condition of the act, decline participation, or communicate unwillingness to engage in the act; and (3) abusive sexual contact.
- **Threats of physical or sexual violence** communicate the intent to cause death, disability, injury, or physical harm through the use of words, gestures, or weapons.
- **Psychological/emotional violence** traumatizes the victim by acts, threats of acts, or coercive tactics (e.g., humiliating the victim, controlling what the victim can and cannot do, withholding information, isolating the victim from friends and family, denying access to money or other basic resources). In most cases, emotional violence has been preceded by acts or threats of physical or sexual violence.

Stalking is often included among types of intimate partner violence. Stalking generally refers to harassing or threatening behavior that an individual engages in repeatedly, such as sending the victim unwanted presents, following or laying in wait for the victim, damaging or threatening to damage the victim's property, appearing at a victim's home or place of business, defaming the victim's character or spreading rumors, or harassing the victim via the Internet by posting personal information.¹⁴³ As with those who commit acts of physical and sexual violence, stalkers may be

¹⁴³ Tjaden, P., and N. Thoennes. Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey. Research Report. Washington, DC, and Atlanta, GA: U.S. Department of Justice, National Institute of Justice, and U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, November 2000, NCJ 183781.

motivated by a desire to exert control over their victims. Stalking and intimate partner violence may co-occur.

2.7 OTHER GLOBAL AND REGIONAL ESTIMATES OF VIOLENCE AGAINST WOMEN

Over a quarter of women aged 15-49 years who have been in a relationship have been subjected to physical and/or sexual violence by their intimate partner at least once in their lifetime (since age 15). The prevalence estimates of lifetime intimate partner violence range from 20% in the Western Pacific, 22% in high-income countries and Europe and 25% in the WHO Regions of the Americas to 33% in the WHO African region, 31% in the WHO Eastern Mediterranean region, and 33% in the WHO South-East Asia region.

Globally as many as 38% of all murders of women are committed by intimate partners. In addition to intimate partner violence, globally 6% of women report having been sexually assaulted by someone other than a partner, although data for non-partner sexual violence are more limited. Intimate partner and sexual violence are mostly perpetrated by men against women.

Lockdowns during the COVID-19 pandemic and its social and economic impacts have increased the exposure of women to abusive partners and known risk factors, while limiting their access to services. Situations of humanitarian crises and displacement may exacerbate existing violence, such as by intimate partners, as well as non-partner sexual violence, and may also lead to new forms of violence against women.

2.8 EFFECTS OF DOMESTIC VIOLENCE

2.8.1 Health Consequences

Domestic violence against women leads to far-reaching physical and psychological consequences, some of which have fatal consequences. Although physical injuries represent only a fraction of the negative health effects on women, they are among the most visible forms of evidence of violence. Attacks cause injuries ranging from scratches and fractures to chronic disabilities such as minor or complete loss of hearing or vision, and burns can

lead to disfigurement. Medical problems can range from bleeding and childbirth to severe psychological trauma. Studies in many countries and in India have shown high levels of violence during pregnancies that endanger the health of both mothers and the unborn. In extreme cases, all these examples of domestic violence can lead to the death of a woman - killed by her partner. ¹⁴⁴

Sexual assault and rape can lead to unwanted pregnancies as well as serious health problems. Women in violent households are unable to use contraceptives or negotiate safer sex, so they are at greater risk of contracting sexually transmitted diseases and HIV / AID. The impact of violence on women's mental health leads to serious and fatal consequences. Battered women have a high rate of depression and stress-related disorders such as posttraumatic stress syndrome, panic, depression, sleep and eating disorders, high blood pressure, alcoholism, drug abuse, and low self-esteem. For some women, who are so depressed that they feel humiliated by their abuse, there seems to be no escape from violent relationships other than suicide.

2.8.2 Impact on Children

Children, who have witnessed domestic violence or have themselves been abused, exhibit health and behaviour problems.¹⁴⁵ They may have difficulty at school and find it hard to develop close and positive friendships. They may try to run away or even display suicidal tendencies. Witnessing and experiencing violence as a child can also result in internalizing violence as a form of conflict resolution. ¹⁴⁶

Girls who see their mother being abused are more likely to accept violence as usual in marriage than those who come from non-violent homes. Although many children from violent homes do not grow up to be violent, those who have experienced childhood violence are more likely to become violent adults inside and outside the home.

¹⁴⁴ Sriranjjan Chaudri, "Study Shows Women are Battered and Assaulted", The Times of India, Feb 2,2000, p.2.

¹⁴⁵ Jafe, P.G., Wolfe, A.D., Wilson, S.K., 'Children of Battered Women', Developmental Clinical Psychology and Psychiatry, Vol.21, Sage Publications, California cited in Innocetni Digest supra note 17, p.9.

¹⁴⁶ *Ibid.*

Studies report that domestic violence undermines child survival in that the children of women who were physically and sexually abused by their partners were six times more likely than other children to die before the age of five. Studies in India, carried out in Tamil Nadu, and Uttar Pradesh have also found that battered women were more likely than women who had not been abused to become pregnant from a miscarriage, or stillbirth, or the loss of a baby.¹⁴⁷

In rural Karnataka a study found that children of battered mothers receive less food than other children, suggesting that these women are unable to negotiate with their husbands because of their children. While the exact way in which violence against women affects child survival is unknown, another possible explanation is that children of abused mothers may be subjected to weight, and thus carry a higher risk of dying in infancy or childhood. Another explanation is that women in abusive relationships suffer from low self-esteem, reduced communication status, limited access to food and resources, and therefore unable to care for their children.¹⁴⁸

2.8.3 Economic multiplier effects

The effects of economic downturns include, for example, a decrease in the participation of women workers and a reduction in employment, as well as lower incomes. In the United States, it has been reported that 30 percent of abused women lose their jobs as a result of abuse. Studies show that women who experience violence earn less than half of what other women earn.

Another effect under this section is the potential impact of domestic violence on children's future ability to secure adequate employment.¹⁴⁹

2.8.4 Social multiplier effects

The effects of social downturn include the impact of intergenerational trauma on the incidence of child malnutrition, lower quality of life and reduced

¹⁴⁷ S.J. Jeejabhoy, 'Association Between wife -beating and Foetal and Infant Death, Impressions from a survey in rural India, *Studies in Family Planning* 29 (3), pp 300-308

¹⁴⁸ Heise, L., Eilsberg, M., and Gottemoeller, M., *Ending Violence Against Women. Population Reports*, (1999), 97-98.

¹⁴⁹ Hayward Ruth, *Breaking the Earthenware Jar: Lessons from South Asia to End Violence Against Women*, New York: UNICEF

participation in the democratic process. These effects are difficult to quantify, but their impact is far more significant for national and economic development. It is clear that all sections of society are deeply affected and bear the consequences of violence against women. More studies need to be done in both developing and developed countries to measure the cost of domestic violence in order to call on the country's police to eliminate this highly preventable crime.¹⁵⁰

2.9 MEDIATION AS A TOOL FOR MARITAL CONFLICT

Marriage is a community-based relationship between people in what is intended to be a strong, lasting relationship. It is the foundation of the family and the institution, defined by six social functions: sexual behavior control, reproduction, child bearing and protection, entertainment, production, exploitation, and the transfer of racially-assigned positions. Marriage and family depend on many beliefs, the most important of which is relationships. Marriage is not just a social event but also a legal commitment. The basis of a living marriage is tolerance, adjustment, and mutual respect. Tolerance of each other's faults to some degree must be present in each marriage. Life has great differences between individuals, groups, and nations. There are cultural differences, personality differences, differences of opinion, and differences of status. Unresolved differences lead to disagreements. Disagreements can lead to problems. Unresolved disagreements become controversial. Unresolved disputes become conflicts. It is an argument that arises between couples in a marriage center known as a marital dispute. The rapidly changing and social and family environment has embarked on new challenges, especially for the new generation due to the growing instability, the changing roles of husband and wife and the instability of rapid life. All of this has resulted in a lack of understanding between married people. The current divorce rate in the world is

¹⁵⁰ Gracia E, Herrero J. Acceptability of domestic violence against women in the European Union: a multilevel analysis. *Journal of Epidemiology and Community Health*, 2006; 60:123-129

alarming. For the marriages to subside there is a need for help and attention. They are limp and require intensive treatment.¹⁵¹

Mediation has emerged as the most widely accepted way to resolve marital disputes. The problem arises when these include cases of domestic violence. While using mediation to resolve disputes of this nature, there are two opposing views in society. The critics of the mediation say the mediation does not work as the perpetrator escapes without being punished with formal State instruments.

There are many benefits associated with mediating marital affairs such as confidentiality, cost effectiveness, lack of procedures, administrative power, complete freedom of parties to reject the result, compromise, etc. The most interesting and important thing is that it follows the goal of timely justice.¹⁵²

With reference to domestic violence cases, Section 12 of the Protection of Women from Domestic Violence Act, 2005 clearly lays down that a magistrate must dispose of a case under this Act within 60 days. However, this provision is rarely complied with. An Advocate, Dinesh Sharma stated, Cases of such nature are never wrapped up in the 60 days period unless parties reach a compromise.

The main reason for this delayed justice is the judge-population ratio in India. According to the Law Commission Report, there are only 17 judges per million people compared to 107 in the USA per 1 million people. Justice V.V. Rao said, It could take nearly 320 years for the Indian judiciary to clear millions of pending cases. Given the current state of the Indian courts, it would not be wrong to assume that other dispute resolution mechanisms such as mediation could be an effective way for parties to seek assistance.

The use of mediation in India is promulgated under the Arbitration and Conciliation Act, 1996 and the Code of Civil Procedure, 1908 (CPC). Section 30 of the Arbitration and Conciliation Act, 1996, states that the

¹⁵¹ Dastane NG, Dastane S. Modern Hindu Law. In: Nagpal RC, editor. Lucknow: Eastern Book Company; 2011. p. S337. 1975; 2 SCC 326

¹⁵² Sharma I. Varanasi: Banaras Hindu University; 2009. Study of the Social and Legal Issues in Married Female Psychiatric Patients. PhD Thesis.

Arbitral Tribunal may use arbitration for resolving disputes. Section 89 CPC states that courts may refer parties to a resolution if there appears to be a specific solution.¹⁵³

2.10 ROLE OF MEDIATION IN MATRIMONIAL DISPUTE

As William E. Gladstone aptly stated, if justice is delayed, justice is denied. This means that if the principle of timely justice is not followed, it is tantamount to a complete opposition to justice. This decline is exacerbated within the Indian judiciary where there is a backlog of approximately twenty-seven million unfinished cases, about 55000 containing divorce matters. This obstacle to achieve timely justice has led to other dispute resolution mechanisms such as negotiation, mediation, arbitration and conciliation gaining consideration and acceptance because of their speedy resolution of disputes. These forums allow for groups to seek help while not engaging in the process, so it is almost out of court.

Mediation is an effective remedy that focuses on a relaxed and tolerant approach. This method of resolving disputes not only saves time but also reduces disputes and unwanted relationships arising from the process. Mediation occurs these days within the U.S. as well as the other North American nations. India and European countries are also looking at the forum as alternative for the adversarial system.¹⁵⁴

Mediation is very helpful in family disputes because family matters do not only involve law and facts, however additional feelings. Mediation within the context of a marital dispute is entirely different in nature and content as compared to a business and property dispute. Matrimonial disputes are associated with certain addition factors which influence the dispute resolution process which are emotions, social coercion, personal debts and group obligations, the views of both parties on health issues in general and the establishment of marriage in particular, the safety of long-term health etc. Speaking of mediating marital disputes, one should keep in mind that the

¹⁵³ Nambi S. Marriage, mental health and the Indian Legislation. Presidential address. Indian J Psychiatry. 2005;47:3–14

¹⁵⁴ M.Khanwilkar (2012) Handbook on mediation 2012, High Court of Bombay 1862- 2012, p.n.1.

factors that determine the choice of parties are not simply governed by rational factors. In the context of marital disputes, the mediator cannot simply look at the financial or general aspects and ignore the emotional aspects.¹⁵⁵

The mediator needs to prepare both sides for the response. It is the duty of the mediator to shape himself/herself to be a mentor and guide the parties with an acceptable response that brings lasting peace. He/she may make recommendations to both parties and ask them of their response in order to determine the acceptance of the planned response. The feedback suggestion may be from the parties or the mediator itself. The role of the mediator would be to permanently put an end to the differences between the parties in order to reach consensus.¹⁵⁶

The advocates of mediation hold mediation to be a favorable mechanism because it safeguards family relationships and specifically kids from having to experience the severities of the traumatic method usually connected to a typical divorce and additionally give speedy justice. On the other hand, 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 benefits and advantages 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.¹⁵⁷

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 possible. The intention of the court matches the

¹⁵⁵ Avatar Singh(2007) Arbitration and Conciliation Act,1996, Law of Arbitration and Conciliation, Eastern Book Company, Lucknow,Eight Edition. p.n.4

¹⁵⁶ Justice Dr. M. K. Sharma, *Conciliation and Mediation*, Delhi Mediation Centre <http://delhimediationcentre.gov.in/articles.htm#partI>

¹⁵⁷ *Concept and Processes of Mediation*, Mediation and Conciliation Project Committee, Supreme Court of India http://mediationbhc.gov.in/PDF/concept_and_process.pdf

ideology of the supporters of mediation that is to safeguard family relationships and supply speedy justice. ¹⁵⁸

The courts have expressed a clear acceptance of the resolution of disputes by way of the quicker methods such as arbitration and mediation. However, the procedure underlying these various processes for resolving disputes is unclear. Mediation is therefore a major factor in marital disputes because of a number of factors, such as confidentiality, privacy, prompt justice, savings, and limited time.

2.10.1 Problems in Marital Disputes

In marital disputes, what are some of the real issues raised by divorced couples? Start with the definition of divorce. Black's Law Dictionary defines divorce as "the legal separation of a man and a woman." The New Britannica - Webster Dictionary defines divorce as "the absolute abolition of the law." Interestingly, though, marriage has a very broad meaning. Britannica - Webster describes marriage as an institution in which a man and a woman are united in a special social and legal relationship with the aim of creating a home and raising a family. ¹⁵⁹

It is, therefore, interesting to note that marriage is viewed as a legal and social union between two persons; however, divorce only has legal aspects. These definitions themselves highlight one of the fundamental problems that arise when a couple chooses to divorce. That is, although the legal system is equipped to deal with legal issues that couples face when they divorce, they do not look for and are not prepared to deal with the social and emotional problems which accompany the divorce. ¹⁶⁰

Once the emotional or social issues are dealt with, it makes the resolution of legal issues much easier. Taking a step forward, what most people argue about is actually not a legal or financial problem, but rather an argument

¹⁵⁸ *Ibid.*

¹⁵⁹ Chauhan, M. (2016), Mediation: Clearing the Minefield of Matrimonial Disputes available at <http://webcache.googleusercontent.com/search?q=cache:dw7ql2j4k40J:www.legalserviceindia.com/legal/article-620-mediation-clearing-the-minefield-of-matrimonial-disputes.html+&cd=1&hl=pa&ct=clnk&gl=in>

¹⁶⁰ *Ibid.*

caused by their desire to get some kind of revenge on what seems to be wrong with another partner. ¹⁶¹

2.10.2 Ways of Dealing with Mediation

Mediation may require more than one mediator to help them reach an acceptable agreement. Different people have different needs. A person's emotional or social problems are best handled by mental health professionals such as psychiatrists, psychologists or social workers. Financial problems are best handled by specially trained mediators such as auditors, accountants and possibly lawyers. Legal issues are best handled by attorneys-mediators. ¹⁶²

This “mediator” approach allows couples to have what might be called a successful divorce. Any problem or issue that needs to be solved by a couple can be handled by a professional mediator who is best suited for that type of problem.

However, if a couple solves unresolved emotional or social issues, then they may have a united interest; that is, they legally end their marriage, in the right way and in such a way that each of the participants and everyone else in the family and community wins.

Win / Win agreements can only happen when each of the participants has an interest in coming up with a win / win solution as opposed to the “you or me” solution.

In the realm of conflict resolution, it can be said that there are three levels of relationships in which people can work”: “you or me,” “you and I,” and “us.

In the context of you or me, each of the participants looks for the best for them, without regard to what the other wants or needs; that is, a win-win situation. ¹⁶³

¹⁶¹ *Ibid.*

¹⁶² Mara Prieditis, Arbitration, Mediation and Conciliation: differences and similarities from an International Perspective available at http://webcache.googleusercontent.com/search?q=cache:K4MbRY_O7nIJ:https://www.mediate.com/articles/sgubinia2.cfm&hl=pa&gl=in&strip=1&vwsrc

¹⁶³ *Ibid.*

In the process of discussing "you and me", each person has an interest in going their own way, but each has an interest in winning the other as well.

In the context of we, the couple would go in the same direction in an effort to unite. Mediation can occur when a couple learns to solve problems for you and for me or for us. This problem-solving approach can be taught to couples by a mediator .

Once a couple gets proper guidance from a trained mediator, changes happen in the way each partner interacts with the other. With the help of a good mediator, the couple will be able to find a variety of ways to win / win to reach a mutually beneficial agreement. ¹⁶⁴

Contrast this with you or me approach in which each person would seek what is best for them and would seek to minimize what the other person gets. This is typical of the adversarial context where each party hires a separate attorney whose role is to get as much for his/her client as possible - often at the expense of the other spouse. ¹⁶⁵

For those who attend a school of thought that a lawyer is always needed in each group, mediation can still be a beneficial process. Indeed, the couple may agree to mediate, even if there are no advocates present at the time of the mediation, and the process may continue until an agreement is reached; this agreement can then be finalized by their respective lawyers.

At all stages of this discussion, each party can consult their respective lawyers for their rights and the consequences of each decision. In this way, the adversarial nature of the litigation process can be avoided, and the party can be represented by his/her legal counsel at all stages.

In such a model the parties move forward as quietly as possible, and their "conflicting interests" (if any) are carefully considered by their advocates.

¹⁶⁴ Mallik Arjun (2006), Mediation Problems to deal in matrimonial disputes and the role of the Mediators, available at <http://www.legalservicesindia.com/article/1383/The-Ways-of-Mediation-In-Matrimonial-Disputes.html>

¹⁶⁵ *Ibid.*

2.11 SUCCESSFUL MEDIATION IN MATRIMONIAL DISPUTES APPROACHES, RESOURCES, STRATEGIES & MANAGEMENT

Matrimonial mediation is a process in which the mediator, an impartial third party, facilitates the resolution of family disputes by bringing a collective agreement into the voluntary process. Mediation is the basis of all societies to maintain consensus in civil society. In the context of marital dispute mediators often play the role of counselors and conciliators. Even before there was talk of resolving disputes in court to reduce the length of court cases, mediation of marital disputes was in place. Initially, such mediators were kind and considerate, and were generally a part of the family. Elders or others who commanded respect from the disputing parties became mediators.

It can be said that the Tata Institute of Social Sciences' project, which was established to manage a counseling center in Bombay, has been a major family court in Bombay. The Counseling Center has been integrated into the family court system and is considered a model family court model. Section 9 of the Family Courts Act, 1984, Section 89 and Order XXXII-A of the Code of Civil Procedure, 1908 makes it mandatory for a court to provide an appropriate opportunity for a joint settlement or negotiation before a decision is made. Section 23 of the Hindu Marriage Act, 1955 focuses on the role of the judge in trying to reconcile. ¹⁶⁶

2.11.1 Peculiarity of matrimonial mediation

Mediation in the context of matrimonial dispute is different in its form and content in comparison to commercial and property disputes. The matrimonial disputes are distinct from other types of disputes on account of presence of certain factors which are not obtained in other disputes. These factors are motivation, sentiments, social compulsions, personal liabilities and responsibilities of the parties, the views of the two parties regarding life in general and to the institution of marriage in particular, the security for the

¹⁶⁶ Justice Manju Goel, Judge, High Court of Delhi, Successful Mediation in Matrimonial Disputes Approaches, Resources, Strategies & Management available at [http://lawfaculty.du.ac.in/files/course_material/VI_Term/LB-602%20Alternative%20Dispute%20Resolution/\(17\)%20Successful%20Mediation%20in%20Matrimonial%20Disputes.pdf](http://lawfaculty.du.ac.in/files/course_material/VI_Term/LB-602%20Alternative%20Dispute%20Resolution/(17)%20Successful%20Mediation%20in%20Matrimonial%20Disputes.pdf)

future life, so on and so forth. Talking in terms of the mediation for matrimonial disputes one must remember that the factors that weigh the decisions of the parties are not controlled simply by rational factors. Very often irrational and emotional factors also have dominant roles in creation of the dispute as well as in their settlement. ¹⁶⁷

In the case of marital disputes, the mediator will not be able to focus solely on financial or general matters and ignore emotional issues. In fact, he is concerned about the happiness of the parties, which is more concerned with the emotional factors. In addition to this his goal is to find a solution without any damage to the parties. He/she cannot just step in between the two sides telling them each of them can take suggestions for a solution. The mediator should arrange for both parties to consider a solution. Most of the times, parties are concerned merely about their own demands and want to damage the other party in revenge. The mediator here must shape himself or herself as a mentor and coordinator to lead the parties to find an acceptable solution to bring lasting peace. The mediator may be required to provide advice to both parties and may be required to keep checking upon them in order to determine the acceptance of the proposed solution. Suggestions for a solution can come from either party or the mediator itself. The mediator's job is to strive hard in filling the differences between the parties in order to reach an agreement. ¹⁶⁸

Mediation can be done simultaneously with exploring possibilities of a legal action on the civil or the criminal jurisdiction. It is a voluntary process and most people are attracted to the option of mediation because

- (1) it promotes the interest of the entire family including those of the children
- (2) it reduces economic and emotional cost associated with the resolution of the family disputes .

As a voluntary process, sometimes a mediator may encounter a situation where one or both parties show reluctance to approach the mediator.

¹⁶⁷ Divya Chowdary, Approach of Family court in setting Matrimonial Disputes, available at <https://blog.ipleaders.in/matrimonial-dispute-settling/>

¹⁶⁸ *Ibid.*

Such reluctance should be overcome by the arbitrator by assuring the parties that the voluntary process provides for the settlement of the dispute by the participation of the parties and that the parties benefit far more by allowing mediation in their dispute. A common experience of family court judges and others who mediate or advise a conflicting couple is that even if the parties formally express their willingness to accept a mediator to resolve their dispute, they in actuality have their reservations about the process. The role of the mediator is to encourage the parties to be open and to bring their grievances to the fore. One of the mediator's skills is to increase participants' ability to communicate. On one occasion when a family court judge was inviting the parties to a reconciliation effort as provided for in Section 23 of the Hindu Marriage Act 1955, faced outright retaliation by a husband who said he would be foolish if he participated in such a process. Under the authority of the law, he could tell him that this was a legal requirement and that he would not go beyond that. Under his command he participated in the process. However, when the parties met face-to-face in his room the counseling began honestly and with great satisfaction the couple finally apologized after six years of separation.¹⁶⁹

A professional mediator who does not adhere to the court does not enjoy the power to order a party before him. Here he must ensure the cooperation of the parties by assuring them that they are free to join the mediation and they can terminate it at any time if they feel that the same is unlikely to produce any effect. Both parties should be confident that the mediator will not enforce his decision to the couple. Both parties must understand that the mediator is a neutral party and does not have any interest in the dispute. As the process progresses from stage to stage the parties must gain confidence that the purpose of the mediator is not to decide on the conduct of one side or the other but to correct the situation that calls for a solution. The mediator's approach should be heavily burdened with reconciliation but both

¹⁶⁹ Justice Dhananjaya Y. Chandrachud Judge, High Court at Bombay, MEDIATION – realizing the potential and designing implementation strategies., available at http://lawcommissionofindia.nic.in/adr_conf/chandrachud3.pdf.

the parties should be made aware of the fact that the option of divorce is always open for them.¹⁷⁰

2.11.2 Resources

The two questions that immediately pose themselves whenever mediation for matrimonial cases comes up for discussion are :

- (1) Where is the mediator or counsellor?
- (2) What is the cost of counselling?

These questions are important because marriage counseling is very different from mediation or counseling in a business dispute. As noted above, marital disputes involve a number of factors that may not be possible in the normal course of a business venture. Therefore, the mediator must be fully equipped to meet the conditions. The marriage mediator's entries need to include knowledge of social customs, knowledge of religious feelings, psychological understanding of divorced people, rights and debts of the parties in the social and economic context, and so forth. Therefore, the mediator should be knowledgeable as well as empathetic. It may be necessary to negotiate whether a true marriage mediator is born or made. There is no doubt that a person with the qualities of maturity, ingenuity, humor, creative ingenuity and diversity (the power to resolve conflicts) can be more effective than others in mediating a marriage. It can certainly be said that although much depends on the mediator's psychological structure, there is room for training the counselor to learn how to deal with the problem with balanced consideration and how to improve his or her skills in the field. Speaking in full terms may not be difficult to find or develop a team of mediator who can be placed in a marriage court or family court even though the country will still focus on developing a larger class to meet the country's greatest need. However, the terms of the agreement will depend on the cost of the mediation and on who pays the costs and how much the government or parties are willing to pay. The availability of a mediator will depend on how many mediators can be produced with the resources provided for the resolution. In fact, a quality

¹⁷⁰ Available at <https://webcache.googleusercontent.com/search?q=cache:fn664HNSIv4J:https://www.wipo.int/amc/en/mediation/guide/+&cd=13&hl=pa&ct=clnk&gl=in>

service will not be available unless mediators choose to mediate as a career path and therefore the job needs to be attractive. ¹⁷¹

A marriage counselor should not be expected to work without help or assistance. There is no denying that a proper working environment should be created for counseling. Psychological counseling cannot be expected to be done in uncomfortable places. A healthy, clean, peaceful environment is a real need for such counselling. Therefore, appropriate infrastructure, staff and other benefits should be provided to the mediators. And this is necessary to increase the credibility of the institution in the eyes of the beneficiaries. Second, marriage counselors may need to be referred to social workers or he or she may personally need to visit those who are handling the dispute. Visiting a party house and meeting with family members in their home can give a clear picture of the social and economic conditions of the parties. A family counselor may also be aware of the equality between different family members. Often, conflict and resolution do not depend on the relationship between the man and the woman but on the relationship between the couple and other family members. Therefore, resources of this type should be provided. A marriage counselor may also seek the advice or authority of professionals such as a physician or a psychologist or even a psychiatrist. Therefore, these institutions are needed to be made available to an advisor.

For the mediation to be effective the state or parties must be prepared to cover the institutional costs required by the mediator. By paying these the parties are saved from long-term trial costs, including attorney fees, witness production costs and similar items. ¹⁷²

2.11.3 Strategies and Management

Marital counseling produces better results when it takes place before a trial. Pre-trial counseling is a stage where separation has not yet taken place. Often at this stage the allegations against each other are unclear. At this stage,

¹⁷¹ Family Therapy, available at <http://webcache.googleusercontent.com/search?q=cache:SUwDgcToO18J:https://positivepsychology.com/family-therapy/&hl=pa&gl=in&strip=1&vwsrc=0>

¹⁷² Mediation, Arbitration and Litigation available at <https://webcache.googleusercontent.com/search?q=cache:xO1LES2h7YgJ:https://adr.findlaw.com/mediation/mediation-vs-arbitration-vs-litigation-whats-the-difference.html+&cd=1&hl=pa&ct=clnk&gl=in>

the parties may be forgiving and forgetful. At this stage, they probably have more hope for a solution, so they are ready to make more sacrifices. At the start of the trial the need to be sharp and focused makes the parties sensitive to their allegations and very often these allegations are exaggerated. In a trial, persuasive lies have been woven into the fabric of hate. The pleading exchange often takes the parties to the end. ¹⁷³

Therefore, strategically all efforts must be made before the trial begins. At all checkpoints, therefore, multiple claims must be prevented. The first signs of a marital dispute are custody cases and complaints to the police. The police must treat the matter with compassion, discretion and patience. The handling of marital disputes by trial under Section 498 A of the Indian Penal Code, 1860 should be handled differently. The suspects in these cases cannot be treated in the same way as suspects in other cases such as theft or fraud or cheating. The suspects in the former case are not criminals in the traditional sense of the word. If the investigator is able to determine how true the complaint is and how much exaggeration has been he/she can play an important role in preventing the spread of the case. On the other hand, if he handles it similar to other crimes could result in great strife. This is where the parties should be told to be more patient in following their cases. ¹⁷⁴

Coming to the strategies to be adopted by the counsellor, the following stages can be suggested:

- i. Probing of facts ;
- ii. Identifying the real cause of dispute ;
- iii. Exploration of possibilities of reconciliation or divorce ;
- iv. Bring the parties to an agreed solution; and”
- v. Shaping the solution in the legal formats

¹⁷³ Dr. M.K. Sharma, Conciliation and Mediation, available at <https://webcache.googleusercontent.com/search?q=cache:iTuCjBoIH3MJ:https://delhicourts.nic.in/dmc/articles.htm+&cd=1&hl=pa&ct=clnk&gl=in>

¹⁷⁴ Justice Manju Goel, Successful Mediation in Matrimonial Disputes Approaches, Resources, Strategies & Management available at <https://delhicourts.nic.in/dmc/articles.htm+&cd=1&hl=pa&ct=clnk&gl=in>

Probing of facts and identification of issue in a matrimonial dispute require enormous patience .

Very often, the pleadings in the first narration by the parties would conceal more than they reveal.

Often the counselor finds that the parties themselves have not been able to determine exactly what caused the disagreement. It is only after active participation by a mediator that the real problem surface. One example an author can give from her own experience is that couples who come to a counselor report all sorts of allegations against each other even though in the counseling test they in fact do not really hate each other. After sitting for a few moment it turned out that the problem was about the woman being barred from having sex with her husband. It later emerged that the wife was barred because of the stench of a man who worked all day at a paint factory. Before the wedding as lovers the wife did not smell it as disgusting but as she approached the man she found it annoying. This perception only occurs in times of counseling and when the truth comes out the solution became easier.¹⁷⁵ As discussed in the later part of the paper the mediator may find various reasons for a matrimonial discord. In some event third parties may be involved. There are disputes arising out of too little money or too little accommodation, so on and so forth. Once the mediator has identified the real issue, i.e., what has affected the relationship, the counsellor has to proceed to examine the possible solutions as to whether reconciliation is possible or not. For arriving at the reconciliation the mediator has to see if the cause of dispute can be removed. Suppose the discord is because of violent nature of the husband or the wife, the counsellor has to examine whether and how the behaviour of the violent person can be modified. If it is shortage of accommodation causing the problem, can the same be solved? Or can the third party like, mother-in-law, be separated or made to see her role in correcting the situation. The possibility of the

¹⁷⁵ Yadev V., Principles of Active Learning in Counseling, available at <https://webcache.googleusercontent.com/search?q=cache:fpraJFic8gQJ:https://www.counsellingconnection.com/index.php/2009/06/02/principles-of-active-listening/+&cd=1&hl=pa&ct=clnk&gl=in>

reconciliation has to be fully explored. Sometimes the suggestions for improvement need to be put to trial by actual practice. ¹⁷⁶

If reconciliation is not possible the counselor should consider whether it is possible for them to separate peacefully. Even in the case of a divorce, counseling plays a vital role and the discerning counselor must be aware of the potential for conflict in the relationship and the consequences for the divorce. In the latter case, the parties must be prepared to accept the conclusion of the divorce which is not always easy due to the fact that until now the parties consider divorce as a last resort. ¹⁷⁷

Very often the disputing parties are looking more on punishing the other side than seeking the relief for themselves. Here comes the role of the counsellor who must make them see the real issues and make them understand that the solution to the problem lies only in peaceful parting. Here it is tempting to mention a case of a fellow counsellor who after failing to reconcile the parties settled the matter in favour of divorce. Later-on accidentally one day he met the parties walking together as if nothing had happened to their relationship. When asked “Have you turned to be friends?” the woman smiled and the man replied “We are always friends”. Here lies the success of counselling, that is, divorce with minimum or no emotional break down or damage. ¹⁷⁸

The mediator should simultaneously notify the parties of the fact that all other legal options are open for them. Similarly, the mediator must state the rights and obligations of each party in relation to the other. If a man wants a divorce, he must be educated in his duty to care for his wife and child. The wife can also be informed of how much she can expect in terms of maintenance and that even if she maintains custody of the child the husband may still have the right to visit the child. Parties can also be educated on the

¹⁷⁶ *Ibid.*

¹⁷⁷ Separation and Divorce, available at <https://webcache.googleusercontent.com/search?q=cache:MDJZzAlINJ4J:https://www.counselling-directory.org.uk/separation.html+&cd=1&hl=pa&ct=clnk&gl=in>

¹⁷⁸ *Ibid.*

benefits of entering into a negotiated agreement instead of being judged by a court

By this time the mediator should have trained the parties to focus on consideration. The goal at this stage is to ensure that the parties stay as comfortable as possible in their future lives. Terms of separation must be applied without ambiguity. If necessary, reasonable time may be given to the parties to allow them to consider carefully the terms of the separation. During this time they can contact those who want them to complete the goals. This step, of course, is the job of the legal adviser who sets out the legal framework for obtaining a legal certificate.

It is important to remember the fact that while mediation is encouraged to be made use of civil cases, in the case of marriage mediation there is not only a quick solution but also an extremely high resolution - one good solution at the time when no legal solution was possible to find.¹⁷⁹

2.12 TYPES OF MATRIMONIAL PROBLEMS - DIAGNOSIS AND MANAGEMENT

From the narrations of the parties an assessment of the nature of the dispute between the parties can be gauged. However, a mediator or a counsellor has to go deeper into the problem to diagnose the real factors which affect the relationship. He is likely to find that the real factor or the cause is one or the other of the types mentioned below.¹⁸⁰

Type – i

What is often viewed as cruelty may be the attitude of a proud person, when the ego or a sense of belonging is damaged, and the reaction of different people may differ. Responding can be in the form of physical violence. Sometimes it can take the form of criticism or fault-finding where there is

¹⁷⁹ *Alessandra Sgubini*, Arbitration, Mediation and Conciliation: differences and similarities from an International and Italian business perspective, available at https://webcache.googleusercontent.com/search?q=cache:K4MbRY_O7nIJ:https://www.mediate.com/articles/sgubinia2.cfm+&cd=11&hl=pa&ct=clnk&gl=in

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none. Criticizing the gifts of marriage can sometimes be a reaction to some behavior that offends a man or a mother. The marriage counselor, therefore, after some settlement should explain whether the real questions are the lust for more dowry, a character that criticizes the man or woman, or the arrogant reaction or pride of the injured person, the most common problems arise from conflicts of that kind where the parties find fault in every little thing of each other in the marriage. There are no real threats to peace now. It may not be appropriate to classify groups as abusers and victims. The mediator must develop a clear picture of the visible profiles of the parties that will help him or her to include the parties in the discussion that will lead to finding a common ground. ¹⁸¹

Type – ii

The presence of behaviors such as violence or addiction or abusive language or total indifference shown by one party is also a cause of marital discord. These are personality traits and are deeply rooted in the individual. Since these qualities are natural, they will affect the relationship between the man and the woman. Once these qualities exceed the level of sharpness, there is a lack of peace in the marriage. In such cases addicts may be treated with behavioral modification either by a mediator or by a specialist. ¹⁸²

Type – iii

Most closely related to certain psychological problems. Common examples include having a suspicious nature, a desire to protect or direct in very small situations or in very small details. Some people have a habit of nagging one partner all the time which leads to endless conflict. Suspicion may be true or may just be based upon surmises. Although the suspicion has no solid basis but the suspect presents the news in a cogent manner in such a way that it is difficult to disbelieve. If the suspicion is a medical condition, cases can be referred to a specialist. Suspicion can be due to paranoia / paranoid schizophrenia .

¹⁸¹ Best Way to deal with Verbal Abuse, Available at <https://webcache.googleusercontent.com/search?q=cache:lJ5bJmbkp2wJ:https://www.mentalhelp.net/advice/best-way-to-deal-with-verbal-abuse/+&cd=1&hl=pa&ct=clnk&gl=in>

¹⁸² *Ibid.*

Type - iv

The next group of cases can be said to be in a situation where there is a party is suffering from certain moral or environmental or personal identity issue, a situation in which the parties find themselves in a conflict. For example, a financial situation where needs exceed the income. Often in limited resources the husband or wife tries to support the person who is earning lesser which causes resentment towards the other partner. Similarly, marital discord may be the result of an acute shortage of housing, which in today's world is far from ideal. Lack of shelter creates a lack of privacy and a lack of freedom. This lack of privacy and a lack of freedom can also be translated into a response that can be seen as cruel or abnormal behavior. Financial hardship can be a real challenge. A wife may tend to brag about her parenting, which is understandable. Husband and / or wife may be forced to use illegal means to earn more money. A man can force his wife to bring cash or some kind from her parental home. On the other hand, the wife's parent may also have a financial problem, and the wife may secretly send money to them or ignore the husband's opposition. How to help the parties depends rely heavily on the creative wisdom of the mediator. ¹⁸³

Type – v

There are cases where the sacrifices and adjustments required by one partner are higher than normal. For example, one group may have to perform nightly tasks or long working hours that require the acceptance of the situation by the other party. Even in the military and armies, months may pass away from the partner. In such cases unless there is honesty with each other and full support of the spouses the relationship can be in jeopardy. Family and work must work hand in hand. If the balance is tilted in favor of work, then marital

¹⁸³ Justice Manju Goel, Judge, Successful Mediation in Matrimonial Disputes Approaches, Resources, Strategies & Management available at [http://lawfaculty.du.ac.in/files/course_material/VI_Term/LB-602%20Alternative%20Dispute%20Resolution/\(17\)%20Successful%20Mediation%20in%20Matrimonial%20Disputes.pdf](http://lawfaculty.du.ac.in/files/course_material/VI_Term/LB-602%20Alternative%20Dispute%20Resolution/(17)%20Successful%20Mediation%20in%20Matrimonial%20Disputes.pdf)

disputes may arise. An ancient example of such a scenario is that of Napoleon, even the most loyal husband and wife have failed. ¹⁸⁴

Type – vi

There are cases where a marriage is arranged by two families as a business agreement. Two neighboring landowners agreed to a land agreement as part of a marriage agreement between the daughter of one party and the son of the other party. The parties at the wedding are really pawns. How long a marriage will last depends on how long the agreement or contract between the two landowners lasts. Similar situations arise when two sisters in a family marry two brothers in a family. If one marriage suffers for some reason, the same could happen for the other. In these cases, the counselor may have to look beyond the obvious and may try to make peace with others. ¹⁸⁵

Type – vii

The following type of conflict is caused by medical reasons such as disorders caused by a mental illness in one of two parties. Sexual dysfunction is a common cause of anxiety. Talking about sex is tedious in this country and it is not always easy to find out if the conflict between a man and a woman is the result of sexual dysfunction. Similarly, one of the two partners may be engaging in sexual misconduct. To some, the problem may seem strange because the parties are unwilling to expose their sexual orientation. In such cases people have strange ideas and strange solutions that often make matters worse than they already are. It is necessary in such cases that such cases be referred to a specialist. But what is sad is that a sick person generally does not admit his shortcomings and which causes manifestation in other ways especially in aggressive behavior. Here the mediator's ability will be of great help in keeping the sick partner on the right track. ¹⁸⁶

¹⁸⁴ *Ibid.*

¹⁸⁵ K.H. Connell, Peasant Marriage: Its structure and Development, *The Economic History Review*, New Series, Vol. 14, No.3, pp.502-503.

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Tarun Narang, Garima, and Shubh M. Singh, Psychosexual disorders and dermatologists available at <http://webcache.googleusercontent.com/search?q=cache:dyFQoEoHRUkJ:https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4886584/&hl=pa&gl=in&strip=1&vwsr=0>

Type – viii

It would not be wrong to talk about certain common cases when from the first day the marriage was a mistake. These are cases of complete inequality caused by a large gap in understanding between partners. For example, when a girl studying Anthropology was married to an uneducated truck driver or a girl's school teacher was married to a police officer.

2.13 IDENTIFYING AND RECOGNIZING DOMESTIC VIOLENCE

Domestic violence is not always easy to identify or is easily seen. There is a strong tendency to keep it a secret, deny and minimize what happened or simply accept the character as a normal way of working in a relationship. If the couple is able to identify and label the abuse in their relationship and understand it as abuse, the intervening mediator needs to be aware of the communication they describe that may fit the pattern and history of domestic violence.

The term domestic violence describes a state of violence in which focuses on the power of relationships in intimate situations where there is a pattern of domination and control (Fischer, Vidmar & Ellis, 1993). When defined as distorted communication, such as being silenced, bright-eyed, loud, or in a critical tone, it is easy to ignore the context of these behaviors and minimize them until they disappear into insignificance. Those outside of marriages cannot understand the meaning of such communication that goes far beyond words or non-verbal clues. Dutton (1994) warns that domestic violence should not be understood as a list of episodes or a list of aggressive behaviors that can be clubbed together. Rather it is a form of communication that influences the power of intimate relationships.

Domestic violence and abuse can be divided into three general categories: physical abuse, sexual assault and psychological abuse, which includes intentional harm to property and pets. Violence ensures that one party keeps control over the other. Examples of psychological abuse include (Dutton, 1994) :

Threats and intimidation - threats to take children with him or financially destroy her; attempts to force her to do illegal things; display or threat of weapons; to destroy things; threatening gestures; isolation or limited use of the telephone or communication.

Reduction, denial and suspicion - blaming a woman in the event of violence or acting as if abuse is not a problem.

Child abuse - conveying threatening messages; using the retention or visitation process to gain access to the woman or to control her whereabouts.

Uses economic resources - unilaterally maintaining exclusive access to cash, credit cards, bank accounts; increased debt on behalf of the woman; withholding child support payments.

The use of "male rights" - to make joint decisions on issues such as where to live, shopping, or working outside the home; sleep or food; control his ideas by reducing access to information.

Emotional trauma and vandalism - name-calling, insults, seduction through hypnosis or drug / alcohol abuse.

Tracking - sending recurring letters, from work or home, and endless calls with threatening messages.

2.14 STRATEGIES FOR WOMEN USING ANTI-DOMESTIC VIOLENCE

Many find it difficult to understand why a woman might tolerate abusive relationships. Those who have never experienced domestic violence may think that the termination of their relationship will end the suffering and would be the best possible option. Not always, though. The process of separation can sometimes show a sudden increase in violence. The most dangerous time for women in abusive relationships is when they are in the process of trying to separate physically or legally. Studies have shown that the

frequency and severity of aggressive attacks increases immediately before or during the decision to leave or divorce.¹⁸⁷

The strategy of separating or breaking up relationships is not always logical or popular because of the economic, health and social needs of children. Its not just a viable option for most battered women. These women, however, resist violence and abuse in many ways. Dutton (1994) classifies strategies for seeking help from battered women into three categories: personal, informal and legal. Personal strategies to combat domestic violence include hiding, concealing appearance, complying with the wishes, or fighting. Informal ways in which women seek help in their resistance include telling family or friends, seeking shelter, and seeking support groups. The third category contains legal strategies such as calling the police, filing for divorce or separation, seeking mental health or medical intervention.¹⁸⁸

Behavior associated with feelings of inadequacy takes many forms depending on the type of relationship and the characteristics of the partners. A partner who feels powerless can use competitive tactics such as anger, violence, opposition, exploitation, fighting, or the use of force by others. He can show a state of distrust, suspicion and self-defense. They can be indigenious, isolated and withdrawn or extremely sensitive and paranoid.

Since domestic violence is a common problem in family violence, family mediators need to consider the potential for domestic violence, even if both parties cannot deny it. When there are explanations for fighting, calling the police, hiding from him, or looking for a place to stay with friends or family members, these are signs of relationship abuse that should not be ignored by the mediator..¹⁸⁹

When a contested custody case reaches mediation, particularly in states where mediation is mandatory for these cases, it is important for the mediator to understand that there is a very strong likelihood that domestic

¹⁸⁷ Geffner, R. & Pagelow, M.D. (1990). Mediation and child custody issues in abusive relationships. *Behavioral Sciences and the Law*, 8. 151 – 159

¹⁸⁸ *Ibid.*

¹⁸⁹ Pearson, J.(1997). Mediating when domestic violence is a factor: Policies and practices in court-based divorce mediation programs. *Mediation Quarterly*, 14, 4, 319 - 333.

violence does or has characterized the relationship. Abusers use violence to maintain the upper hand and control their spouses. Thus, a woman in mediation usually cannot advocate for herself without fearing the response of her abusive partner.¹⁹⁰

Mediators should be aware of common incidents of reducing domestic violence and reviving the abuser's intentions. Victims often erase the violence against them by looking at the reality of the violence in their descriptions, or by leaving out key features of the violent episodes. Women who are beaten can also give innocent intentions to the abusive partner, convincing themselves and others that it was just a mere accident or that it was not intended to cause pain. Women often deny their suffering and abusers deny their guilt.¹⁹¹

Werner (1994)¹⁹² researched communication behaviors in mediators and parties involved in child custody mediation. While the study was not focused on issues of domestic violence, it noted the behavior of unsuccessful couples as being more competitive. They used behavior that was confrontative such as blaming, faultfinding, accusing; dominating the conversation; interrupting; being critical; making threats etc. The implications of these findings for couples in mediation might be that highly conflicted couples exhibiting confrontative communication patterns such as those noted may be enmeshed in patterns of domestic violence.

Reactions to feelings of powerlessness are very strong in battered women. Her feelings may include insecurity, guilt, anger, resentment, exhaustion, hopelessness, inferiority, shame, incompetence, and helplessness. Grim feelings that may remain with her are fear, pain, depression, and self-hatred. Geffner and Pagelow (1990)¹⁹³ argue that fear is always present when battered women confront their abusive partners. Batterers use their anger and violence to maintain the upper hand and control their partners. Thus, a woman

¹⁹⁰ *Ibid.*

¹⁹¹ Cobb, S. (1997). The domestication of violence in mediation. *Law & Society Review*, 31, 3 397-440.

¹⁹² Werner, B.L. (1994). Mediator and client communicative behaviors in child- custody mediation. *Women and Language*, 17, 2 21(9)

¹⁹³ Geffner, R. & Pagelow, M.D. (1990). Mediation and child custody issues in abusive relationships. *Behavioral Sciences and the Law*, 8. 151 – 159

in mediation cannot advocate for herself without fearing her batterer's reaction.

2.15 UNDERSTANDING OF PARTNERS GET STUCK IN ABUSIVE RELATIONSHIPS

The prevalence of marital abuse is well documented, the tendency to keep it a secret is still quite common. Pearson (1997) notes that few people admit to domestic violence unless asked in a straightforward and explicit manner. It is very difficult for a woman to admit what is happening and it is often hidden by the woman and her abusive partner. They may be in a state of denial. The wife can reduce the harassment to fit her view that she does not deserve such treatment, so it does not happen. Mary Ann Dutton describes cases where the secret of domestic violence was so complete that no one but the battered woman had a clear knowledge of it. Family and friends deny or are unaware of any such harassment. To put a cloak on it various methods are used as scratches were covered with clothes and unemployment was obscured by sick leave or shift work.¹⁹⁴

Mediators who have never experienced such abuse at the community level, or who have not been trained to identify and deal with domestic violence can have difficulty in understanding or believing what they hear from one or both partners. Another common myth is that a woman indulges in this violence so she can change her behavior and stop or solve it. Both of these reactions are flawed.

Leaving a relationship is a process that can be opened up to a few women. But as noted earlier, there are natural security risks, as violence often escalates either during or after the process of separation. In addition to security measures there are other serious barriers to leaving, including the welfare of children, apart from the economic and social issues. Battered women live with their partners because of fear, lack of money, and lack of space to go. Isolation

¹⁹⁴ Dutton, Mary Ann. (1994). The dynamics of domestic violence: Understanding the response from battered women. Florida Bar Journal, 68 24 – 28

is common to many battered women due to the fact that they do not have a network of family and friends to support them. ¹⁹⁵

The second false assumption focuses on the female burden of abuse which is that it was the behavior of the wife towards her husband which caused him to abuse her. This misconception leads to the mistaken conclusion that she can stop or reduce the violence by changing the way she treats him. Dutton (1995) notes that both professional and religious people often believe that a battered woman can stop violence as long as she does what is right, he notes that sometimes strikers stop their violent and abusive behavior, but that they do so depending on the batterer, not on the response of the battered woman to violence. Cobb analyzed mediation in a number of cases involving domestic violence and found that mediator diverted a woman's requests to deal with abusive language to her ex-husband. In response to her repeated requests to ask the husband to stop calling her names, mediators suggested that she consider what she could do to limit or not respond to her comments. Women are structured in such a way that they are capable of transformation and bear the brunt of the burden of ending violence. ¹⁹⁶

This kind of prevalent perception that a woman is responsible for the abuse and therefore can eliminate it, and the claim that a woman has a responsibility to change her behavior to reduce violence against her - keep women trapped in abusive relationships. Our society has historically maintained family sanctity. Public participation in family matters is simply not allowed in the Indian society; and many members of our criminal justice system still believe that men have the right to manage families without much intervention from the law or the courts. As long as society does not have the resources to allow women to be heard and understood, and also to provide them with viable options, countless women will have no choice but to stay in abusive relationships.

2.16 INTERVENTIONS WHICH HELP MEDIATION PROGRAMS DEAL WITH CASES OF DOMESTIC VIOLENCE

¹⁹⁵ Warters, B. (1986) Treatment of the male batterer: An overview of the field. Unpublished paper.

¹⁹⁶ Cobb, S. (1997). The domestication of violence in mediation. *Law & Society Review*, 31, 3 331.

It is clear that domestic violence is commonplace in disputes involving divorce, custody of children, and maintenance. Given the scale and challenges of these cases, mediation programs should be put in place to address them effectively. There are three common ways to prepare for this: 1) the training of family mediators. In this section, special techniques and procedures are described. The discussion of the first two interventions - case trials and mediator training - follows in the following sections.

Just as the basic rule of any professional intervention should always be positive, mediation systems should consider the safety of the parties as a priority. There are elements to be introduced in family mediation programs to address group safety, mediator safety etc.

Chance and Gerencser (1996)¹⁹⁷ list several measures to modify the facilities, such as :

- Spacious conference rooms that allow for easy and unencumbered escape
- Conference tables that provide a barrier to immediate contact
- Clearly marked exits
- Separate and safe waiting areas
- Metal detection devices

Measures to protect the parties must recognize the dangers by not allowing the violent person to know when and where his or her partner will be to mediate. Measures such as these may include the appearance of a peace officer and escorts for escorting the parties to a parking lot after mediation. It is also important for a woman to have a safety plan if the violence escalates or if she sees that it will continue. The mediator can help her think of ways to protect herself and the children. They should also be informed of how to obtain preventive or protective orders, if necessary.

In addition to policies and procedures to protect the parties from the risks of the violent partners, mediation programs can incorporate a variety of

¹⁹⁷ Chance, C.B. & Gerencser, A.E. (1996). Screening family mediation for domestic violence. The Florida Bar Journal, April, 1996, 54 - 57.

mechanisms during the mediation process. The most important method is pre-mediation testing, which will be discussed in more detail later. The purpose of a pre-trial mediation for domestic violence is to determine whether the case is suitable for mediation or not. Once a trained interviewer / mediator has been identified and trained as the couple's suitability for mediation, the mediator should use a power measurement technique. The mediator is encouraged to use a private caucus, so the woman does not have to admit anything in the presence of her partner. Private meetings give a woman the opportunity to express any fears or worries that she may have. ¹⁹⁸

Additional techniques recommended by Salem and Milne (1995) include mediation methods where the parties are not in face-to-face contact. Shuttle mediation is when the mediator moves back and forth while the parties are in separate rooms, or attending sessions at different times. Telephone mediation is suggested when travel and safety issues are a concern.

Ground rules can be used to restrict discussion topics and to preclude topics the batterers may want to negotiate such as dropping the abuse charges or modification of protection orders. ¹⁹⁹

2.16.1 Alternative Dispute Resolution System

Dispute resolution is the process of deciding a dispute or a conflict that has arisen between transacting parties. The decision can be arrived at either in an amicable manner or adversarial manner, either by the parties themselves or a neutral third party. The differences between the parties are addressed by dealing with their transaction-related interests.

Mediation is a voluntary, disputant-centered, non-binding method of dispute resolution wherein a neutral and credible third party facilitates a settlement between the parties. It is a confidential and structured process where the mediator uses special communication, negotiation and social skills to assist the disputants in arriving at a mutually acceptable solution themselves. The

¹⁹⁸ Perry, L. (1994). Mediation and wife abuse: a review of the literature. *Mediation Quarterly*, 11, 4, 313 - 325

¹⁹⁹ Salem, P. & Milne, A. (1995). Making mediation work in a domestic violence case. *Family Advocate*, 17, 3, 34-38

parties thereto must be willing to iron out the creases in their relation by a little outside help as the focus in mediation is on the future. It is ideal where the emphasis of the parties is on building relationships, rather than ascertaining the party at fault for what has already transpired. The outcome of a successful mediation is a settlement agreement, and not a decision. The objective of mediation is not to evaluate guilt or innocence but to promote understanding, focus the parties on their interests, and encourage them to reach their own agreement.

2.16.2 Online Dispute Resolution

Online Dispute Resolution or ODR is the process of settling disputes outside courts, combining alternative dispute resolution ("ADR") mechanisms with technology.

Online Dispute Resolution primarily involves the use of negotiation, arbitration, or mediation for dispute resolution. The most common methods of ODR are as follows:

- Synchronous ODR is a method of online dispute resolution where the parties communicate with each other using various video-conferencing applications in real-time.
- Asynchronous ODR is the method where communication is via email or other such communication applications. The communication here doesn't happen in real-time.
- Online Mediation is coming out to be the most favorable form of dispute resolution. This can be seen as a mix of synchronous and asynchronous ODR. Most ODR platforms use this method to reach a conclusion. Generally, online mediation starts with sending an email to parties. The email would contain basic information about the proceedings. This is followed by virtual meetings conducted in the chat rooms.

Advantages of ODR

- Online Dispute Resolution is an accurate, time-saving, convenient, and cost-saving method of dispute resolution.
- ODR provides efficient, scalable, effective, and collaborative mechanisms of resolution and containment.

Challenges

- Lack of enough arbitrators
- Building trust among consumers
- Dealing with people who are not used to the digital ecosystem would be a challenge.

ODR Platforms

ODR platforms have made the process of dispute resolution easy by combining the cutting edge technology with existing ADR processes, making the processing time convenient and effective altogether. A few top ODR platforms are:

- CADRE or Centre for Alternate Dispute Resolution Excellence is a website based platform for ODR. CADRE has been resolving rental and tenant contract disputes for NestAway, an online home rental startup.
- SAMA is another ODR platform that enables easy access to high-quality ADR service providers and helps people to resolve disputes online. ICICI Bank is using Sama as the ODR platform to resolve nearly 10,000 disputes with values going up as high as INR 20 lakh.
- CODR or Centre for Online Dispute Resolution is an institution that administers cases online end to end.

2.17 CONCLUSION

The term 'domestic violence' has now become a part of indigenous languages and is no longer surprising; it is a common word. Again, this statement is a rebellion against a great empire because it contains word-for-

word transmission that would be considered unusual. After all, the domestic sector is traditionally considered a shelter and a place of protection, not a place of violence. The widespread adoption of the term means that women are no longer safe inside their home. Instead, it is in this area where they are most likely to be beaten and killed.

Women are often at greater risk in an area where they have to be more secure in their families. For many the home is where they face a state of fear and violence at the hands of those close to them - those whom she should be able to trust. Victims experience physical and mental suffering. They cannot make decisions for themselves, express their opinions, or defend themselves and their children due to fear of further consequences. Their human rights are being violated and their lives are being stolen from them with the constant threat of violence.

It is evident that in court proceedings, marital disputes constitute a large part of the cases referred to mediation. The community, therefore, needs mediators in the field who can bring about empathy and understanding in handling the conflict and help the parties find solutions to the problem of the deterioration of deep personal relationships. It is a social responsibility that marriages should not be easily broken and disrupted. It is the policy of State to maintain the continuity of marital relations and to prevent, as far as possible, any kind of disruptions. This method of resolving disputes not only saves time but also reduces cohesion and isolated relations from the court. Mediation has gained considerable popularity in India, especially in marital disputes.

In the case of a marriage, the entire purpose of the marriage arrangement is broken if there is a physical or emotional delay in which the parties to the marriage have little or no remarriage. For maintaining future relationships alternative dispute resolution techniques are preferred and a peaceful solution is found out. There had been a very sad situation due to an alarming increase in divorce cases in the recent years, but mediation offers a spark of hope for many couples to resolve their disputes. It is the job of the State to protect marital relationships through counseling and mediation services.

CHAPTER-3

REVIEW OF LITERATURE

The review of the related literature is of great significance for the researcher, as it guides the investigator to know about the amount of work done in the discipline in which the investigator conducted the research. It also directs the researcher to tackle the problem chosen for research and avoid the risk of duplicity in research. It is certain that the review of related literature saves time, money and energy for the investigator. In the words of C.V. Goods (1971), the survey of related literature may provide guiding hypotheses, suggestive methods of investigation and comparative data for interpretive purposes.

Keeping in view the above stated purposes the researcher has made an attempt to survey the related literature in the field.

Cleak H. (2018)²⁰⁰, in his article entitled "Examination of Partner Violence among Family Mediation clients: classification of abuse" discussed that although mediating couples opposing separation and parenthood is not mandatory in cases of domestic violence, testing tools are still in the early stages of development. This article examines the credibility and legitimacy of some of the new and established standards for measuring domestic violence, as part of a larger survey of parties attending family rehabilitation centers in Victoria. Associations between types of trauma and other relationship indicators such as acrimony and parenting alliances are also being explored, as well as the increase in different types of trauma in the victim party. The majority of clients revealed a history of at least one form of domestic violence: 95% reported psychological trauma, 72% control and jealousy behavior, 50% financial control, and 35% physical assault. The results of practice and research are also discussed .

Harman J. (2018)²⁰¹, in the article points out that there is a significant delay and a rapidly growing burden on the Australian family legal system, which has created a lot of buzz in the media. This article looks at what immediate and effective solutions can be brought to the State Regional Court to deal with the complexities, to see the

²⁰⁰ Cleak H. (2018), *Journal of Interpersonal Violence* v. 33 no. 7 Apr 2018: 1118-1146

²⁰¹ Harman J. (2018), *Family Law Review* v. 7 no. 3 2018: 179-195.

greatest impact on the availability of resources or legal changes. It looks at pre-action and pre-filing procedures, the role of registrars in case management, the use of independent dispute resolution, and the sharing of information and co-operation in services involving cases of domestic violence.

Ghoi and Deshpande and Shailesh (2017)²⁰² conducted the study, "Violence against women in India: A Case for Research in Tackling the Menace". They pointed out that violence against women has long been a problem, in times of peace and war. This violence ranges from the smallest humor to the rape and murder and occurs at home, on the streets, in the workplace, in prisons, in short everywhere. A few cases against women have been reported, a few are still being prosecuted and a number of unsuspecting suspects are being punished. In the absence of detailed studies on incidents, it is difficult to come up with mitigation proposals to end such violence. There is an urgent need for more studies on this violence so that the psychology of offenders can be better understood. Cases of violence need to be investigated and methods of construction need to be found out to reduce their incidence. There is a need for immediate and severe punishment for the accused, which can serve as a deterrent. Any society, where half the people are not secure, needs to reconsider their claim for being a good civilization .

Girdner (2017)²⁰³, argues that family mediation can represent improper "public control" or "empowerment" of vulnerable couples, and suggests how it could take this final form. For example, when a party is powerless due to lack of legal information the mediator can provide details and strengths and experiences. Girdner underscores the fact that mediators often uphold the right to cohabitation or joint parenthood, and suggests that mediators should be suggested as to avoid placing this view on the table.

Carol Bohmer and Marilyn L. Ray (2017)²⁰⁴ have reached a more ambiguous conclusion when comparing the differences between judgments rendered in the State

²⁰² Ghoi and Deshpande and Shailesh (2017), *Women in a Changing Society*, Ashish Publishing House, New Delhi, 1984.

²⁰³ Girdner, L.K. (2017). Mediation triage: Screening for spouse abuse in divorce mediation. *Mediation Quarterly*, 16. 298.

²⁰⁴ Carol Bohmer & Marilyn L. Ray, (2017), *Notions of Equity and Fairness in the Context of Divorce: The Role of Mediation*, 14 *Mediation Q.* 37.

of New York and Georgia. In New York State, women often received less child support in the aftermath of the mediation, although in terms of the distribution of property they did better than they did at the time of the separation. In Georgia, however, on an average no outcomes for women were worse under mediation than under other means. The authors attribute this difference to (1) the fact that Georgia at the time (as Canada is today) has strict guidelines for child support; and (2) the fact that mediators in Georgia had many opportunities for legal training. There is evidence that the main factor that separates premarital sex from divorcees is not that they are more attractive to women but, rather, that they are more detailed.

Veenat (2016)²⁰⁵ conducted research on domestic violence and self-defense: A study of family counseling centers in Chandigarh, Panchkula and Mohali. In the current context of commitment, freedom, private trade, advances in technology and consumer census, India has progressed socially faster. As a result, a majority of the social conflicts associated with new permits and combinations created in the family center which led to increased deterioration and marital discord study were an attempt to understand the functioning of family counseling centers or mediation centers in Chandigarh, Panchkula and Mohali. (i) To monitor the effectiveness of family counseling centers under research, by examining the methods they use to obtain their assets. (ii) Identifying the problems faced by the Family Counseling Center to meet their objectives (iii) To read the views of the parties of the Family Counseling Courts, regarding their satisfaction with the operation of these FCCs. (iv) Looking at specific studies for a deeper understanding of the nature of modern family problems and how they deal with the FCC's use of the Method Interview system and face-to-face discussions. As such, the issue of the family is widely considered to be a personal issue and each case is differently dealt with depending on the type of the case .

Markwick K (2015)²⁰⁶, in his article “Resolving Appropriate Conflicts in Domestic Violence and Co-operative Model” argued that a collaborative approach to practice can improve responses to situations involving domestic violence. It discusses the features of this model as it is used in family law disputes, inconsistencies in the

²⁰⁵ Veenat (2016), *Violence and Protective Measures for Women*, Deep & Deep Publications Pvt. Ltd., New Delhi.

²⁰⁶ Markwick K (2015), *Family Law Review* v. 5 no. 1 Apr 2015: 4-12

current litigation system, mediation limitations, and how a co-operative model can address these issues.”

De Maio, Moore et al., (2015)²⁰⁷ Parental separation does not mean the end of violence, and for many women in abusive relationships, the divorce phase is a time of extreme risk of partner violence and murder. The ESPS findings outlined above, support the need to continue to improve in the identification of domestic violence. Among the providers of family mediation services, there has been an ongoing concern over whether parties having a history of domestic violence are able to negotiate equally, and the apparent threat of abusive spouse violence may not be apparent in the mediation process but may result in inappropriate agreements which later endanger victims.

Butalia (2014)²⁰⁸ noted that Kashmiri women, whether Muslim or Pandit, were made aware of this 'neglect' by the sisters from women's activist groups. In recent years, activists have sought to change this by engaging in working with women in Kashmir and taking up the issue of domestic violence. Due to the nature of the conflict and the conditions on the ground, they are forced here to use various tactics to carry out their intervention, the crime scene unlike Kashmir is by no means a place to take out the procession and carry placards to demand action or change. Instead activists have worked with the group down to providing women's counseling, health services, social and economic support to research and discover the truth and, where possible, using a tool to motivate political actors for the purpose of seeking change.

Sifris A and Parker A (2014)²⁰⁹, in their study, "Family Violence and Family Law: Where Now" discussed that The Family Law Amendment (Family Violence and other Measure Act) of 2011 introduced many amendments to the Family Law Act, 1975 on how the courts exercising their powers under the Act should deal with cases involving domestic violence and child abuse. This text examines these changes, including the context in which they occur. It also states that while the changes are important and will go a long way in improving the response of the family law system

²⁰⁷ Kaspiew, R., Carson, R., Dunstan, J., De Maio, J., Moore, S., Moloney, L. et al. (2015). Experiences of Separated Parents Study (Evaluation of the 2012 Family Violence Amendments). Melbourne: Australian Institute of Family Studies.

²⁰⁸ Butalia (2014), *Women and Human Rights*. APH Publishing Corp.. Delhi.

²⁰⁹ Sifris A and Parker A (2014), *Family Law Review* v. 4 no. 1 Apr 2014: 3-24.

for the victims of violence, more change is needed. In particular, it is suggested that if the family law system is to adequately respond to high incidence of domestic violence and abuse, the provisions of the Family Law Act which deems domestic violence as normal should be amended .

Salem and Milne (2014)²¹⁰ warn that mediation is inappropriate if there is ongoing abuse or assault by a person using or threatening to use a weapon. In a report by the Maine, Domestic Abuse and Mediation Project (1992), a sample of the risk assessment protocol is included, aimed at life-threatening strikers. Bingham, Beldin, & Dendinger (2014)²¹¹ conducted research suggests that domestic violence testing among mediation clients has not been successful, and there is a lack of clarity on how patterns of domestic violence should influence decisions about mediation. There are significant disagreements about the best ways to assess mediation, let alone family-wide legislation.

Skrobotowicz (2014)²¹² conversely, as statistics in Poland show, the procedure related to Article 207 of the Criminal Code (abuse) accounts for most cases submitted to mediation. It should be noted that in accordance with Article 48 of the Council of the European Union on the Prevention and Combating of Violence Against Women and Domestic Violence, Parties shall take necessary legal or other measures for the compulsory resolution of disputes, including mediation and conciliation. At the same time, this work states that “the domestic law of many member states of the Council of Europe provides alternative means of resolving disputes and convictions - of criminal and civil law. In particular, in family law, alternative dispute resolution mechanisms are considered to be more effective in family relationships and lead to long-term dispute resolution. In some legal systems, other dispute resolution or sentencing procedures such as mediation or conciliation are also used in criminal law.

²¹⁰ Salem and Milne (2014) *Divorce and Family Mediation: Models, Techniques, and Applications* 1st Edition, ISBN 1593850029, p.239.

²¹¹ Bingham, S., Beldin, K., & Dendinger, L. (2014). Mediator and survivor perspectives on screening for intimate partner abuse. *Conflict Resolution Quarterly*, 31(3), 305–330.

²¹² Skrobotowicz, G. A. (2014). *Mediacja w sprawach o przemoc w rodzinie, Prokuratura I Prawo* no. 3

Bingham et al. (2014)²¹³ effective assessment should be made for including strategies that make victims feel safe enough to disclose the experience of abuse so that the mediator can make informed decisions regarding the mediation process and determine as to whether mediation should continue or not. Studies show that when victims of domestic violence are asked directly about the abuse, provided protection from the abuser and institutional management and are questioned by a trusted person, they are more likely to choose to disclose their abuse during the mediation process.

Bingham and colleagues (2014)²¹⁴ conducted a qualitative study of women who left abusive relationships; asking them what they think will prevent or improve disclosure during testing. Barriers to disclosure included: a general lack of awareness of victims of the violence they experienced in the past or experienced during the trial; fear of the consequences of the abuser if the violence is exposed; worrying that the screening process will also harm the victim; and fear of judgment.

Parikh and Anjenaya (2013)²¹⁵ conducted a Study on the Separation of Domestic Violence among Married Women in Asudgaon Village in Raigad district. The study was done with an aim to assess the prevalence of domestic violence, its causes including social and cultural practices. These would help the health workers develop comprehensive and effective strategies to address the problem. House-to-house visits were conducted and women were interviewed on a pre-arranged, pre-assessed and systematic questionnaire, designed to determine whether they were experiencing domestic violence and, if so, to assess its causes, including population and social status cultural indicator. Daily data collected was compiled, edited and analyzed. Mathematical analysis was performed using Mean and Percentage. Of the 250 married women met with, 83 women gave a good record of domestic violence, thus reporting a 33.2 percent increase. Various causes of domestic violence, as reported by affected women were cooking (38.55%), persistent or disputed wife (32.53%), child-related issues (30.12%) and economic stress (26.5%). Beating (46.98%) was the most common form of physical trauma, followed by hair pulling (14.46%), twisted arm (13.25%) and throwing objects (13.25%). Experiences of

²¹³ Bingham, S., Beldin, K., & Dendinger, L. (2014). Mediator and survivor perspectives on screening for intimate partner abuse. *Conflict Resolution Quarterly*, 31(3), 305–330.

²¹⁴ *Ibid.*

²¹⁵ Parikh and Anjenaya (2013), *Family Abuse and its Consequences*, Sage Publication, New Delhi.

sexual violence include marital rape (12.05%), forced unprotected sex (pregnancy and STDs) (10.84%), forced sexual activity (6.02%) and forced sexual activity as depicted in sex films (4.82%). The most common factor, as reported by respondents, was addiction (42.11%), followed by poverty (38.55%), male perception that beating a wife was acceptable (36.14%) and domestic visitors (16.86%). Among the reasons given by battered women for staying in a violent relationship, the most common reason was that women did not know about legal terms (61.45%), followed by fear of social stigma (59.03%), because of their children (54.22%) and fear of complaining about threats from the abuser (43.37%). 80.72 percent of the abused women were reported to be tolerant of violence. Only 5.26 percent of affected women sought legal assistance to deal with the violence, while 15.66% of women tried to convince the perpetrator. A comprehensive response from the health sector to this problem is needed where the health sector can play an important role in preventing violence against women, help identify early abuse, provide victims with the necessary treatment and refer women to appropriate care.

Diva Verma's (2013)²¹⁶ analyzed the role of mediation in marital disputes. In marital disputes, the parties' decision is based, not on mere rationale, but on emotion. The rationale is developed keeping in mind all the aspects including children or economics or emotions. Negative emotions such as ego, fear, hatred, guilt, anger and consensus are some of the factors in a negative relationship. Mediation is important in resolving family disputes, it is the duty of the court to make every effort to reconcile between the parties where the circumstances of the case allow for the execution of the marital obligation.

Beck et al (2013)²¹⁷, established the Relationship Behave Rating Scale (RBRS) to measure the highly differentiated aspects of partner abuse and intimidation between couples participating in divorce mediation (Beck et al., 2009). The rating consists of 41 items with six proven subsidies: psychological abuse, stress management, physical abuse, threats and escalation of physical violence, sexual harassment, intimidation and coercion. It was used to examine the profiles of violence

²¹⁶ Diva verma (Feb2013) Mediation in matrimonial disputes:An analysis, Law profile,Vol4, Issue 2, p.n.9-10

²¹⁷ Bailey, A., and Bickerdike, A. (2013). Family violence and family mediation, DVIRC Quarterly, 1, 10–14.

in a large study of the cases of marital separations leading to mediation. Nearly all couples reported some form of stress management and psychological abuse, and men were found to be at greater risk of developing more aggressive patterns of partner violence. RBRS was reviewed and validated again, confirming better differentiation of abuse control types compared to CTS2.

Fischer, Vidmar & Ellis (2013)²¹⁸ CAP consists of four parts: 1) introduction, 2) questions about decision-making patterns, conflict resolution and angry speech, and 3) questions about certain abusive behavior, and 4) closure of time differences for testing. The interviewer may or may not be a mediator, but must be trained to recognize the signs of domestic violence. Fischer, et. I recommend that testing should not be done by those with a desire for mediation, but by independent individuals with the skills and compassion to identify and assist in cases of domestic violence. Cases are organized into three categories that represent a continuous transition from a non-abusive and unregulated relationship on one side to an abusive, controlling, and potentially harmful relationship on the other.

Pearson (2013)²¹⁹ reviewed a court-based arbitration system to determine how domestic violence cases are handled. He found that 80% of the surveyed programs reported domestic abuse testing, but only half of the programs that use private interviews ask clients directly about the violence.

Malika Arjun (2013)²²⁰ comments on the ways to deal with Domestic Violence by Mediation. More than one mediator may be required for helping the parties reach an acceptable agreement. Different people have different needs. Emotional or social issues are best handled by psychologists such as psychiatrists, or social workers. Financial problems are best handled by a specially trained mediator. Legal issues are best handled by an attorney. This approach to mediation helps couples to have what might be called a successful divorce. Any problem or issues can be

²¹⁸ Fischer, K., Vidmar, N & Ellis, R. (2013). The culture of battering and the role of mediation in domestic violence cases. *SMU Law Review*, 46, 5 2117-2174

²¹⁹ Pearson, J.(2013). Mediating when domestic violence is a factor: Policies and practices in court-based divorce mediation programs. *Mediation Quarterly*, 27, 4, 321.

²²⁰ Malika Arjun (2013) The ways of mediation in Matrimonial Disputes, www.legalserviceindia.com. p.n.3

resolved by the couple and a professional solution can be worked upon that is particularly relevant to the problem.

Annerley Qld. (2013)²²¹, in her book, provides a comprehensive overview of legal data for women in Queensland who are considering separation or are separating from their partners. It discusses where you can get support and advice, issues related to leaving home, domestic violence and protection orders, children and custody, child support, the provision of property and care, divorce applications, and mediation and dispute resolution. The book concludes with contact details of appropriate Queensland services and agencies.

Pande Rekha, Bindu, Mumtaz Fatima and Nazhath Khatron (2012)²²² conducted Research into domestic violence issues: Reconstruction of men and women. The main objectives of the study was to try focusing on masculinity building by emphasizing male and female sexuality in situations of domestic violence. They deliberately refused to combine all these effects and were well aware that there are many other patterns in which domestic conditions deteriorate into violence. The limited role we have outside of this paper to play is as follows: we would like to ask the question of whether certain ideas of the role of sex work in strengthening the structural conditions that lead to domestic violence. The schedule-cum-Interview method was used as a tool. The sample contained the Mahila Police Station. They spoke to the victims who had come to lodge complaints at the Mahila police station in the police control room. They also took interviews with police officers and counselors in the area .

The main findings of the study were: (1) Greed when seeking action not only as a means of economic negotiation, but also as a means of emotional dialogue. Families seem to be negotiating a way to control emotions using dowry. (2) Another finding is that men seem to be very attached to their families and there seems to be a matter of controlling the newlywed bride. The other conclusion is also based on the views of men and women, which seems to clearly affect both parties in cases of domestic violence. The masculine images of helpless women and their image as self-

²²¹ Annerley Qld. (2013), Women's Legal Service Inc (Online).

²²² Pande Rekha, Bindu, Mumtaz Fatima and Nazhath Khatron (2012), *Women Welfare : Some New Dimensions*, Sarup & Sons, New Delhi.

sacrificing people seem to reflect the moral character of the violence. Another important finding was around men's sexual problems and their sexual problems appear to be creating a dangerous atmosphere in the home. Another way in which sex seems to be inextricably linked with violence is based on allegations of female infidelity. Stories about other women also seem to undermine the peace of many homes. This is not a call to Understand Men better in the way women have been asked to do it but to better understand masculinity (and theirs, women) and their social structure .

Mohit Sihghvi (2012)²²³ highlighted the importance of Family Settlement. Consideration of family settlement is anticipated that such an agreement will result in the establishment or affirmation of the relationship and interest in the relationship and once such consideration has been passed by each party, payments involving guaranteed rights recognition to each other may not be impeached. The court ruled that the consideration for family tenure was an agreement between the parties and even in the previous court it could be a family agreement. For putting the country in the right path we must first strengthen its foundation which is the family. When we plan a family properly then we have to start by cultivating our health and finally that is what we must first prepare our hearts for.

According to the Supreme Court of Delhi (2012)²²⁴, the mediator provides the parties with an overview of the mediation process, emphasizes the whole procedure and explains that the parties not only control the process but also the outcome of the process. It also explains the basic rules and ultimately generates the impetus for open dialogue. The opening statement gives the parties the opportunity to familiarize themselves with the mediator, understand the status of the mediator and assure the parties of a confidential, secure and voluntary procedure moving forward.

Rhys Taylor (2012)²²⁵ explains the benefits of family cooperation. The parties have the right to choose their own court to resolve disputes based on the purposes of justice. The basic premise of mediation is that there is no need to follow court

²²³ Mohit Sihghvi (2012), Family Settlement: The Real and Reel [www.indialawjournal](http://www.indialawjournal.com), Vol- 3 (Issue I)

²²⁴ Delhi High Court Mediation and Conciliation Centre, Mediator's Tool Box (Volume I).

²²⁵ Rhys Taylor (2012), Domestic violence and empowerment in custody and visitation cases: An empirical study on the impact of domestic abuse. Association of Family and Conciliation Courts, Madison, WI

procedures. The parties have to choose the place for deciding their dispute. The mediation process is faster than the process of court. Confidentiality is important in family situations. It is a basic principle of the Law that mediator should be confidential and should not involve media access. The parties can themselves choose to manage their costs.

Ranbir Krishn et al (2012)²²⁶ discussed the sanctity of arbitral award. It is true that if there is an error that appears on the face of the award or where the arbitrator has exceeded his or her power or goes beyond the reference, the court may interfere. If the arbitrator's conclusion is based on a possible view of the matter, then the court is not expected to overturn the award. The High Court erred in intervening in this way. The court when considering arbitral award does not appeal against the decision of the arbitrator

Dr Mukund Sarda (2012)²²⁷ focuses on the challenges of the changing marital breakdown. The challenges of current marriage laws are due to the following - Allocation of marital property, marginal marital breakdown, marital status, same-sex marriage, marriage ceremonies, Unregistered marriage, Criminal and more expensive cases, Child Marriage, bigamy by converting to Islam, maintenance rights etc. Finding a solution to these challenges is therefore urgently needed to review existing legislation in the context of today's young generation's demands for greater freedom and less commitment.

Amhan Khanwilkar (2012)²²⁸ in the Bombay High Court's arbitration document said our concern is now centered on misdemeanor, with the number of unfair cases outgrowing the successful cases. The balance sheet will now need to be moved to the level of resolving two mediation cases per judge per month, and the organization has now grown with the presence of qualified mediators and adjudicators throughout the country. Judges and lawyers have access to these places and we believe

²²⁶ Ranbir Krishan, Krishan Singhania, Namit Gehlot(Oct-Dec2012),Sanctity of Arbitral Awards in India, www.indialawjournal, Vol-5 (Issue V).

²²⁷ Mukund Sarda (July-Sept 2012) Break down of marriage Laws-Its challenges and reforms, Bharati Law Review, Pune, Vol I (Issue1),p.n.53

²²⁸ Hon'ble Mr. Justice A.M. Khanwilkar Former Chief Justice, High Court of Himachal Pradesh (04.04.2013 to 24.11.2013)

that it is not important that others can do better but it is important that you do your best.

Ballard, Beck, Holtzworth-Munroe, Applegate, and D'Onofrio (2011)²²⁹ found that, although they prepared ahead of time, mediators did not report the occurrence of domestic violence in more than half of cases where the parties themselves reported violence. One study found that, although about 60% of divorced couples who went to mediation reported physical violence in the experimental way, only 7% of these couples tested without mediation.

Lowe & Abrams (2011)²³⁰ express the view that compulsive control forces and effective architectural interventions are contraindicated and may protect the most competent solution to achieve success. Domestic violence can be reduced as long as there is a guarantee that domestic violence laws are enforced and perpetrators face charges of violating protection orders and granting parental time .

Rajat Kumar (2011)²³¹ takes a review of the Family Law book. Today's image of a family is a neutral wife who loves ownership but its negative impact is that there has been a lack of support from the spouse which is why the relationship is deteriorating. Sometimes the first marriage of the husband is still alive even though the adulterous relationship with the other and the applications sometimes fail because of the rigidity of the rule of law and the physical evidence. The process should therefore be simple and quick to bind the marital relationships.

Justice P.V.Reddy (2011)²³² commented on a Supreme Court report that it is not possible for the courts to perform these acts at the first hearing to determine whether a case should be referred to an ADR procedure and if so to what ADR procedure. Also what needs to be done in the final stage of reconciliation by the

²²⁹ Ballard, Beck, Holtzworth-Munroe, Applegate, and D'Onofrio (2011) Detecting Intimate Partner Violence in Family and Divorce Mediation: A Randomized Trial of Intimate Partner Violence Screening, *Psychology Public Policy and Law* 17(4), 241,

²³⁰ Lowe, A. E., & Dodge Abrams, N. (2011). Should We Mediate Cases Involving Domestic Violence?, *Oakland County Bar Association*. Retrieved from <https://www.riverdalemediation.com/wp-content/uploads/2011/01/Lowe-and-Abrams-should-we-mediated-cases-involving-domestic-violence.pdf>.

²³¹ Rajat Kumar,(2011),Book Review Family Law-Vol-I Family Law and constitutional claims and vol-II Marriage ,Divorce and Matrimonial Litigation, *Journals of Indian Law and Society*, Vol II(Monsoon) p.n. 392-393

²³² Justic P.V.Reddy (2011), Resolution of domain name disputes through ADR- Impact of wipo's initiative towards eURDP, *Journal of the Indian Law Institute*, Vol 52 (Issue1) p.n.89

arbitrator is to borrow a key, stock and barrel in Section 89 of the CP and the court is required to create remedial policies and reorganize them on stage before referring to the ADR process. If the reference is a conciliation or arbitration or a Lok Adalat, then formulating the terms of the settlement or redress is the responsibility of the arbitrator or mediator or Lok Adalat even after going through the whole process of conciliation or arbitration. Therefore, the payment terms made by the court will be completely void in any subsequent ADR process. Why the courts should bear the brunt of the difficult and impossible task, and the Legislature be not required to perform the task of drafting policies to resolve it in advance.

Lowe & Abrams (2011)²³³ The literature in this article provides a review of the mediation of cases involving violence. It was pointed out that the general category labeled "violence" failed to indicate the severity of the problem, and that it was important for a panel of mediators to be able to negotiate and remain stable. Despite differences of opinion, all authors agree that it is a very serious matter and therefore requires great effort and skill from the mediator. It seems that the primary function of the mediator in cases of domestic violence (in addition to identifying the problem) is to restore equality between the parties. If this is not achieved - mediation can continue. Only if the balance in the relationship between the parties is maintained can we speak of the full willingness to participate in mediation. On the contrary, the apparent inequality in the relationship between partners makes it increasingly difficult to make meaningful mediation, after all, to resolve conflicts. Whenever the balance is available, the payout appears to be consistent and the legal and quasi-legal instruments are overused. According to the information presented in the introduction to this article, it is also important for the mediator to know how this so-called violent practice works. This is important as mediation made during the holiday will lead to a clear resolution of the conflict that will arise again in the next cycle (after the stage of creating a conflict) .

Lowe & Abrams (2011) in his study point out that the first important issue regarding the possible use of solutions in cases of domestic violence is to ensure the

²³³ Lowe, A. E., & Dodge Abrams, N. (2011). Should We Mediate Cases Involving Domestic Violence?, *Oakland County Bar Association*. Retrieved from <https://www.riverdalemediation.com/wp-content/uploads/2011/01/Lowe-and-Abrams-should-we-mediated-cases-involving-domestic-violence.pdf>.

importance of reconciliation solutions to various types of criminal cases. In the case of domestic violence, the critical requirements of the mediation framework may not be met. Given the fact that domestic violence is defined as a pattern of behavior designed to control a close partner, trust, good honesty and transparency required in mediation may not exist. The victim's memory of past events and her fears of ongoing violence or retaliation can greatly reduce her ability to communicate.

Lowe & Abrams (2011)²³⁴ The first important issue is whether mediation can be used in cases of domestic violence to determine the importance of reconciliation solutions to various types of criminal cases. In the case of domestic violence, the critical requirements of the mediation framework may not be met. Given the fact that domestic violence is defined as a pattern of behavior designed to control a close partner, trust, good honesty and transparency required in mediation may not exist. The victim's memory of past events and her fears of ongoing violence or retaliation can greatly reduce her ability to communicate.

Shamyam K. Krishan (2011)²³⁵ comments on the nature of marriage. Marriage is a blood relationship and it is not the only relationship that exists between men and women. Some of these relationships between men and women can be beautiful, complex, and difficult. It can be live or its integration. Some of these relationships are encouraged by the community, some are tolerated, and some are despised. The public perception of marital relations is often reflected in their rules. To provide high quality marital health legislature take efforts. But the fulfillment of other lacuna as a complete uncertainty confirmed by women who had a relationship in terms of marital status and one-man rule was not introduced by Muslims.

The views of Lalu Varghese (2011) expressed by respondents regarding the functioning of the panchayat court as an ADR process are summarized. ADR's dispute resolution mechanism has been transferred to a judicial system, and it is not costly. Cases have never been dismissed as a unanimous decision. The service of the

²³⁴ Lowe, A. E., & Dodge Abrams, N. (2011). Should We Mediate Cases Involving Domestic Violence?, *Oakland County Bar Association*. Retrieved from <https://www.riverdalemediation.com/wp-content/uploads/2011/01/Lowe-and-Abrams-should-we-mediated-cases-involving-domestic-violence.pdf>

²³⁵ Shyam Krishan Kaushib (July-sept 2011) A relationship in the nature of marriage-Hope and disappointment, *Journal of the Indian Law Institute*, Vol 53 (Issue3) p.n.474

members of the panchyat court is voluntary. Panchayat guarantees the services of such people with the qualities of social responsibility, honesty, lawlessness, confidentiality, patience, honesty, the ability to speak, empathy and respect.

Emphasizing by Sangeeta Sehgal (2011)²³⁶ on the costs of cases, Mediation is a tool to address the challenge of increasing the costs of cases and reducing the effectiveness of cases. But the fact is that if anyone wants to mediate, they will end up paying more than they would have paid in court as the mediator charged more than Rs 10,000 per seat, attorneys' fees and liability for postponement are increased. Lokadalat has also failed as it will not take a decision, if one of the parties does not agree to a settlement. Legal aid procedures are not available due to illiteracy and the need to complete application forms for a legal aid officer to refuse assistance in some cases.

AK Sikri et al (2011)²³⁷ argued that justice is fundamental to human rights. The right to justice is central to the rule of law and our constitution begins by saying, we the people of India who have made social justice an undeniable claim to the government gives a very humble person the legal literacy and fundamental rights and enforcement of the original truth, but the power of hostile forces to It remains an idea unless there is infrastructure that can be put on the line to protect or punish wrongdoing and to make the legal right a less expensive human right. Injustice abounds, poverty afflicts the weak class and few suffer from the syndrome of oppression.

Girdner (2010) believes that it is the job of mediators to try to identify which groups in abusive relationships can benefit from mediation and those that need to be removed from mediation and transferred to other resources. The CAP identifies patterns of decision-making organizations, combating and expressing anger, and their history of abusive behavior. The mediator can use this information to assess the magnitude of the force and control in the relationship.

²³⁶ Sangeeta Sehgal (2011) Cost of Litigation :Bottleneck in the path of justice, Indian Bar review, Bar council of India Trust, New Delhi, Vol.XXXVIII(4) 2011, p.n.56-5

²³⁷ Justice A.K. Sikri, Shreya Arora (July2011) Mediation : New Dimension of Access to justice, Nyaya Deep, National Legal Service Authority, New Delhi, Vol XII (Issue 3).p.n.5

C.P. Nandini et al (2010)²³⁸ describes the best online dispute resolution that has been described as using information and communication technology to assist teams and the resolution of experts in charge, transforming and resolving conflict. The ADR mode replaces the traditional court system with online dispute relations and is more relevant to the current state of technological development. Its need to understand that online dispute resolution is complementary and commendable to the existing ADR system and its adoption can be of benefit to more flexible, more expensive and faster accelerated justice delivery systems, compared to a regular, countless and robust court process to follow.

Myneni S.R. (2010)²³⁹ focused on changes in Indian society. Changes have been taking place in the traditional context as in the west. Increase, the number of social changes, women's independence, changes in the economic system, education, status of women etc. There is no doubt that their good growth in the nation but at the same time these things negatively affect the relationship between man and woman. which is why today there is a need for a central solution.

Moharana (2010)²⁴⁰ focuses on legal aid. Legal Aid extends the assistance provided to the public to its vulnerable members in their efforts to protect them and their freedom. While women are a vulnerable part of society and on the other hand everyone has the right to expedite justice under Article 21 of the constitution. It means that legal aid is right for both spouses. Legal aid means legal advice, which is the first stage of litigation when a legal problem arises. With the help of such advice, a knowledgeable person legally listens to the person in question and advises him on how to deal with the problem. The advice may be to avoid prosecution, may or may not take the form of a written application or legal document. It is nothing but conciliation or arbitration for a previous claim.

²³⁸ C.P. Nandini, G.B. Reddy (Jan-March 2010) Resolution of domain name disputes through ADR- Impact of wipo's initiative towards eURDP, Journal of the Indian Law Institute, Vol 52 (Issue1) p.n.89

²³⁹ Myneni S.R. (2010) chapter 4th, Social change in modern India, Sociology Allahabad Law Agency, second Edition p.n.444

²⁴⁰ S.D.Moharana(2010)Dimension of legal aid in 21st century, Indian Bar Review, Vol 37,p.n.72

Virendra Kumar (2010)²⁴¹ emphasizes the need to maintain the institution of marriage. Marital rights are not just a matter of the law but also of the institution of marriage. The marital dispute should not be pursued for a better legal settlement. Every possible effort should be made to restore a shared home and harmony between husband and wife. There should be a court-martial court process that is more constructive, convincing and productive rather than ambiguous, instructive or instructive. The court must try to bring about reconciliation, regardless of the case.”

Tripathi S.C. (2010)²⁴² explains the importance of ADR. There is no doubt that the justice or judicial system needs a major overhaul and policymakers are forced to devise an alternative. During the legal process, the Indian parliament introduced the Legal Service Authority Act and Arbitration and Conciliation Act. The need for Alternative means peaceful resolution of disputes, speedy justice, economic reform, time management, rule of law. Problems in marriage are directly affecting the individual and the health. that is why the urgent need for justice is so important. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Alternative Dispute Resolution has removed the dispute resolution process away from the courts and online dispute resolution is focused on Sophia Firtado et.al. (2010) online conflict resolution refers to conflict resolution processes where technological communication methods are used instead of traditional face-to-face relationships. The researcher explains the benefits of online dispute resolution such as, accessibility and cost savings, time saving, better utilization, transfer and access to information and the opportunity to use an expert. Today everyone is busy whether they are male or female which is why due to the cheapness, efficiency, simplicity, quick decision making, the technical benefits of ODR (online dispute resolution) are very helpful in family matters.

²⁴¹ Virendra kumar (April-June 2010) varying Judicial responses to dissolution of marriage by mutual consent under the Hindu Marriage Act,1955: A crisis of constitutional culture ,Journal of the Indian Law Institute, Vol.52 (Issue2) p.n.28

²⁴² Tripathi S.C.(2010) Alternative Dispute Re solution: why Needed, Arbitration and Conciliation Act,1996 with alternative means of settlement of disputes, Central law publication, fifth edition,p.n.335

J.S.B Sinha (2010)²⁴³ provides guidance on the use of ADR. The Mediation Act of 2003 with or without amendments must be applied to those who have identified these exemplary rules. The institutional framework must have three phases: first awareness, second approval and third implementation. The campaign should take a change in the attitude or mind of the opposition, lawyers and judges. Adoption of training is required for facilitators, mediators and consultants. It is also necessary to have trained social workers, a family counselor not only having legal knowledge but also the required knowledge to deal with psychological, social problems, etc.

Sitarska (2010) pointed out that, however, those who support restorative justice point to the beneficial effect of effective mediation in inter-party relations, the psychological resilience of the victim and the recovery of the offender. They emphasized that the risk of arbitration in cases involving violence is not higher than in the case of participation in court proceedings. Determination and independence are confidential means mediation makes it possible to achieve what seems to be the most accessible of court procedures - dispute resolution. However, the mediator must ensure that the victim participates in the mediation because he or she truly wishes, not because he or she admits the request was made by the perpetrator. It can also be added that mediation is often a way the victim has never seen it before, as they did not know there was such an opportunity.

Holtzworth-Munroe et al. (2010)²⁴⁴ developed another tool for assessing mediation settings, the Mediator's Assessment of Safety Issues and Concerns (MASIC), which contained seven subscales and was found to be simpler and faster to manage. However, while MASIC asks participants about their partner's behavior, it does not measure participants' abusive behavior against their partner.

Holtzworth- Munroe et al. (2010)²⁴⁵ found that while mediators used well-planned interviews, approximately one-third of couples identified as non-domestic

²⁴³ J.S.B.Sinha (2010) (Former Judge of Chief Justice of Supreme Court), official website of Bombay High Court, Mediation, Article.p.n.5

²⁴⁴ Holtzworth-Munroe, A., Beck, C. J. A., & Applegate, A. G. (2010). The mediator's assessment of safety issues and concerns (MASIC): A screening interview for intimate partner violence and abuse available in the public domain. *Family Court Review*, 48(4), 646–662

²⁴⁵ Holtzworth- Munroe, A., Applegate, A. G., & Putz, J. W. (2010). Divorce mediation with and without legal representation: A focus on intimate partner abuse and violence. *Family Court Review*, 48, 631–645.

violence reported in the questionnaire as having experienced a horrific or horrible risk or sexual intimidation, coercion or assault. A law school clinical study found that although the director and mediators were confident that they had experienced domestic violence through court file reviews and interviews, among other things, they missed about 50% of the cases found in the questionnaire.

Moloney L, (2010)²⁴⁶, in "Compulsory Dispute Resolution and Change of Family Law 2006: use, consequences, communication and alternatives, and the impact of domestic violence", *Compulsory Family Dispute Resolution (more commonly as family mediation) is a platform between 2006 reforms. in the Australian family law system. This paper provides an overview of family dispute resolution data from the 2006 Australian Institute of Family Study review. It reports on the rates of use of family dispute resolution and the effects of immediate and medium term, perceived solutions and the impact of domestic violence on both outcomes and approaches. While this is a common occurrence, the data also highlight the need for family relations practitioners and family advocates to play a role in assisting those families experiencing severe violence or significant levels of ongoing conflict.*

Divya Tyagi (2009)²⁴⁷ comments on irreparable divorce. It is true that unresolved marital discord is not one of the legal grounds for a court order to dissolve a marriage, the court's view of absolute justice and to alleviate the suffering of the parties involved in a long-running legal battle, in which case the indication of divorce. but those cases are different cases. When there is no opportunity for them to come together or to live together again.

Kaspiew et al. (2009)²⁴⁸ Research suggests that domestic violence is not always respected by mediators and that, although known, appropriate measures aimed at creating or maintaining security is not always taken seriously. Communication analysis within the resolution of court-based disputes found a disturbing pattern of setting aside allegations of injury to employees during mediation.

²⁴⁶ Moloney L, (2010), *Journal of Family Studies* v. 16 no. 3 Dec 2010: 192-196.

²⁴⁷ Divya Tyagi (2009) *Irretrievable breakdown of marriage as a ground of divorce: time for parliament to intervene*, *Indian Bar review*, Bar council of India Trust, New Delhi, Vol XXXVI (1 to 4) p.n.136

²⁴⁸ Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L., & the Family Law Evaluation Team. (2009). *Evaluation of the 2006 family law reforms*. Melbourne: Australian Institute of Family Studies.

Wanda & Michaela (2008)²⁴⁹, Mediation is a dispute resolution mechanism involving a neutral third party with no jurisdiction to bind parties. Its defining feature is the lack of a set outcome - arbitration constitutes a decision only if the parties agree on such terms. Unlike adjudication or mediation, mediation gives the parties themselves the authority to find a solution. However, unlike traditional bipartite negotiations or new innovations such as the law of cooperation, mediation takes a third person among the opponents.

Wiegers and Keet (2008)²⁵⁰, Violence is a factor in 50-80 percent of marital relationships ending before death and 50-60 percent of those relationships coming to mediation. Women are more likely than men to be victims of the most serious forms of domestic violence. Another estimate is that about one third of women have actually been physically assaulted by a close partner at some point in their life. Prevention and protection orders become important issues in many cases involving domestic violence, in addition to money and parenting. However, violence can seriously undermine a victim's ability to assert his or her rights and interests against the perpetrator.

All modern empires play an active and common role in controlling family life. This is explained by WFriedmann (2008) in the article, state and family. Many functions are the nature of judgment and quasi-judgment. Today the administrative and security functions of the institution are used not only by a separation or equity company but also by a special court, such as a family court, a domestic court etc. but care focuses only on the protection of property. In today's social work life is important. This is maintained by the judicial, judicial and administrative functions.

Chhlebowicz (2008)²⁵¹ Reconciliation is a key component of mediation, including mediation for victims. However, reconciliation is not the only purpose of

²⁴⁹ Wanda Wiegers and Michaela Keet, "Collaborative Family Law and Gender Inequalities: Balancing Risks and Opportunities" (2008) 46 Osgoode Hall Law Journal 738. In collaborative family law (CFL), the parties are represented by settlement-oriented lawyers with special training, often assisted by other financial or mental health professionals. In the event that settlement does not occur and the matter goes to court, the CFL lawyers must withdraw from the case.

²⁵⁰ Wiegers and Keet, *supra* note 5 at 736-7; Joan B Kelly and Michael P Johnson, "Differentiation among Types of Intimate Partner Violence: Research Update and Implications for Interventions" (2008) 46 Family Court Review 476 at 482

²⁵¹ Chhlebowicz P., & Kotowska-Romanowska, M. (2008). Problematyka mediacji z perspektywy wiktymologicznej. In T. Cielecki (Ed.), *Pozycja ofiary w procesie karnym – standardy europejskie a prawo krajowe*, Szczytn

mediation, nor can it be pursued by all means. From the victim's point of view, the needs and expectations of the injured party are paramount. Mediation satisfies his psychological needs - enabling him to present his own details of what happened, which in turn helps them recover from depression and express their anger. Mediation helps the victim understand why he or she becomes a victim, and gives them a chance to hear the abuser admit his or her guilt and apologize. Finally, mediation enables the victim to forgive the offender.

Kusum (2007)²⁵² while defining divorce in unison should explain other cases. The Supreme Court granted an application for rejection of a family court application for *Roopa V Santosh Kumar* AIR 2005 All 172, that the Family Court should have considered the application properly. The Family Court Act does not allow attorneys to appear before a family court. Technology cannot be allowed to continue over the interests of justice. Procedures are undertaken to achieve the goal of maintaining the justice system. (Page 174) Also, there was no indication that the husband did not agree with the agreement or that he wished to settle the matter in a joint application by his wife. Therefore, there are no grounds for refusing a permit application. The wife's complaint was appropriately approved; The family court declaration was set aside and the original divorce application was returned and returned to the family court for a proper decision.

Avatar Singh (2007)²⁵³ on the topic Alternative Dispute Redress explains the constitutional origins of ADR. Under Articles 39-A and 21 of the Indian Constitution free legal aid for the poor who are unable to defend themselves in a court of law is a constitutional authority. The weak class was unable to approach the courts of law, from the Munsif courts to the Supreme Court. CILAS (Committee for the Establishment of Legal Aid Services) has introduced mechanisms for resolving civil disputes over illegal and illegal flowers. The State has also adopted (through Government Legal Aid Boards and Advisory Boards) Lok Adalat and Legal Aid Camps, Family Courts, Local Courts, Arbitration Centers, Commercial Arbitration, Women's Centers, Consumer Protection Forums which are various aspects of effective

²⁵² Kusum, (2007) Restitution of conjugal rights, Cases and materials on Family Law, Universal Law Publishing Co., Delhi. p.n.49-51.

²⁵³ Avatar Singh (2007), Alternative Dispute Redressal, Law of Arbitration and Conciliation, Eastern Book Company, Lucknow, Eight Edition. p.n.476

dispute resolution programs. The spirit of good government is justice to the people. Our constitution, therefore, enshrines many aspects of economic justice, political justice and social justice.

Sharad Mishra (2007)²⁵⁴ on the Justice System through the Alternative Dispute Resolution Program in India. Mahatma Gandhi put appropriate words such as: I had read the real picture of the law. I had learned to find the best side of the human condition and to enter the hearts of men. I realized that the real task of a lawyer was to unite the parties into two groups. This lesson has burned indiscriminately to me that a large part of my time during the twenty years of my practice as a lawyer has been held to bring about private corruption that has been marred by hundreds of cases. I have lost nothing of that and even money certainly not my soul.

Avatar Singh (2007)²⁵⁵ while explaining the Use of Materials and Reasons for Interpreting the Provision of Mediation and Arbitration Act, focus on the case of *Narain Khamman V. Parduman Kumar* AIR1985 1 SCC 1 The High Court has seen that, of powerful legal provisions. *Furest Day Lawson Ltd V Jindal Exports Ltd* AIR2001 SCC 356. The High Court noted that the purpose of this Act is to provide a speedy resolution of the dispute and alternative dispute resolution and to avoid prolonged litigation. The provisions of the Act must be properly interpreted. The key to action is quick and fair justice for the parties.

Pilszyk, (2007)²⁵⁶ Hiding violence within a family circle means that the problem with shame is kept closed within four walls. Victims of domestic violence report that they are abused only when they are pressured to the limits of their physical and emotional well-being, and when they fear for their own health and that of their loved ones. At such a critical moment the problems facing the victim's family reach such a level that the victims can no longer cope on their own. Domestic violence is deeply ingrained; it is a problem that in many countries there is a general discussion of reluctance, stigma, or even outright disapproval, which is largely based on the fear that

²⁵⁴ Justice Dispensation Through Alternate Dispute Resolution System In India Sharad Mishra Legal India Laws of India

²⁵⁵ Avatar Singh(2007) Arbitration and Conciliation Act,1996, Law of Arbitration and Conciliation, Eastern Book Company, Lucknow,Eight Edition. p.n.4

²⁵⁶ Pilszyk, A. (2007). Obraz psychopatologiczny sprawcy przemocy w rodzinie, *Psychiatria Polska*, XLI(6)

such disclosure could damage the unity of the family unit. However, the general need to continue sharing the abode with the abuser requires that the dispute be resolved permanently, rather than dismissed or temporarily reduced by imposition of fines or other restrictions. In view of the above, the need for mediation in such cases is increasingly accepted.

Plątek, (2007)²⁵⁷ Apart from the age of the child, the special relationship between the perpetrator and the victim provides another valid reason for opposing the involvement of the children in mediation. Clearly, the principles on which mediation is based are intended to facilitate real understanding between the perpetrator and the victim. Of the many basic principles of restorative justice, with mediation as one of its means, the voluntary goal is the first to be articulated. The Polish Code of Criminal Procedure also makes the decision to appeal to the defendant based on the action or consent of the victim and the respondent. Voluntary policy is inherently related to the principle of equal representation of groups, which also applies to mediation. Party rule in one is a risk of lack of freedom when a decision is made to participate in mediation and creates tension during the mediation process. Sadly, such disparities between the parties also increase the risk of coercion - this problem is particularly acute in cases of domestic violence.

Gojska & Huryn (2007)²⁵⁸ However, proponents of restorative justice point to the beneficial effects of effective intermediate interventions, the victim's psychological stabilization and the rehabilitation of victims. Determination and independence are confidential means mediation makes it possible to achieve what seems to be the most accessible of court procedures - dispute resolution. However, the mediator must ensure that the victim participates in the mediation because he or she truly wishes, not because he or she admits the request was made by the perpetrator. It can also be added that mediation is often a way the victim has never seen it before, as they did not know there was such an opportunity.

²⁵⁷ Plątek, M. (2007-2008). Karnoprawne modele przeciwdziałania przemocy w rodzinie. *Archiwum Kryminologii*, XXIX-XXX.

²⁵⁸ Gójska, A. & Huryn, V. (2007). *Mediacja w rozwiązywaniu konfliktów rodzinnych*, Warsaw

Bhushan Vidya et.al. (2006)²⁵⁹ describe the social instability of a family in the family account of its several factors in the importance of integration. The author describes how a child's attitude develops in the family; the influence of the family on the child is deeper and more lasting than in other groups. The players he played with in childhood, changed his school but his parents remained close for life that is why stressful parental relationships have a profound impact on a child's health and today's children are the future of the nation. Therefore the maintenance of parental relationships is very important.

Justice S.B Sinha (2006)²⁶⁰ describes the stages of mediation. In the first stage of mediation, the mediator lets the lawyers and clients know what to expect and how to prepare. In the second section the Mediators explain the process and the process guidelines in the third stage to identify problems. In the fourth stage mediators help assess the problem by using values, needs and interests. In the fifth phase the arbitrator and the parties identify and analyze the dispute resolution options. And finally the arbitration is completed by assuring the parties to understand and accept the agreement and future obligations of the parties and to agree to the termination of the arbitration.

Murphy & Rubinson (2005)²⁶¹, as the mediation of family disputes has become more widespread and institutionalized through court proceedings, academics and academics have recognized the need to establish high standards of conduct in this area. As a result, the American Bar Association Section of Family Law (ABA) and the Association of Family and Conciliation Courts (AFCC) have partnered with various individuals and professional organizations to carry out what became the Model Standards of Practice for Family and Divorce Mediation.

Myeni S. R. (2006) on the status of women in the Vedic or Ancient Period that men and women played an important role in building and developing their families and especially in society as a whole. Women of ancient times were considered superior to men and were treated as 'goddess' Adi Shakti 'but in the future the status of

²⁵⁹ Bhushan Vidya, D.R.Sachdeva (2006) An Introduction to sociology, Kitab Mahal 40 Th Edition.p.n.300-306

²⁶⁰ J.S.B.Sinha (Former Judge of Chief Justice of Supreme Court), official website of Bombay High Court, Mediation, Article, 5.

²⁶¹ Murphy, J. C., & Rubinson, R. (2005). Domestic Violence and Mediation: Responding to the Challenges, *Family Law Quarterly*, 39(1)

women was degraded. According to Deb, men in India viewed women as domestic slaves. The attitude of men that shifts to women as slaves or *dasi*, the current situation of women inequality treats them as inferior members of their family even if they are independent and have a high position in society which is why this type of conflict in marital life and relationships becomes stressful, where now the need for mediator or integration conflict resolution there.”

Bailey & Bickerdike (2005) Mediators are required to apply a screening process that will discriminate between those clients of domestic violence who are unable to participate for security reasons or power and those who may participate in a properly modified process. Mediators also need to use reasonable judgment when deciding how to deal with a family client affected by the mediation process. Modifications within their record include shuttle and video mediation, victim support, attorneys-assisted procedures, an equally co-ordinated mediation team, strict procedures control, various time-varying and many subtle compliance processes.

Miller and DePorto (2004)²⁶² discuss the difficulties in implementing this process of co-operation between mediators and domestic violence practitioners. In doing so, they realized that they would have to hear ideas and agendas common to each other. What held them together, however, was a common and repetitive philosophy: the belief that power, self-determination, and self-determination can be achieved through a supportive process that creates voice, choice, reassurance and security.

Sunny (2003) in her study “Domestic Violence against Women in Kerala”, random selection of cases is intended for each major category, namely violence due to alcohol abuse, due to insufficient supply, frustration due to economic hardship, violence due to additional marital issues, and due to personality disorder. Most female abusers were in the daily wage, and excessive drinking and inadequate income were the most frequently identified causes. Alcohol abuse is evident, leading to financial

²⁶² It is important to note the program recognized that the mediation process needed to be the least directive and favored the Transformative Mediation model for its adherence to the premise of self-determination and its focus on party agency, and the dimensions of empowerment and recognition. *Id.* In forms of mediation where the ultimate goal of the mediator was settlement, there would likely be overstepping of party agency or self-determination in favor of the mediator’s desire for settlement, thereby overlooking the subtle and critical dynamics of domestic violence

insecurity and abuse of women as a way to bring about frustration. Insufficient dosage also appears to be linked to this complex. In general, research writes that, although one cause may be significant, the multiplicity of factors works. The perpetrators are often found as ordinary people, although domestic violence can be exacerbated by mental illness. All victims were physically abused, but were not abused at least when economic factors were a major factor. All were traumatized and OP 25 victims in the study, three attempted suicide and 12 considered suicide. All in all the victims seem to take pains to see that the stressful situation they were in did not affect their relationships with their children or their children's education. The objectives of the study were to (i) Count the various forms of domestic violence that are rampant in the Ernakulum region; (ii) Studying major forms of violence in terms of the underlying cause of the violence, the environment, the manifestations, the frequency and the outcome of the victims; (iii) Studying domestic violence services in terms of availability and effectiveness and suggesting ways to improve themselves; (iv) Proposing appropriate measures to reduce the incidence and spread of domestic violence. The entire study area contained all reported cases of domestic violence in the Ernakulum district of Kerala district during the period 1998-2000. In order to identify the different types of domestic violence, a registration study was conducted with a women's cell, a family court, a police station, counseling centers and women's organizations. He found that although domestic violence has been categorized according to its major cases, there are no specific causes that can only be affected. The causes are closely linked. In the same way, the nature and manifestation of violence also have many similarities in different types of causes with the effects of violent behavior on the victims .

Perry, R. (2004) In Honolulu, the Neighborhood Justice Center uses telephone interview interviews. If abuse is found, the abused partner is referred to a pre-mediation counseling system for further testing. The testing center may determine that you are able to mediate without additional support; or that he may mediate with the support of a lawyer; or unable to intervene at that time, when he or she may be offered counseling or transfer to other functions.

Galtung (2004) sees violence as specific, such as murder or injury, or form, as exploitation, oppression, and exclusion of individuals or groups. Structural violence is

built in society and is forgiven and justified by generations of cultures. Examples of ways in which legitimacy is legal and male domination of a woman are in attitudes such as a man rules over an ant and a man's home is his fortress. Our society admits to the military, traditionally masculine and traditionally violent. Mediators dealing with conflicting couples need to know their feelings about gender roles, power and violence in order to see the issues properly. At a time when women advocates are advocating that mediation keeps the secret of domestic violence hidden away from society, each of us needs to ask how we, as mediators, can be part of the solution to the social problem of domestic violence .

Marc Galanter and Mia Cahill (2004)²⁶³, Mediation advocates often claim that it resolves disputes effectively and efficiently, while providing the benefits of self-determination to opponents. Royal research has found that between 50 and 90 percent of family disputes that go into mediation are resolved. Its self-determined behavior can lead to far greater results than judgment, perhaps because mediation allows for more creative solutions.

UN Zoe Hilton (2004) ²⁶⁴ Domestic violence has also found time for interpretation and classification that has encouraged criticism of women for family mediation. Many such efforts divide violence on the basis of the aggressor's motives, which may include coercion, self-defense, or mental illness. Not all forms of violence are equitable, and some domestic violence can have little effect on power struggles. The effect of a single act of violence on the ability of a negotiating group depends largely on the context of the relationship. However, the literature has clearly shown that forms of domestic violence identified as coercive control or patriarchal terrorism can expose or exacerbate power inequalities. One such relationship involves a culture of violence in which formal abuse results in the abuser's complete control over the victim. It can also be difficult for an abused person to claim their rights and interests if doing so during the relationship was the cause of violent retaliation.

²⁶³ Marc Galanter and Mia Cahill, "Most Cases Settle": Judicial Promotion and Regulation of Settlements" (2004) 46 Stanford Law Review 1339 at 1350.

²⁶⁴ N Zoe Hilton, "Mediating Wife Assault: Battered Women and the 'New Family'" (2004) 9 Canadian Journal of Family Law 29 at 35; Hilary Astor, "The Weight of Silence: Talking about Violence in Family Mediation" in Margaret Thornton ed, Public and Private: Feminist Debates (Melbourne, Australia: Oxford University Press) 174 at 180

Martha J Bailey (2004)²⁶⁵ pointed out the effects of domestic violence on family mediation. He also explained that as an alternative to resolving disputes without making informed decisions, mediation can also allow criminal violence to go unpunished. The truth of the harassment may be the truth or claim to be sold to others within the conversation. Mediation in the final or final case is usually "aimed at the future," with a particular focus on child development programs going forward. Violence thus can be treated as a page in the history of groups, and this is a book they are encouraged to close.

Myaneni (2004) describes the advantages and disadvantages of ADR in his book *Alternative Dispute Resolution Arbitration, Conciliation and Alternative Dispute Resolution Systems*. It can be used at any time before a lawsuit, or a pending trial before a court, a better solution at a lower cost, its flexibility not being a technical deadline, ADR can be used with a lawyer or without law while permission from parties to appoint a neutral dispute resolution expert. ADR is unpopular in cases such as when any party is not allowed to settle peacefully, in criminal cases etc. But in marital situations most emotional and emotional issues are the reason why mediation as an ADR method is suitable for these issues.

Douglas D. (2004)²⁶⁶ wrote an article looking at mediation as a panacea or problem in which domestic violence is a factor and ends in a dispute over mediation. Muhlhauser introduced the anti-mediation debate in these situations by emphasizing that once the violence has affected relationships, the power difference and the vulnerability of the victim support the chances of a negative impact on mediation. 48 In addition, he asks that a competent mediator "sees the power, power, and power to force even the simplest voluntary movement (hand gesture, blink) and the effect it can have on the victim's victim" by reducing his or her power in such a way that equality and balance are achieved.

²⁶⁵ Martha J Bailey, "Unpacking the Rational Alternative: A Critical Review of Family Mediation Movement Claims" (2004) 8 *Canadian Journal of Family Law* 61 at 69; Regehr, *supra* note 53 at 364

²⁶⁶ Douglas D. Knowlton & Tara Lea Muhlhauser (2004) *Mediation in the Presence of Domestic Violence: Is it the Light at the End of the Tunnel or is it A Train on the Track?*, 70 *N.D. L. REV.* 255 (1994).

Beck & Sales (2003)²⁶⁷ it is not practical or desirable for all cases of domestic violence to be investigated without FDR. The escalation of domestic violence will leave very few cases to be resolved in mediation and to place an unresolved burden on court services. One of the first suggested benefits of mediating families is that the process can produce better agreements for the opposing parents than a legal approach and equal in cost and time.

Nigam (2001)²⁶⁸ explained that Indian culture glorifies the image of women who tolerate and accept whatever is offered by the husband because there is no source of support such as emotional or material or support from his father's family, access to other physical, economic and social rehabilitation etc. At the heart of it is the inadequacy of the social support network that forces women to back off or reconcile and fail to meet the legal provisions that take so long to deliver justice. But that concession was made with force and the delay in justice was not denied. Therefore, mediation as an ADR method is the only solution to this problem.

Shrivastava Alka (1999)²⁶⁹ focuses on rural areas. In India, especially in rural areas, women's qualifications are needed because they must be indifferent, patient, self-sacrificing and modest. So rights are like divorce, equality is far from him. She is the victim of daily abuse by her husband or family. Sometimes it leads to division which is why there is a need to create special programs such as forgiveness, mediation etc.

Banji K. Milon (1997) explains the topic of Arbitration through Arbitration versus case, these are two ways of resolving conflicting or inconsistent disputes. Prosecution and arbitration are both ways of resolving a dispute, one in a court of law and the other in a private court. when the dispute is resolved through a court of law then the same attorneys will not leave or waive a small fee which is why they do not agree on resolving the dispute by resolving it. However, all attorneys agree that the dispute resolution process should be approved.

²⁶⁷ Beck, C. J. A., & Sales, B. D. (2003). A critical reappraisal of divorce mediation research and policy. *Psychology, Public Policy, and Law*, 6(4), 989–1056

²⁶⁸ Shalu Nigam (Jan 2001) *Womens rights and violence in marriage*, legal news and views p.n.3-4

²⁶⁹ Shrivastava Alka (Jan-March 1999) *Violence against women: The rural scene*, women's link Vol-5, No.1, p.n.27

Jayprakash sen (1992) argues that the solution to land restitution is unconstitutional, as it violates women's right to privacy and should be replaced by a solution to reconciliation. It is the normal duty of the court to make every effort to preserve the marriage. The reconciliation solution will allow the disbanded party to go to court.

Padmavathi (1990)²⁷⁰ research in the field of domestic violence highlights the need for family violence for law enforcement and private counseling. The mediator's approach has far-reaching effects on domestic violence. Thus the establishment of family courts free legal aid, counseling for young people. It means a place of mediation and counseling that protects women and their marital relationships and will change the criminal mindset of domestic violence.

NATIONAL FAMILY HEALTH SURVEY:

The National Family Health Survey (NFHS) is a large-scale, multi-round survey conducted in a representative sample of households throughout India. The NFHS is a collaborative project of the International Institute for Population Sciences (IIPS), Mumbai, India; ORC Macro, Calverton, Maryland, USA and the East-West Center, Honolulu, Hawaii, USA. The Ministry of Health and Family Welfare (MOHFW), Government of India, designated IIPS as the nodal agency, responsible for providing coordination and technical guidance for the NFHS.

The first National Family Health Survey (NFHS-1) was conducted in 1992-93. The survey collected extensive information on population, health, and nutrition, with an emphasis on women and young children. The second National Family Health Survey (NFHS-2) was conducted in 1998-99 in all 26 states of India with added features on the quality of health and family planning services, domestic violence, reproductive health, anemia, the nutrition of women, and the status of women. The information was collected from a representative sample of approximately 90,000 ever-married women age 15–49 years drawn from all the states. The first

²⁷⁰ A.Padmavathi (August 1990) Violence in the Family: A Criminological View, Legal News and Views, p.n. 24

NFHS was conducted in 1992–93 and proved to be a major landmark in the development of a comprehensive demographic and health database for India.

NFHS-2 included some data related to domestic violence also.²⁷¹ NFHS-2 findings showed that almost three out of five women (56 percent) believe that wife-beating is justified for at least one of six specific reasons (if she neglects the house or the children, she goes out without telling him, she shows disrespect for in-laws, he suspects that she is unfaithful, if she does not cook food properly, or if her family does not give money or other items as expected). Rural and illiterate women are more likely to accept wife-beating as justified for any reason than their urban, educated counterparts. At least 1 in 5 ever-married women have experienced domestic violence since age 15 and at least 1 in 9 have experienced domestic violence in the 12 months preceding the survey. Most women beaten at all are beaten by their husbands. About one-fourth of illiterate women report being beaten and nearly one-third of poorer women report beatings. Due to the inherent tendency for underreporting of domestic violence, however, these results should be treated as setting only a lower bound for the proportion of ever-married women who have experienced any domestic violence.

The 2005-06 National Family Health Survey (NFHS-3) is the third in a series of national surveys.²⁷² In NFHS-3, 18 research organizations conducted interviews with more than 230,000 women age 15-49 and men age 15-54 throughout India. NFHS-3 also tested more than 100,000 women and men for HIV and more than 200,000 adults and young children for anaemia. Fieldwork for NFHS-3 was conducted from December 2005 to August 2006.

In NFHS-3, a module of questions on domestic violence was included as part of the Woman's Questionnaire. Information was collected on different forms of violence experienced by women age 15-49 and their help-seeking behaviour. The module collects detailed information on physical, sexual, and emotional violence perpetrated by husbands against their wives, physical consequences of spousal violence, and when spousal violence was first initiated, as well as information on violence perpetrated by wives against their husbands. In addition, in order to examine

²⁷¹ <https://hetv.org/india/nfhs/pnfhs2.html>

²⁷² www.nfhsindia.org

the intergenerational effects of domestic violence, information was collected on whether the respondent's father ever beat her mother.

Security precautions required that only one woman be administered the domestic violence module in each sample household, and that the domestic violence module not be administered if privacy is not achievable. With these restrictions, the resulting sample of women for the domestic violence module is 83,703 (13,999 never married women and 69,704 ever-married women) or 67 percent of the entire NFHS-3 sample of women. Of the 49,682 unweighted de facto women excluded, 40,117 women were not selected for the domestic violence sample because they belonged to households with more than one eligible woman, only 477 (0.6 percent of all women eligible for the module) could not be administered the module because privacy could not be obtained, and 88 could not be interviewed for other reasons.

NFHS-3²⁷³ findings suggested that by age, the prevalence of physical violence is lowest, at 21 percent, for women age 15-19, followed by 31 percent for women age 20-24 and 38-39 percent for women in the older age groups. The prevalence of violence in the past 12 months has an inverted U-shaped relationship with age, with the highest prevalence (24 percent) found for women age 25-29 and the lowest (15-16 percent) for the youngest and oldest women. Women age 25-29 are also somewhat more likely to experience violence often. However, among women who have ever experienced violence at some time since the age of 15, the youngest women (age 15-19) are most likely, at 70 percent, to have experienced violence in the past 12 months and the oldest women (age 40-49) least likely, at 41 percent, to have done so. Rural women are more likely than urban women to have ever experienced physical violence since the age of 15, and to have experienced it in the past 12 months.

Differentials in prevalence by women's education are substantial. Forty-four percent of women with no education have experienced violence at some time since the age of 15, and 26 percent have experienced violence in the past 12 months. These proportions decline steadily with education and the corresponding proportions

²⁷³ <http://hetv.org/india/nfhs/nfhs3/NFHS-3-Chapter-15-Domestic-Violence.pdf>

for women who have completed 12 or more years of education are 14 percent and 6 percent, respectively. The percentage of women often experiencing violence in the past 12 months also declines with education, from 6 percent for women with no education to 1 percent for women who have the highest level of education. However, among women who have experienced violence since the age of 15, there is much less variation in the experience of violence in the past 12 months across educational levels (from 58 percent among women with no education to 50 percent among women with 10-11 complete years of education and 42 percent among women with the highest level of education). Women who were employed at any time in the past 12 months have a much higher prevalence of violence (39-40 percent) than women who were not employed (29 percent), although the corresponding differential in the experience of violence in the past 12 months is much smaller (22 percent for women employed in the past 12 months, compared with 17 percent for women who were not employed). Two-thirds of currently divorced, separated, or deserted women have experienced violence at some time since age 15, twice the national average. Currently married women and widowed women have a much higher prevalence of violence (37 and 38 percent) than never married women or women whose gauhars have not yet been performed (16 and 15 percent). This is not surprising since spousal violence for women age 15-49 is the most common form of domestic violence. The prevalence of violence does not vary by household structure.

Differentials by religion and caste/tribe status are large. Buddhist/Neo-Buddhist women report the highest level of violence (41 percent), followed by Muslim and Hindu women (34-35 percent), and Sikh and Christian women (26-28 percent); Jain women report the lowest levels of violence (13 percent).

Differentials across wealth quintiles are also large. The prevalence of the experience of physical violence since the age of 15 declines sharply and steadily with increasing wealth status from 45 percent for women in the lowest wealth quintile to 19 percent for women in the highest wealth quintile. Thus, it is evident that even among the wealthiest groups, one of every five women has ever experienced physical violence, and among those who have experienced violence, almost half have experienced violence in the recent past.

Findings about who committed the violence by providing the nature of the relationship between the perpetrator of the violence and the respondent. Data are shown separately by current marital status of the respondent, although the violence being reported by ever married women may have occurred before, during, or after having been married. Since women could have experienced violence at the hands of more than one person, the percentages do not sum to 100. As expected, almost all ever married women who have experienced violence report a current or former husband as the person who inflicted violence. Eighty-five percent of ever-married women who have experienced violence since the age of 15 have experienced it from their current husband. Only 2 percent mention a mother-in-law as the perpetrator. Never married women and women whose gaunahas not been performed mainly report family members, particularly mothers, as the person committing the violence. Notably, about one in seven of these women report violence at the hands of a teacher.

Data showed the percentage of women who have experienced different combinations of physical and sexual violence for India as a whole, according to selected background characteristics and by state. Thirty-four percent have experienced physical violence and 27 percent have experienced physical violence but not sexual violence; 9 percent have experienced sexual violence and 2 percent have experienced sexual violence but not physical violence; and 7 percent have experienced both physical and sexual violence. Overall, in India 35 percent of women age 15-49 have experienced physical or sexual violence; this proportion is 40 percent for ever-married women and 17 percent for never married women. Both types of violence are higher in rural than in urban areas.

Women's experience of the different types of violence varies greatly by state. In all states, however, physical violence alone tends to be the most common form of violence. Sexual violence rarely occurs without physical violence. Any sexual violence (with or without physical violence) ranges from 1 percent in Himachal Pradesh and Meghalaya to 16 percent in Tripura, 17 percent in Bihar and Rajasthan, and 18 percent in West Bengal. The prevalence of any violence (physical or sexual) is least in Himachal Pradesh, at 6 percent, followed by Jammu and Kashmir (13

percent) and Goa (15 percent). Any violence is most common in Bihar (56 percent), followed by Rajasthan, Madhya Pradesh, and Tripura (45-47 percent).

Spousal violence refers to violence perpetrated by partners in a marital union. Since spousal or intimate partner violence is the most common form of domestic violence for women age 15-49, the NFHS-3 collected detailed information on the different types of violence—physical, sexual, and emotional—experienced by women at the hands of their current or most recent husbands. Focusing on the most current/recent spouse permits a better understanding of current risk of spousal violence.

In NFHS-3, ever-married women were asked about seven sets of acts of physical violence by their current or most recent husband, two of sexual violence, and three of emotional violence. Although specific acts are labeled here as constituting physical, sexual, or emotional violence for purposes of discussion, there is no implication that an act of physical violence will not entail emotional violence or that an act of sexual violence does not entail physical violence. Overall, 37 percent of ever-married women have experienced spousal physical or sexual violence, and 40 percent have experienced spousal physical, sexual or emotional violence. Smaller proportions of women report experiencing both spousal physical and sexual violence (8 percent), as well as spousal physical and sexual and emotional violence (4 percent). Large differentials exist by background characteristics in the proportions of women who experience different forms of violence.

Prevalence of physical or sexual violence, as well as emotional physical or sexual violence, does not vary greatly by age for women age 20-49, but is somewhat lower for women age 15-19. Prevalence of such violence is higher in rural areas than in urban areas; however, even in urban areas, 30 percent of women have experienced spousal physical or sexual violence. Differentials in the prevalence of spousal violence are particularly large by education, with 46 percent of women with no education having experienced physical or sexual violence, compared with 12 percent of women with 12 or more completed years

of education. Employed women experience higher rates of physical or sexual violence (43-44 percent) than women who are not employed (32 percent). Divorced, separated, and deserted women report much higher rates of violence (64 percent) than widowed or currently married women (37 percent). This is to be expected since a husband's violent behaviour is often an important reason for ending a marriage. Notably, rates of physical or sexual violence by the current husband among currently married women are higher for women who have been married more than once (49 percent) than for women in their first marriage (36 percent). Notably, the prevalence of violence increases with marital duration and with number of children. One in two women with five or more children report having experienced spousal physical or sexual violence.

By caste/tribe, rates of violence are highest for scheduled caste and scheduled tribe women. However, even though women not belonging to the scheduled castes, scheduled tribes, or other backward classes have a lower prevalence, nearly one out of three of these women have experienced spousal physical or sexual violence. Prevalence of spousal physical or sexual violence declines sharply with the wealth index from a high of 49 percent for women in the lowest wealth quintile to a low of 18 percent for women in the highest wealth quintile. Despite the differentials by wealth, these data suggest high rates of all forms of violence in even the wealthiest households.

Increases in husband's education shows a clear negative association with prevalence of violence, but it has less of an effect on lowering the prevalence of violence than do increases in women's own education. Only 12 percent of women who had 12 or more years of education report experiencing physical or sexual violence, compared with 21 percent of women whose husbands have completed 12 or more years of education.

Women whose husbands drink alcohol have significantly higher rates of violence than women whose husbands do not drink at all; emotional violence is three

times as high, physical violence is more than two times as high, and sexual violence is four times as high for women whose husbands are frequently drunk, compared with women whose husbands do not drink. Notably, the prevalence of emotional, physical, or sexual violence, at 72 percent, for women whose husbands are frequently drunk is also much higher than for women whose husbands drink alcohol but are either never or only sometimes drunk (50-51percent).

72 percent of women who have ever experienced emotional violence by their current or most recent husband experienced such violence in the 12 months preceding the survey, and 19 percent of them did so often. Similarly, 65 percent of women who have ever experienced physical or sexual violence by their current or most recent husband have experienced such violence in the 12 months preceding the survey, and 15 percent have experienced such violence often. Among those who have ever experienced spousal emotional violence or physical or sexual violence, those in the 15-19 age group are more likely than older women to have experienced such violence in the past 12 months and to have experienced the violence often. Differentials by residence, education, and employment in these indicators are small.

Almost one-fourth of all ever-married women (23 percent) experienced physical or sexual violence within the first two years of marriage (19 percent in urban areas and 24 percent in rural areas). One-third (32 percent) experienced violence in the first five years of marriage. Calculations based only on women who report ever experiencing spousal violence suggest that, for the majority (62 percent) of these women, violence was initiated within the first two years of marriage.

What is also particularly striking about help-seeking behaviour among women who have ever experienced violence is the virtual lack of differentials by most background characteristics, including education and wealth. Overall, the data suggest that neither education nor wealth imply a greater likelihood that women will seek

help against violence. There is even some indication that the most educated women and women in the highest wealth quintile are less likely to seek help than less educated or less wealthy women. The largest differentials by background characteristics are found by religion. Jain women (who are least likely to report experiencing any violence) and Buddhist/Neo Buddhist women (who are most likely to report experiencing violence) are the least likely to seek help (17 and 19 percent respectively). Sikh and Christian women are most likely (31 and 32 percent respectively) to seek help.

Abused women most often seek help from their own families. Data shows abused women's sources of help, according to the type of violence they had suffered. Seventy-two percent of women who experienced only physical violence and 58 percent of women who experienced only sexual violence mention their own family as a source. The second most common source of help for women who experienced physical violence is the husbands' family (28 percent); by contrast, among women who experienced sexual violence only and sought help, friends are the second most common source of help (34 percent). Only 6 percent of women who suffered sexual violence only and sought help turned to their husband's family. Notably few women seek help from any institutional sources such as the police, medical personnel, or social service organizations.

In addition to the 29 states, NFHS-4²⁷⁴ also included all six union territories for the first time and will also provide estimates of most indicators at the district level for all 640 districts in the country as per the 2011 census. NFHS-4 sample size is expected to be approximately 568,200 households, up from about 109,000 households in NFHS-3. This is expected to yield a total sample of 625,014 women and 93,065 men eligible for the interview. In these households information on 265,653 children below age 5 will be collected in the survey. Data will be collected using Computer Assisted Personal Interviewing (CAPI) on mini-notebook computers.

²⁷⁴ <http://rchiips.org/NFHS/nfhs4.shtml>

⁷⁶ <http://rchiips.org/NFHS/NFHS-4Report.shtml>

NFHS-4 included a module of questions on domestic violence that was administered in the subsample of households that were selected for the state module. A similar module was also included in NFHS-3, allowing for comparisons over time. In accordance with the World Health Organization's guidelines on the ethical collection of information on domestic violence, only one eligible woman per household was randomly selected for the module, and the module was not implemented if privacy could not be obtained. In total, 83,397 women were selected for the domestic violence questions and 79,729 completed the module. Only 4 percent of women eligible for the domestic violence module could not be successfully be interviewed with the module because privacy could not be obtained or for other reasons. Special weights were used to adjust for the selection of only one woman per household and to ensure that the domestic violence subsample was nationally representative.

NFHS-4²⁷⁵ showed that thirty percent of women have experienced physical violence since age 15, and 6 percent have ever experienced sexual violence in their lifetime. Four percent of ever-pregnant women have experienced physical violence during any pregnancy. Spousal violence: Thirty-three percent of ever-married women have experienced physical, sexual, or emotional spousal violence. The most common type of spousal violence is physical violence (30%), followed by emotional violence (14%). Seven percent of ever-married women have experienced spousal sexual violence. Trends in spousal physical or sexual violence: Ever-married women's ever experience of spousal physical or sexual violence has declined from 37 percent in NFHS-3 to 31 percent in NFHS-4; however, there has been no change in women's experience of spousal physical or sexual violence in the 12 months preceding each survey (24% in both NFHS-3 and NFHS-4). Injuries due to spousal violence: One-fourth of ever-married women who have experienced spousal physical or sexual violence report experiencing physical injuries, including 8 percent who have had eye injuries, sprains, dislocations, or burns and 5 percent who have had deep wounds, broken bones, broken teeth, or any other serious injury. Help seeking: Only 14 percent of women who have experienced physical or sexual violence by anyone have sought help to stop the violence, down from 24 percent in NFHS-3.

Thirty percent of women age 15-49 in India have experienced physical violence since age 15, and 21 percent have experienced physical violence in the 12 months preceding the survey. Among women who have ever been pregnant, 4 percent have experienced physical violence during any pregnancy.

Women's experience of physical violence increases with age, from 17 percent among women age 15-19 to 35 percent among women age 40-49. In addition, the experience of violence is much less common among never-married women than among women who have ever been married. The experience of physical violence is more common among women in rural areas (32%) than among women in urban areas (25%). Women's experience of violence declines sharply with women's schooling and wealth. By schooling, the percentage of women who report physical violence declines from 41 percent among women with no schooling to 17 percent among women with 12 or more years of schooling. Similarly, the experience of physical violence ranges from 40 percent among women in the lowest wealth quintile to 19 percent among women in the highest wealth quintile. Women who are employed are more likely to experience physical violence than women who are not employed. For example, 39% of women employed for cash, compared with 26% of women who are not employed have experienced physical violence since age 15 years.

Among ever-married women age 15-49, who have experienced physical violence since age 15, 83 percent report their current husbands as perpetrators of the violence and 7 percent report former husbands as perpetrators (Table 16.3). For never-married women who have experienced physical violence since age 15, the most common perpetrators include mothers or step-mothers (60%), fathers or step-fathers (32%), sisters or brothers (26%), and teachers (15%).

One-third of ever-married women (33%) have ever experienced spousal physical, sexual, or emotional violence by their current husband (for currently married women) or their most recent husband (for formerly married women), and 26 percent have experienced at least one of these forms of violence in the 12 months preceding the survey. Thirty percent of ever-married women have experienced spousal physical violence, with 23 percent experiencing this type of violence in the past 12

months. Seven percent have experienced spousal sexual violence, with 5 percent experiencing this type of violence in the past 12 months. Spousal emotional violence was reported by 14 percent of ever-married women, and 11 percent reported such violence in the past 12 months.

Of all women in India who have ever experienced any type of physical or sexual violence, only 14 percent have sought help to stop the violence and 77 percent have never sought help nor told anyone about the violence they experienced. The percentage of women who have experienced violence who have sought help has declined since NFHS-3, when it was 24 percent. Among the women who have experienced physical or sexual violence and sought help, the most common source for help was the women's own family (65%). The second most common source of help was husband's family (29%). Fifteen percent of women sought help from a friend. Among institutional sources of help, the most common is police (3%), followed by a religious leader (2%). Only 1 percent each have ever sought help from a doctor or medical personnel, a lawyer, or a social service organization.

NFHS-4 fieldwork for Chandigarh was conducted from 14 May 2016 to 24 June 2016 by Society for Promotion of Youth & Masses (SPYM) and gathered information from 751 households, 746 women, and 120 men. Ever-married women who have ever experienced spousal violence was 22.5%. Ever-married women who have experienced violence during any pregnancy was 3.5%.

Data about domestic violence is captured in National Family Health Surveys (NFHS) and registered crimes of domestic violence are reported in the annual report of the National Crime Records Bureau (NCRB). The Health Ministry recently released the key findings of the first phase of NFHS-5 conducted in 2019-20. This is the fifth edition of the survey covering 6.1 Lakh sample households. 17 states and 5 UTs have been covered in the first phase of the survey. The second phase of the survey covering the remaining 12 states and 2 UTs was paused because of COVID-19 and has resumed in November 2020. The sample size for the survey varies from state to state because of the differences in population & age composition. The latest NFHS survey has a separate section on Gender-Based Violence under which data on women

aged between 18 to 49 years and who have experienced spousal violence, and physical violence during pregnancy has been provided. There is also data on young women who experienced sexual violence. Both physical and/or sexual violence have been included in spousal violence.

The findings from the survey indicate that there has been a decrease in the proportion of women who reported experience of spousal violence in most parts of the country compared to NFHS-4 carried out in 2015-16. Of the 22 states/UTs covered in the first phase of NFHS-5, it is observed that except in Karnataka, Assam, Maharashtra, Ladakh, Sikkim, and Himachal Pradesh, the proportion of women who ever experienced spousal violence (those of ages 18 to 49) has decreased compared to the previous editions of the NFHS.

3.19 RESEARCH GAP

A research gap is defined as a topic or area for which missing or insufficient information limits the ability to reach a conclusion for a question. A research gap defined as a gap that limits the ability of decision-makers (policy-makers, patients, practitioners) from making decisions. The field and area of Mediation Centers is not so much popular as it should be to deal with the problem of domestic violence. Due to this fact, as has been referred to by a number of authors in their literary works or studies, the assessment of the focal research activities and the over-all course of this fresh and constantly developing field of research are limited and most of the times unfinished. Hence, as has been previously pointed out by Jenkin et al. (2011), there is underdevelopment of the general idea of the literature of this thematic .

This is very unsurprising outcome because of the fact that the field of Mediation Center is relatively much undeveloped or not much popular among the people of India as well as Tricity. On the other hand, it can be clearly seen that a rise in the number of researches published starting from the year 1990, which does not come as a surprise as well, particularly if we take into account the rising levels of thoughtfulness given to the ideas of mediation centers dealing with domestic violence cases as a concern across the country, in addition to the acknowledgment of the potential power of mediation centers to deal with the problem of domestic violence.

Out of the studies and researches, there was no such study which could throw light on the impact of the evolving risks. The area of research of Role of Mediation centers in dealing with the cases of domestic disputes is constantly hindered due to the absence of sufficient knowledge.

This study proposes a new category of effect (people awareness) that, even if often addressed by the field, is not included in current role of mediation centers frameworks and also in social science disciplines.

CHAPTER-4

RESEARCH METHODOLOGY

This chapter deals with all the methodological and procedural aspects of the problem. It explains operational definitions, procedure and design followed in selection of sample, hypotheses, gives description of tools employed and procedure adopted in data collection, besides the statistical operations carried out for the treatment of the data.

4.1 STATEMENT OF THE STUDY

The present study therefore, is an endeavor to find aforementioned - relationships. The title of the study reads as under :

“ROLE OF MEDIATION CENTERS IN DEALING WITH DOMESTIC DISPUTES”

4.2 OPERATIONAL DEFINITIONS

Operational definition of the terms used

4.2.1 Mediation

Mediation is a voluntary, party-centered and structured negotiation process where a neutral third party assists the parties in amicably resolving their dispute by using specialized communication and negotiation techniques. In mediation, the parties retain the right to decide for themselves whether to settle a dispute and the terms of any settlement. Even though the mediator facilitates their communications and negotiations, the parties always retain control over the outcome of the dispute. Mediation is conducted by a neutral third party- the mediator. The mediator remains impartial, independent, detached and objective throughout the mediation process. In mediation, the mediator assists the parties in resolving their dispute. The mediator is a guide who helps the parties to find their own solution to the dispute. The mediator's personal preferences or perceptions do not have any bearing on the dispute resolution process.

4.2.2 Domestic Violence

Domestic violence and abuse can happen to anyone; it does not discriminate. Abuse happens within heterosexual relationships and in same-sex partnerships. It occurs within all age ranges, ethnic backgrounds, and economic levels. The bottom line is that abusive behaviour is never acceptable, whether from a man, woman, teenager, or an older adult. Everyone deserves to feel valued, respected, and safe.

4.3. METHOD OF THE STUDY

For the current study, the descriptive method of research was employed to study the views of victims of domestic violence and views of mediators working in mediation centers dealing with the problem of domestic violence. The study is conducted in the mediation centers of Tri City which includes Chandigarh, Mohali & Panchkula areas.

4.4 SAMPLE

The sample was comprised of 70 Mediators working in mediation centers. These mediation centers are situated in the Judicial Courts of Chandigarh, Mohali and Panchkula. The selected cases in the present study were purely based upon random sampling. No such particular theme has been selected to choose these cases. But these cases were selected for the time period July 2019 to January 2020. 200 victims of domestic violence who came to mediation centers for their problems of domestic violence were also taken as a sample to know the nature of problems which they are facing.

4.5 OBJECTIVES OF THE STUDY

The main objectives of this study were :

- 1) To study the role of Mediation in handling domestic violence disputes .
- 2) To review the problems of victims of domestic violence who are taking help of mediators in particular area.

- 3) To analyze the reviews of officials regarding domestic disputes cases by handling through mediation centres.
- 4) To suggest the measures for improving the working of mediation centres.

4.6 TOOLS USED

Following tests were used to measure respondent's perception in this study:

1. Questionnaire for Mediators working in Mediation centers prepared by Researcher.
2. Questionnaire for Victims of Domestic Violence prepared by Researcher.

4.8 DESCRIPTION OF THE TOOLS

4.8.1 Questionnaire for Mediators

“Médiators are curios about the depth of human nature and they often make an effort to understand other people true feelings. This can make them capable of great empathy. It can also enable them to communicate in ways that are sensitive, original, and quite moving. Perhaps because of these strengths, Mediators tend to crave opportunities for creative self-expression .

4.8.1.1 Development of tool

4.8.1.2 Construction and standardization of tool of Mediators

Due to lack of any suitable scale to assess the perception of mediators regarding facilities provided in mediation centers, the investigator was motivated to prepare and standardize own scale. Here, an attempt has been made to give the steps undertaken for construction and standardization of the scale.

4.8.1.3 Planning:

These aspects were taken into account while planning a test:

- Mediator for whom the test will be taken.
- What will be measured?
- The tuning of the measurement

Considering the above-mentioned aspects, it was decided that

- The test is prepared for the Mediators of different mediation centers of Tri city i.e. Chandigarh, Mohali and Panchkula.
- Acquisition of Mediation concepts was to be measured and the cognitive domains of objective to be realized were knowledge, understanding, reasoning, skill, application and comprehension.

4.8.1.4 Identification of items for the scale/ preliminary draft of the role:

For the construction of scale, reviews from the related literature, for the concept of Cleak H. (2018), Ghoi and Deshpande and Shailesh (2017), Girdner (2017), Carol Bohmer and Marilyn L. Ray (2017), Markwick K. (2015), Salem and Milne (2014), Bingham, Beldin, & Dendinger (2014) and Bingham et al. (2014) was done. Domestic Violence being a multi-facet variable, attempt was made to study by taking the following facilities provided in the mediation centers to the mediators and problems faced by the mediators dealing with the problems of victims of domestic violence. To stand with, a total of twenty-two steps were taken up regarding various dimensions of domestic violence.

Type of Test items

Present scale for mediators includes various options i.e. majority of questions include yes/no option whereas some includes five points scale. Every item is in the statement form and positive items are included in the scale. Beside yes/no option, there are some questions with five responses that are provided for responding to every item which are:

- Excellent
- Very good
- Good
- Average
- Poor

From these responses, the subject is required to select the most appropriate response.

4.8.1.5 Developing of Draft of the Test:

Directions for Administration

While administrating the scale, the administrator has to simply distribute the copy of self-prepared questionnaire to the mediators. This questionnaire includes demographical information of mediators in the starting of the questionnaire whereas the rest main part includes the questions regarding infrastructure facilities provided to the mediators and nature of problems faced by the mediators while dealing with the problems of domestic violence victims. They were verbally told about the necessary information in relation to administration of scale, which is stated below :

- ☐ The scale is to be used in individual situation.
- ☐ The responses are to be given on the questionnaire itself. Against each item of scale, five response categories are given accordingly.
- ☐ The subject has to read each item carefully and mark his/her response category.
- ☐ There is no right or wrong response.
- ☐ Tick only one out of the five response categories, which is most suitable and spontaneous.
- ☐ Go through all the items carefully and select the appropriate response category.
- ☐ There is no time limit for the administration of the scale; usually it takes 25-30 minutes for its completion.

Response Mode

Beside yes/no option Likert continuum excellent, very good, good, average and poor has been provided for each item. The subject responds to each item by putting a tick mark (☐) on the chosen alternative.

Procedure for Scoring

The mediator scale can be scored by hand. The weightage to be given to responded statements was also planned to be ranging from 5 to 1. For positive

statements, 5 marks were given to response, "Excellent", 4 marks to "Very good", 3 marks to "Good", 2 marks to "Average" and 1 mark to "Poor".

Table 4.1

Scoring procedure of items for Job Satisfies

Sr. No.	Statement	Excellent	Very good	Good	Average	Poor
1	Positive	5	4	3	2	1

The sum of scores in all the areas gives the total score on Mediator's scale. The scale is also capable of sorting out the scores.

Reliability

The reliability of the tool was established on a sample of Mediators from Tri City including Chandigarh, Mohali and Panchkula who were selected randomly.

	Cronbach's Alpha	No. of Items
Mediators Perceptions	.720	17

Validity:

Validity means truthfulness. A number of procedures have been suggested by experts in the field of test construction like Thorndike and Hegan (1962), Ebel(1966), Gronlund (1968), Anastasi (1971), Guilford (1980) and many others. These procedures are classified mainly under three categories -content, criterion related and construct validity. The purpose of this investigation restricted the use of very exhaustive statistical techniques to validate the test. Factorial validity could not be used as each concept was represented by few items. Therefore, the test was validated against the criterion of content validity. [Content validity is concerned with adequacy of sampling of specified universe of content]. The test was given to a panel of 3 experts. The test represents a fairly well-defined universe of content. Content was made closely parallel to tasks constituting the universe under study and performance

on individual items was determined with respect to accuracy of responses and process used to solve the items. Experts agree with the content of the test. This occurrence was taken as evidence of content validity (Kpul, 2001).

4.8.2 Questionnaire for Victims of Domestic Violence

4.8.2.1 Development of tool

Domestic violence is violence or other abuse in a domestic setting, such as in marriage or cohabitation. Domestic violence is often used as a synonym for intimate partner violence, which is committed by a spouse or partner in an intimate relationship against the other spouse or partner. In its broadest sense, domestic violence also involves violence against children, teenagers, parents, or the elderly. It takes a number of forms, including physical, verbal, emotional, economic, religious, reproductive, and sexual abuse, which can range from subtle, coercive forms to marital rape and to violent physical abuse such as choking, beating, female genital mutilation, and acid throwing that result in disfigurement or death.

4.8.2.2 Construction and standardization of tool for Victims of Domestic Violence

As, there was no suitable scale to assess the perceptions of Victims of domestic violence regarding problems faced by them, the researcher was motivated to prepare and standardize her own scale. Here, an attempt has been made to give the steps undertaken for construction and standardization of the scale.

4.8.2.3 Planning:

These aspects were taken into account while planning a test:

- Victims for whom the test will be taken.
- What will be measured?
- The tuning of the measurement

Considering the above- mentioned aspects, it was decided that

- “The test is prepared for the Victims of domestic violence came to different mediation centers of Tri city i.e. Chandigarh, Mohali and

Panchkula for consultation.”

- “Acquisition of Mediation concepts was to be measured and the cognitive domain of objective to be realized was knowledge, understanding, reasoning, skill, application and comprehension.”

4.8.2.4 Identification of items for the scale/ preliminary draft of the role:

For the contraction of scale, reviews from the related literature, for the concept of Skrobotowicz (2014), Parikh and Anjenaya (2013), Fischer, Vidmar & Ellis (2013), Pearson (2013), Pande Rekha, Bindu, Mumtaz Fatima and Nazhath Khatron (2012) and Abrams (2011) was done. Domestic Violence being a multi-facet variable, attempt was made to study by taking the problems faced by the victims of Domestic Violence who came to mediation centers. To stand with, a total of twenty-three steps were taken up regarding various dimensions of domestic violence.

Type of Test items

Present scale for mediators includes various options i.e. majority of questions include yes/no option whereas some includes relevant options with different natures.

4.8.2.5 Developing of Draft of the Test:

Directions for Administration

While administrating the scale, the administrator has to simply distribute the copy of self-prepared questionnaire to the mediators. This questionnaire includes demographical information of victims of domestic violence in the starting of the questionnaire whereas the rest main part includes the questions regarding problems faced by the victims for whom they came to the mediation centers. They are also verbally told about the necessary information in relation to administration of scale which is stated below:

- ☐ The scale is to be used in individual situation .
- ☐ The responses are to be given on the questionnaire itself .
- ☐ The subject has to read each item carefully and mark her response category .
- ☐ There is no right or wrong response .
- ☐ Tick only one out of the given response categories, which is most suitable and spontaneous .

- ☐ Go through all the items carefully and select the appropriate response category .
- ☐ There is no time limit for the administration of the scale; usually it takes 25-30 minutes for its completion.
- ☐

Response Mode

Beside yes/no option, various types of responses were given for the statements representing the problems of victims of domestic violence who came to the mediator centers for help. The subject responds to each item by putting a tick mark (☐) on the chosen alternative.

Reliability

The reliability of the tool was established on a sample of Victims of Domestic violence from Tri City including Chandigarh, Mohali and Panchkula who were selected randomly.

	Cronbach's Alpha	No. of Items
Victims Perceptions	.728	23

Validity:

Validity means truthfulness. A number of procedures have been suggested by experts in the field of test construction like Thorndike and Ebel(1966), Gronlund Anastasi (1971), Guilford (1980) and many others. These procedures are classified mainly under three categories content, criterion related and construct validity. The purpose of this investigation restricted the use of very exhaustive statistical techniques to validate the test. Factorial validity could not be used as each concept was represented by few items. Therefore, the test was validated against the criterion of content validity. [Content validity is concerned with adequacy of sampling of specified universe of content]. The test was given to a panel of 3 experts. The test represents a fairly well defined universe of content. Content was made closely parallel to tasks constituting the universe under study and performance on individual items was determined with respect to accuracy of responses and process used to solve the

items. Experts agree with the content of the test. This occurrence was taken as evidence of content validity (Kpul, 2001).

4.9 PROCEDURE:

Procedure of the study to be followed by the investigator was:

Step I: As mentioned above, investigator developed two tools i.e. Questionnaire for Mediators of Mediation centers and Questionnaire for Victims of Domestic Violence who came to the Mediation centers for the research work, so in the first step tools were developed. Proper tool making procedure was followed to develop both the tools.

Step II: This step comprised the administration of the tools, in other words data collection was done for domestic violence. For the data collection, the sample of 70 Mediators and 200 victims of domestic violence who came to the mediation centers for help were selected from the various mediator centers of Tri City i.e. Chandigarh, Mohali and Panchkula using stratified random sampling.

Step III: Finally data collected was subjected to descriptive and inferential statistics. Data was analyzed on Percentage basis.

4.10 STATISTICAL TECHNIQUE USED

Percentage method was used to see the responses on perceptions of mediators and victims of domestic violence.

CHAPTER-5

STATISTICAL DATA INTERPRETATION

The analysis and interpretation of data has been dealt with in this chapter. The organization, analysis, and interpretation of data, the formation of conclusions, and generalizations are necessary steps for getting a meaningful picture out of the raw information collected. For the analysis and interpretation of deal with the objective material and subjective reactions of the material, the data has been used for deriving some inherent meanings in its relation to the problem. An analysis of data means studying the tabulated material in order to determine inherent facts or meanings. It entails breaking down the existing complex factors into simple parts, and thereafter putting those parts together in new arrangements for the purpose of interpretation.

This chapter is divided into two parts:

Part-I: ANALYSIS OF VIEWS OF DOMESTIC VIOLENCE VICTIMS

Part-II: ANALYSIS OF VIEWS OF MEDITATORS/ COUNSELLORS DEALING WITH PROBLEMS OF DOMESTIC VIOLENCE VICTIMS

Part-I: ANALYSIS OF VIEWS OF DOMESTIC VIOLENCE VICTIMS

Age:

Age plays a significant role in determining the status of individual. Therefore, it is necessary to ascertain the age group of the respondents.

Table-5.1
Age wise distribution of the respondents

Age	Frequency	Percentage
20-25	40	20
26-30	50	25
31-35	60	30
36-40	50	25
Total	200	100

Source: primary data collected by researcher

The table 5.1 indicates that majority of respondent i.e. 30 percent of the total respondents were in the age group category of 31-35 years. 25 percent of the total respondents were in 36-40 years and 26-30 years whereas 20 percent of the total respondents were in 20-25 years age group. This shows no significant difference in various age groups suggesting that domestic violence occurs in all phases.

Religion

Religion is a belief in the existence of supernatural elements. It is that force which influences our ideology, value system and behaviour pattern. Most of the religion provide equality to women whereas religious preaching strict women's movement. Keeping such notion in mind religious background of the respondents was studied.

Table-5.2

Religion wise distribution of the respondents

Religion	Frequency	Percentage
Hindu	90	45
Muslim	40	20
Sikh	60	30
Christian	10	5
Total	200	100

Source: primary data collected by researcher

Religious composition of the respondents indicates that the majority of the respondents that were studied belonged to Hindu Religion i.e. 45 percent. The data shows that 30 percent respondents were Sikh, 20 percent respondents were Muslims. Only 5 percent of the respondents were Christians.

Social Status

Various sociologists like Weber, Dahrendorf, Marx have defined the concept of social class and emphasized on different attributes. It is assumed that the higher risk of domestic abuse is faced by women who belong to lower class but in the present study, an attempt has been made to look upon the different class backgrounds .

Table-5.3

Social Status wise distribution of the respondents

Social Status	Frequency	Percentage
House wife	100	50
Service Holder	40	20
Professional	40	20
Any other	20	10
Total	200	100

Source: primary data collected by researcher

Table-5.3 reveals that majority of respondents i.e. half of the victims of violence came to the mediator centers were housewives, 20 percent were service holders, 20 percent were professionals and 10 percent were involved in other works. This suggests that dependent females are at more risk of domestic violence than working women.

Educational Qualification

Education plays a significant role in the life of any individual. Higher the level of education, higher is the potential for resisting any action of injustice, exploitation and torture. As far as women are concerned, education gives them a voice against all types of evils inflicted on them and empowers them to fight for justice. It is generally presumed that the extent of domestic violence is less in cases where the victim of violence is educated.

Education is one of the independent variables. Education helps in improving women's status in their conjugal households thereby affording them more freedom and less dependency. Education can also help her to speak on her behalf and defend herself. Educations help them to protest when their situation is worst. If they cannot change the natural of marriage, they can leave it.

Education enhances one's rationality and develops the capacity to understand and cope up with various societal realities. It is an important instrument for attaining economic empowerment and independence. Qualification denotes fitness for purpose through fulfilment of necessary conditions such as attainment of a certain age, completion of required schooling or training, or acquisition of a degree or diploma. Qualification does not necessarily imply competence.

The data relating to educational level of women respondents were collected to examine the association, if any, between the level of education of women and the quality of interpersonal relations in relation to domestic violence against them.

Table-5.4

Educational Qualification wise distribution of the respondents

Educational Qualification	Frequency	Percentage
Illiterate	3	1.5
Class-I to V	2	1.0
Class-VI to VIII	4	2.0
Class-IX to X	2	1.0
Intermediate	4	2.0
Graduate	85	42.5
Post-Graduate	53	26.5
Technical Education	47	23.5
Total	200	100

Source: primary data collected by researcher

Table-5.4 reveals the information regarding education as socio-demographic variable related to respondents and it is found that majority of respondents i.e. 42.5 percent respondents were graduate, another 50% were either post graduate or having

technical education. Only 5.5 percent were educated upto class X. This shows that education is very important to raise voice against any injustice such as domestic violence that may be reason that majority of our victims i.e. 92.5% were either graduate or have above qualification.

Monthly Income

Monthly Income is generally considered a primary measure of a family. It is an important risk measure used by lenders for underwriting loans, as well as a useful economic indicator of an area's standard of living.

Table-5.5
Victim's monthly income

Monthly income	Frequency	Percentage
5000-10000	70	35
10000-20000	60	30
20000-30000	40	20
More than 30,000	20	10
None	10	5
Total	200	100

Source: primary data collected by researcher

Table 5.5 depicts the information regarding monthly income of respondents and it is found that almost two-third (65%) of victims have income less than 20000 and 5% did not had any monthly income. So, majority of victims of our study were having lower standard of living. So, domestic violence is common in lower income strata group.

Family status

The household composition is an important variable for understanding the phenomenon of violence against women. Women living in extended and joint families are required to make adjustments with a large number of family members as compared with those living in nuclear families. The patrilocal residence and patriarchal structure of the family places women into subservient position. The men are more likely to act

as cruel dictators rather than husbands. The in-laws and other members continue to have greater affiliation with their son as compared with daughter-in-law. This gives rise to maltreatment of wives by their husbands and in-laws. Hence, presence of a large number of members in the family not only creates the problem of adjustment but they also act as instigators for violence against women. In the joint families, husbands are given more authority to exercise marital control on their wives and therefore, such controlling behaviour is against the norms of gender justice.

Table-5.6
Family status wise distribution of the respondents

Family status	Frequency	Percentage
Joint Family	140	70
Nuclear Family	60	30
Total	200	100

Source: primary data collected by researcher

Table-5.6 reveals that majority of victims of domestic violence i.e. 70% were living in joint family suggesting the same that as number of members increase more chances of maladjustment and hence more chance of violence.

Duration of marriage

Table-5.7
Duration of marriage of the respondents

Duration of Marriage	Frequency	Percentage
< 1 Year	40	20
1 year – 3 years	30	15
3 years – 5 years	50	25
More than 5 years	80	40
Total	200	100

Source: primary data collected by researcher

Table 5.7 reveals that almost two-third (65%) of respondents were married for more than 3 years who visited mediation center. It is because most of the victims first

tried to resolve the issues and in hope of that everything will get better, they waited but once they understood that their issues are not going to get resolved and domestic violence continued, they approached the mediation centres.

Husband's Occupation

An occupation is an activity, often regular and often performed in exchange for payment ("for a living"). Many people have multiple jobs for example, a person can begin a job by becoming an employee, volunteering, starting a business, etc.

Unemployed women or the women who stays at home are more likely to be at greater risk of domestic violence than those women who are employed. The occupational background indicates that those women whose husbands are engaged in high occupation, they have high prestige and as a result lower the rate of violence whereas those who are engaged in low occupation or do not have paid work outside, will suffer marital conflict great.

Table-5.8
Husband's occupation

Husband's occupation	Frequency	Percentage
Private	60	30
Government	90	45
Any other	50	25
Total	200	100

Source: primary data collected by researcher

Table 5.8 shows that 45% victim's husband were in government sector, 30% in private sector and 25% in other occupations like bloggers, online sellers, marketing, free-lence writing, contractual workers etc.

Monthly income

Table-5.9
Monthly income of the husband

Monthly income	Frequency	Percentage
5000-10000	30	15
10000-20000	80	40
20000-30000	70	35
More than 30,000	20	10
None	-	-
Total	200	100

Source: primary data collected by researcher

Table 5.9 shows monthly income of the husband and most of them i.e.75% earn between 10000-30000 monthly. The income level shows that majority of male partners were from lower strata and that may be the reason for domestic violence as lower income leads to dissatisfaction and sense of insecurity and this is diverted at home specially against female partner.

Nature of Marriage

Marriage is an important social institution. Marriage is one of the most ancient, important, universal and indispensable social institution which has been in existence since the inception of human civilization. It also admits men and women to family life and fixes certain rights and duties in respect of children born of their union. As a stable social institution, it binds two opposite sexes and allows them to live as husband and wife.

Table-5.10
Nature of Marriage of the respondents

Nature of Marriage	Frequency	Percentage
Arranged Marriage	80	40
Love Marriage	120	60
Total	200	100

In the present study an attempt has been made to study the nature of marriage of respondents and as table 5.10 depicts, it is found that majority were love marriages. This study shows more domestic violence in love marriage cases which may be due to change in behaviour, incompatibility issues, intolerance and change in responsibilities before and after marriage whereas in arrange marriage as families are more involved so less victims reach mediation centres due to stigma involved with the matrimonial dispute cases in courts.

Table-5.11

When the harassment became intolerable for the victim

	Frequency	Percentage
0- 1 Year	35	17.5
1 year – 3 years	25	12.5
3 years – 5 years	65	32.5
5 years- 7 years	35	17.5
7years and above	40	20
Total	200	100

Source: primary data collected by researcher

Table 5.11 shows that for the majority of victims of domestic violence i.e. 60 % came to mediation centers when harassment becomes intolerable more than 3 years of their marriage. The result of the study throws the light on the aspect that mostly women try to make their homes and for that they tolerate the violence against them till they can. After that when they had no option then they came to Mediation centre for solution.

Table-5.12
Any demand of dowry at the time of marriage by husband or in-laws?

	Frequency	Percentage
Yes	130	65
No	70	35
Total	200	100

Source: primary data collected by researcher

Table 5.12 points out that majority of victims of domestic violence i.e. 65 percent came to mediator centers were agreed that their husbands or in-laws had demand of dowry at the time of their marriage and 35% have not demanded any dowry.

Table-5.13
Whether father able to fulfill the total demand of dowry at the time of marriage

	Frequency	Percentage
Yes	90	45
No	110	55
Total	200	100

Source: primary data collected by researcher

Table 5.13 shows that in majority of cases i.e. 55% respondents, father was not able to fulfil the dowry demand. This is shown to be one of the main reasons for domestic violence against females after marriage. So, this may be the reason for majority of cases in our study also.

Table-5.14

Whether Victims had any knowledge about Dowry Prohibition Act

	Frequency	Percentage
Having awareness	20	10
No awareness	50	25
Having awareness but reluctant to approach the court.	130	65
Total	200	100

Source: primary data collected by researcher

Table 5.14 reveals that majority of victims i.e. 75% had awareness about the law against dowry system and out of that almost 90% were reluctant to approach the court. The reason may be considering it as social custom, pressure by the victim's family on her, fear of social image being getting tarnished, fear of marriage can get broke etc. so even after knowing about the dowry as a crime many females still don't go to court or police for help.

Table-5.15

Opinion about dowry system

	Frequency	Percentage
Bad and should be stopped	40	20
Social custom	70	35
Not bad if it is within one's capacity	90	45
Total	200	100

Source: primary data collected by researcher

Table 5.15 shows that majority of victims consider it as a social custom (35%) or not bad if one can pay it (45%). This may be due to tradition which is being followed in India from many centuries. Only 20% victims consider it to be bad and it should be stopped.

Table-5.16

Nature of harassment or torture

	Frequency	Percentage
Verbal abuse	20	10
Mental abuse	30	15
Physical violence	120	60
Both mental and physical abuse	30	15
Total	200	100

Source: primary data collected by researcher

Table -5.16 depicts that according to majority of victims came to mediator centres i.e. 60 percent were facing physical violence, 15 percent were facing mental abuse, 10 percent were facing verbal abuse whereas 15 percent were facing both mental and physical violence. Overall, 75% or 3/4th of respondents faces physical abuse which coincides with our patriarchal society where men consider themselves in-charge of the house and controller of the relationship.

Table-5.17

Perpetrators of violence

	Frequency	Percentage
Husband only	80	40
Father-in-law	35	17.5
Mother-in-law	70	35
Brother-in-law	5	2.5
Sister-in-law	10	5
Total	200	100

Source: primary data collected by researcher

Table-5.17 shows that husbands were the perpetrators of violence in 40% of the cases followed by mother-in-law in 35% cases. This may be due the patrilocal residence and patriarchal structure of the family which places women into subservient position. The men are more likely to act as cruel dictators rather than husbands. The in-laws and other members continue to have greater affiliation with their son as compared with daughter-in-law. This gives rise to maltreatment of wives by their husbands and in-laws.

Table-5.18

Frequency of harassment

	Frequency	Percentage
Daily	25	12.5
Monthly once	35	17.5
Occasionally	33	16.5
Weekly	55	27.5
Monthly twice or thrice	52	26
Total	200	100

Source: primary data collected by researcher

Table -5.18 shows the frequency of harassment of the respondents. More than 50% face harassment weekly or fortnightly. Only 12.5% face violence daily and 16.5% face it occasionally. This shows that in some cases violence is common, when there is total maladjustment either with husband or his family, alcoholism, sometimes

extra marital relationships whereas in other it is seen when there is dowry demand, ego conflicts, either argument with the spouse or with family members etc.

Table-5.19

Reason for such harassment or torture

	Frequency	Percentage
Demand for dowry	60	30
Incompatibility	30	15
Ego conflict	35	17.5
Without any reason	20	10
Alcoholism	40	20
Extra marital relationship	10	5
Unsatisfied sexual relation	5	2.5
Any other reason (mention)	0	0
Total	200	100

Source: primary data collected by researcher

Table-5.19 depicts the information regarding reasons for harassment or torture to the victims who came to mediation and it shows the most common cause is dowry demand in 30% cases followed by ego conflicts in 17.5% cases. Other reasons for harassment are alcoholism, incompatibility, extra marital relationships etc. This is indicative of that; dowry is still the common problem in our country in spite of it being an illegal thing and alcohol abuse is also very common cause of abusive nature.

Table-5.20

Protest by victims when their husband in-laws tortured them or they remained silent all the time

	Frequency	Percentage
Yes	160	80
No	40	20
Total	200	100

Source: primary data collected by researcher

Table-5.21 reveals that majority of respondents i.e. 80 percent accepted that they protested when their husband / in-laws tortured them whereas 20 percent respondents never protested when their husband / in-laws tortured them. It shows that

victims often protest against violence but in some cases, they remain silent due to fear of society and pressure by the parents and thinking that this will change with time.

Table-5.21

Get any help from neighbours

	Frequency	Percentage
Yes	30	15
No	170	85
Total	200	100

Source: primary data collected by researcher

Table-5.21 shows that majority of respondents i.e. 85 percent didn't get any help at the time of harassment from neighbours suggesting that majority of people often hesitate to interfere in family matters of the others. Only 15% got help from neighbours.

Table-5.22

File any complaint against your husband and in-laws to the local police station

	Frequency	Percentage
Yes	110	55
No	90	45
Total	200	100

Source: primary data collected by researcher

Table-5.22 shows that majority of respondents i.e. 55% filed complaint against their husbands and in-laws to the local police station out of 80% those who protested against the violence, this shows that many females don't take help of police or law in cases of violence and they file complaint when they had no other option against the violence.

Table-5.23

Want to file a case or move to the Court for Justice

	Frequency	Percentage
Yes	170	85
No	30	15
Total	200	100

Source: primary data collected by researcher

Table-5.23 shows that majority of respondents i.e. 85 percent accepted that they want to file a case or move to the court for justice which shows that respondent wants to end the abusive relationship whereas 15 percent stated that they didn't want to file any case which may be due to due fear of society, parents or they were hoping that situation will change.

Table-5.24

If compromised, reason for such compromise

	Frequency	Percentage
In the interest of the children.	130	65
In the interest of the natal family members.	20	10
Lack of economic support.	30	15
For her social security.	20	10
Total	200	100

Source: primary data collected by researcher

Table -5.24 shows the reasons for compromise, if compromise occurs and most important reason for this is in the interest of children (65%) followed by lack of economic support (15%). This shows that female partner gets bound even if they want to leave the relationship due to children, natal family members, due to lack of economic support or social security.

Table-5.25

Caused or affected the mental condition/personality development of children

	Frequency	Percentage
Definitely	90	45
Unable to asses	40	20
To some extent	40	20
Any other (please specify)	30	15
Total	200	100

Source: primary data collected by researcher

Table-5.25 shows the effect of domestic violence on the development of children according to respondents. Majority (45%) were of the opinion that it definitely affected the children and 20% were of opinion that to some extent it affected their children development. This shows that disturbed relationship affects the development of children

Table-5.26

Reasons for not approaching the Court

	Frequency	Percentage
Wife battering / harassment is common	40	20
In the interest of children	80	40
Lack of economic support.	40	20
In the interest of natal family members.	20	10
Social insecurity.	20	10
Total	200	100

Source: primary data collected by researcher

Table-5.26 shows reasons for not approaching the court and it coincides with the finding that most common reason is in interest of children (40%) followed by lack of economic support (20%). So, interest of children becomes binding for the female partner to compromise. Other reasons which pressurise for compromise are pressure

by natal family member (10%), social insecurity (10%). Also due to men dominant society, 20% don't approach as they think harassment or battering is common and normal.

Table-5.27

Whether they had any knowledge about "The Protection of Women from Domestic Violence Act

	Frequency	Percentage
Yes	85	42.5
No	115	57.5
Total	200	100

Source: primary data collected by researcher

Table-5.27 shows even though most females are aware of dowry act (75%) but only 42.5% were aware of the protection act against domestic violence. So, most females are not aware of various law made for their protection.

Table-5.28

Whether they had any idea about family counseling

	Frequency	Percentage
Yes	70	35
No	130	65
Total	200	100

Source: primary data collected by researcher

Table-5.28 depicts the information regarding having any knowledge about family counselling by the victims who came to mediation centers selected for the study purpose and it is found that majority of respondents i.e. 65 percent didn't have any knowledge about family counselling. From this, it is clear that trend of counselling

was not very well known to the victims and their families. Mostly couples are counseled by their family members or someone elder in house.

Table-5.29

Ever visit any family counselling center

	Frequency	Percentage
Yes	40	20
No	160	80
Total	200	100

Source: primary data collected by researcher

Table-5.29 further depicts that knowledge about counselling is rare and even though 35% had knowledge about counselling, only 20% visited any counselling centre. This may be due to stigma attached with visiting counselling centres and fear of society. Also, elders don't favour visit to counselling centre.

Table-5.30

Want to divorce husband

	Frequency	Percentage
Yes	160	80
No	40	20
Total	200	100

Source: primary data collected by researcher

Table-5.30 throws the light on the opinions of the victims who came to mediation centers selected for the study purpose and 80 percent wanted to give divorce to their husbands. So, most of them want to give divorce but unable to do so because of children, social insecurity, pressure by family members etc.

Table-5.31

**Whether they want any maintenance from husband after
Judicial Separation/ Divorce**

	Frequency	Percentage
Yes	180	90
No	20	10
Total	200	100

Source: primary data collected by researcher

Table-5.31 shows that almost all women want maintenance after separation/divorce from husband. This is because of many responsibilities women have to fulfill for which they need money like taking care of children, household responsibilities, for social security and economic stability.

As it is said that marriage is an important social institution and is one of the most ancient, important, universal and indispensable social institution which has been in existence since the inception of human civilization, it also admits men and women to family life and fixes certain rights and duties in respect of children born of their union. As a stable social institution, it binds two opposite sexes and allows them to live as husband and wife. It is also true that majority of housewives has to face so many problems in relation to domestic violence that is also discussed in the above given discussion. Family relations always remain sensitive matters and should also be deal with sensitivity.

“Part-II: ANALYSIS OF VIEWS OF MEDIATORS/COUNSELLORS DEALING WITH PROBLEMS OF DOMESTIC VIOLENCE VICTIMS

**Table-5.32
Age wise distribution of the Mediators**

Age	Frequency	Percentage
25-35	35	50
36-45	20	28.58
More than 45	15	21.42
Total	70	100

Source: primary data collected by researcher

Table-5.32 reveals age distribution of the Mediators and it is found that majority of respondents i.e. 50 percent belonged to 25-35 years age group, 28.58 percent belonged to 36-46 years age group and 21.42 percent belonged to more than 45 years age group. So, our study has half of the mediators who are young.

**Table-5.33
Gender wise distribution of the Mediators**

Gender	Frequency	Percentage
Male	45	64.5
Female	25	35.5
Total	70	100

Source: primary data collected by researcher

Table-5.33 shows that almost two-third of the mediators were male (64.5%) and 35.5% were females. This shows that mostly males act as mediators which may due to predominant male population of lawyers.

Table-5.34

Religion wise distribution of the mediators

Religion	Frequency	Percentage
Hindu	30	42.85
Muslim	5	7.15
Sikh	30	42.85
Christian	5	7.15
Total	70	100

Source: primary data collected by researcher

Table-5.34 shows religion wise distribution of the Mediators working at Mediation centers and it is found that majority of respondents i.e. 42.85 percent belonged to Hindu religion and Sikh religion each, 7.15 percent belonged to Muslim religion and same percent i.e. 7.15 belonged to Christian religion.

Table-5.35

Composition of mediation centers and agencies

Whether there is adequate staff available for mediation center

	Frequency	Percentage
Yes	58	82.86
No	12	17.14
Total	70	100

Source: primary data collected by researcher

Table-5.35 shows the opinion of mediators about the adequacy of the staffs available for mediation centres, most of them (82.86%) accepted that there is adequate staff whereas only 1.14% said no. So, this shows that adequate staff is provided for the functioning of mediator centres.

Table-5.36

Opinion as to the response of staff manning the mediation centre

	Frequency	Percentage
Excellent	30	42.85
Very Good	15	21.42
Good	10	14.28
Average	10	14.28
Poor	5	7.17
Total	70	100

Source: primary data collected by researcher

Table-5.36 shows the opinion of the respondents about the response of staff manning the mediation centre and it is found that around two-third (64%) said the response was either excellent or very good. A small number of respondents found the response of the staff as average (14.28%) or poor (7.17%).

Table-5.37

Opinion regarding the infrastructure facility at the Mediation centre

	Frequency	Percentage
Excellent	40	57.14
Very Good	10	14.28
Good	10	14.28
Average	5	7.14
Poor	5	7.14
Total	70	100

Source: primary data collected by researcher

Table-5.37 throws the light on opinions of respondents regarding the infrastructure facility at the Mediation centre and it is found that majority of respondents i.e. 71.42% said that infrastructure is either excellent or very good and only 7.14% responded in poor or average. This shows adequate infrastructure availability at the mediation centres.

Table-5.38

Whether there is any need of institutionalization of Mediation

	Frequency	Percentage
Yes	50	71.42
No	20	28.58
Total	70	100

Source: primary data collected by researcher

Table 5.38, shows the opinion of mediators about the need of institutionalization of mediation centres and majority i.e. 71.42% wants them to be institutionalize as it will give legal identity to the mediation centres and will have proper framework. Also, it will give some power to the mediation centre regarding the decisions.

Table-5.39

Average number of sitting required for mediation

	Frequency	Percentage
Three sittings	50	71.42
Five sittings	10	14.28
Seven sittings	5	7.14
More than seven	5	7.14
Total	70	100

Source: primary data collected by researcher

According to table-5.39, number of sitting required for mediation in majority of cases is three (71.42%) which may be due to early judgement of the response of the parties coming to mediation centres by the mediator whether parties have positive mind-set or negative mind-set for the mediation process. Only 7.14% cases required more than seven sittings which may be due to unsure nature of the parties.

Table-5.40

Whether there is need to incorporate mediation as a special subject in syllabus at graduate level in law and/or post graduate level in law

	Frequency	Percentage
Yes	60	85.72
No	10	14.28
Total	70	100

Source: primary data collected by researcher

When asked whether there is need to incorporate mediation as a special subject in the syllabus at graduate level in law and/or post graduate level in law, majority of respondents i.e. 85.72 percent responded in Yes as it will help lawyers who become mediators in dealing with cases if they already have knowledge related to the topic. Only 14.28 percent responded in No.

Table-5.41

Whether they had faced any difficulties while referring the case to the mediation process

	Frequency	Percentage
Yes	45	64.28
No	25	35.72
Total	70	100

Source: primary data collected by researcher

Table-5.41 any difficulty was faced by mediators while mediation process, almost two-third (64.28%) of them said yes. This may be because, mediation in domestic violence case is very sensitive matter and parties often are not ready to listen to one another and are not ready to forgive other.

Table-5.42

Duration to serve as accredited mediator

	Frequency	Percentage
1-3 years	50	71.43
4-6 years	8	11.42
7-10 years	7	10
More than 10 years	5	7.14
Total	70	100

Source: primary data collected by researcher

According to table-5.42, 71.43% mediators were working as accredited mediator for 1-3 years whereas only 7.14% were working for more than 10 years. It shows number of mediators are increasing and more lawyers are becoming mediators, so number of experienced mediators are low.

Table-5.43

Whether they feel capable to settle the domestic violence dispute when parties that enters into mediation process reluctant to talk to each other

	Frequency	Percentage
Yes	50	71.43
No	20	28.57
Total	70	100

Source: primary data collected by researcher

Table -5.43 shows that 71.43% percent mediators find themselves capable to settle domestic violence disputes when parties were reluctant to talk with each other.

This is either due to experienced nature of mediator or changing the mind-set of the parties after talking with them. It shows that most mediators were able to change the mind-set of the parties and were able to handle the domestic violence cases.

Table-5.44

Whether they feel capable to handle domestic violence cases when it comes to condition where parties don't want to hear any offer from other parties

	Frequency	Percentage
Yes	40	57.14
No	30	42.86
Total	70	100

Source: primary data collected by researcher

Table-5.44 shows the extension of the previous table where mediators were asked if they feel capable to handle domestic violence cases when it comes to condition where parties don't want to hear any offer from other parties then percentage drops down to 57.14 percent from 71.43%, this is because with fixed mind-set parties ignore the talk and they just want to fight case in court. Whereas 42.86% mediators find it difficult to handle case where parties have fixed mind-set.

Table-5.45

In the mediation process, there is the private meeting call cause where the mediator meets with the victim of domestic violence without attendance of the other party. Whether they feel capable to deal in that session

	Frequency	Percentage
Yes	60	85.72
No	10	14.28
Total	70	100

Source: primary data collected by researcher

Table -5.45 shows dealing with victims during private meeting call where other party is not present. In private meeting session more than 85% mediators

said that they were able to deal with the victims successfully. This is because in the presence of other party victims tend to hide details or were not comfortable to share it with mediators. But without presence of other party, they feel more safe and more comfortable to tell the mediator.

Table-5.46

Whether they feel capable in gaining information in the meeting

	Frequency	Percentage
Yes	45	64.28
No	25	35.72
Total	70	100

Source: primary data collected by researcher

According to table -5.46, 64.28% of the mediators were capable of gaining information in the private meeting whereas 35.72% were not able to do so. It is clear from the results that most of the mediators were doing well in gathering information in the meeting with the victims.

Table-5.47

In the mediation process, the mediator act as independent party that doesn't offer the solution, but be the person that channel the parties to find the solution. Whether they feel capable when it comes to situation where the parties still insist with his/her offered and has no intention to revise the offer

	Frequency	Percentage
Yes	40	57.14
No	30	42.86
Total	70	100

Source: primary data collected by researcher

According to table-5.47, when parties with fixed mind-set come to mediation centre and they insist with their own offer without consideration for revision of the offer, percentage of mediators drops from 71.43% to 57.14% who feel capable of handling the situation when parties were reluctant to talk with each other because

parties already made their mind even before entering the mediation centre and with this attitude, changing their mind-set is difficult task for the mediators.

Table-5.48

Whether every mediator needs to have the soft skills syllabus in their courses to become the accredited mediator

	Frequency	Percentage
Yes	48	68.58
No	22	31.42
Total	70	100

Source: primary data collected by researcher

According to table-5.48, when it is asked to mediators, should every mediator need to have the soft skills syllabus in their courses to become the accredited mediator then majority of respondents i.e. 68.38 percent respond in yes, which shows the need of having these kind of skill in handling the sensitive issues like domestic violence where parties were already non-cooperative with each other.

Table-5.49

Response of parties during mediation related to domestic violence cases.

	Frequency	Percentage
Excellent	5	7.14
Very Good	15	24.42
Good	35	50
Average	10	14.28
Poor	5	7.14
Total	70	100

Source: primary data collected by researcher

Table-5.49 shows the opinions of mediators about the response of parties during mediation related to domestic violence cases and half (50%) of them responded

in good, 24.42 percent responded in very good, 14.28 percent responded in average, 7.14 percent responded in excellent and response of 7.14 percent was poor. It is clear from the study that, as most of mediators were reputed/retired faculties related with law background, parties give respect to them and provide good response to them.

Table-5.50

Response of Advocates of the parties during mediation process in relation to domestic violence cases

	Frequency	Percentage
Excellent	6	8.57
Very Good	18	25.71
Good	29	41.42
Average	10	14.28
Poor	7	10
Total	70	100

Source: primary data collected by researcher

Table-5.50 shows response of the advocates of the parties during mediation process and majority of mediators i.e. 41.42% got good respond, 8.57 percent in excellent, 25.71 percent in very good. Only around 25% got average or poor response.

Table-5.51

Whether there is any need of Refresher Training Programme for the trained mediators for domestic violence cases

	Frequency	Percentage
Yes	47	67.14
No	23	32.86
Total	70	100

Source: primary data collected by researcher

Table -5.51 shows that more than two-third of mediators (67.14%) feel that there is need of Refresher Training Programme for the trained mediators for domestic violence cases as laws are ever evolving and knowledge of latest development is required to properly deal with the cases.

As per above given discussion, it is found that according to the majority of the mediators adequate staff is available for mediation centre. Majority of mediators realized the need of Institutionalization of mediation. They also realized the need to incorporate mediation as a special subject to be included in syllabus at graduate level in law and/or post graduate level in law. Further, it is found that whether they feel capable to settle the domestic violence dispute when parties that enters into mediation process reluctant to talk to each other. The present study reveals that in the mediation process, there is the private meeting call cause where the mediator meet with the victims of domestic violence without attendance of the other party where more mediators feel capable to deal in that session. Further, it is depicted from the study that majority of the mediators in the mediation process feel capable when it comes to situation where the parties still insist with his/her offered and have no intention to revise the offer.

No doubt, mediators always have the power to change the life of the victims of the domestic violence that's why they go to them. It is also a fact that faith of victims in their decisions increases the social responsibility of the mediators to work well.

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CHAPTER-6

CONCLUSION AND SUGGESTIONS

Mediation is a voluntary problem-solving process in which a third party is an impartial person (mediator) who helps the parties in working together to identify their interests, evaluate options and seek related solutions to the problems they face. It allows conflicting parties to resolve their differences through a process that is different from the traditional approach based on rights (e.g., grievances and appeals), courts (civil, minor claims and crimes) or simply make it impossible. Mediation can help people find solutions when they have failed to solve their problems on their own.

The beauty of mediation is that it allows parties to manage their situation and how it is resolved. They are the ones who, with the help of the mediator, decide on the issues to be discussed, the placement and what is needed for constructive discussions. Procedures and solutions are not set by a third party. The parties decide how to resolve the issues - the mediator helps keep the conversations constructive and in order

Mediation allows parties to take a collaborative approach rather than competition when negotiating and seeking solutions to meet these relevant interests. The mediation process allows parties to explore a variety of new options collaboratively and gives them the opportunity to reach an agreement on how to resolve their disputes. In short, in most cases, arbitration is an appropriate process for parties to look at, when they have not been able to resolve their dispute alone.

The role of the mediator is to help the parties create conditions that will assist and encourage the sharing of information, effective communication, respect for ideas and interests, open dialogue, and mutual agreement. Parties are key players in determining how mediation will proceed according to agenda, stakeholders, when / where it will happen and a set of basic rules to guide them in their discussions. The mediator will help the parties to follow the basic rules, cover the agenda and finalize their agreement. A mediator is not a judge or arbitrator; he does not have the authority to make decisions. In all cases, mediation is a voluntary process, so no one should be pushed to participate. The facilitator will work with stakeholders to determine who

should participate so that they can resolve issues. In mediation at work, the employee may wish the sponsor to be present as a union representative or colleague. Similarly, a supervisor may wish to have an employee relations officer. Workers, managers, union representatives and employers may be invited to participate in mediation.

It is the basic goal of the voluntary mediation process for the parties to agree on a potential mediator to assist them in trying to resolve their problem. They must have the necessary training, skill and experience requirements in order to function properly. They should also be impartial in the parties and in the issue that is being addressed.

It is now widely accepted that mediation is a way of resolving disputes in a systematic way with skills and techniques that can be learned and applied. And it is a friendly opposition process. Mediation is a way of stressing problem solving rather than making a decision.

The concept of mediation is legally and naturally adopted by all stakeholders, will not only save time and energy but will also bring about good cooperation and harmony among the people; it will bring peace to the community. A civilized society cannot advance a conflict that will disrupt human relations and create social unrest and become a bottle of development.

Self-determination is the basic concept of mediation. The mediation process, as we know, is voluntary. It is organized and focused on the future and the result is an acceptable agreement.

SOCIOLOGICAL INSIGHT FOR THE PRESENT STUDY

From a sociological perspective, plotting the future of mediation is best achieved by exploring the social forces acting in the disciplinary field and assessing their combined effects. On its current trajectory, given the socio-economic pressures of the marketplace and struggle for professional identity, mediation is likely to continue to become more formalistic and legalistic as a discipline. In the future, a growing divide will continue to emerge between legal and non-legal. The mediation

field is likely to experience greater institutionalization of certain legal ethics. In addition, and somewhat inconsistently, in certain sub-fields, it will experience increasing specialization in practice along cultural, sector, and disciplinary boundaries. Social forces associated with culture, sector, and discipline will continue to pull mediation in very different and distinct directions. The implications for mediators and mediator organizations are significant. The effects associated with the above sociological themes are already beginning to resonate among practitioners and mediator organizations. Further, the current splintering occurring within the field has caused some leading mediators to question the very use of pan-mediator organizations, such as the Association for Conflict Resolution.' If the mediation community is truly committed to developing a unified mediation field that is capable of welcoming a genuine diversity of approaches, it has little choice but to carefully address and proactively navigate the above five themes. Indeed, the very future of mediation depends on it.

Domestic Violence is a very well-known issue in the Indian society and mediation provide the way to sought out the problems in a family with sociological point of view. There are so many social aspects which affect the life of a woman i.e. poverty, unemployment, drinking habits of male persons in the family, aggressiveness, impetuousness etc. and these aspects can provide the base to the problem of domestic violence. The present study not only throws the light on socio-economic status of the respondents in study area but also provide the working point of view of mediation centers. It is found and is a reality that one out of ten women come to mediation centers for the solution of their problems however, mostly try to tolerate and want to sought the problem at their own level or by tolerating the violence for family sake at the end of their patience level.

SOCIOLOGICAL SIGNIFICANCE OF THE STUDY

Violence against women remains one of the most pervasive human rights violations of our time, and one of the biggest global problems. Violence against women is a violation of fundamental freedoms and rights, such as the right to liberty and security, as mentioned in the Charter of Fundamental Rights of the European

Union (EU, 2000). Violence against women can be domestic as well as public, Physical, emotional or mental. Women have fear of violence in their mind which causes the lack of participation in various areas of life. Fear of violence in the women mind has been so deep which cannot be out easily even after complete removal of violence against women in the society.

Around the world at least one woman in every three has been beaten, coerced into sex, or otherwise abused in her lifetime. Every year, violence in the home and the community devastates the lives of millions of women. Violence against women is rooted in a global culture of discrimination which denies women equal rights with men and which legitimizes the appropriation of women's bodies for individual gratification or political ends. The problem has therefore received international attention. Victims can be of any age, sex, race, culture, religion, education, employment or marital status. One of the causes of violence against women in India is the male dominance. Women generally face various kinds of crime like dowry death, sexual harassment, cheating, murder, girl child abuse, robbery, etc. Violence against women which counted as crimes under the Indian Penal Code are rape, kidnapping and abduction, physical and mental torture, dowry deaths, wife battering, sexual harassment, molestation, importation of girls, etc. The cases of violence against women are increasing day by day and becoming too broad. According to the National Crime Records Bureau, women in India are unsafe in their marital home. Other types of common violence against women in the society are domestic violence, acid attacks, rape, honor killings, dowry deaths, abduction, and brutal behavior by husbands and in-laws. It is important to understand the opinion and attitude of the women towards the problems and the situation due to the problem.

Constitutionally, every crime should be reported, and every woman who faced violence of any form should get justice. The trends of reporting influenced by various socio-cultural factors and the justice systems and the attitude of the person associated with the justice system at various level. In India, the rate of unreported sexual violence is "far higher" than statistics indicate.

In response to the tri city role in combating the violence, there is a need to come up with rules and regulation to protect the women from the violence and punish the abuser immediately. However, the challenge still exists in front of the law reformer to criminalize the wife battery. The main dilemma is whether to treat the wife battery as a crime or there should be an emphasis on counselling and mediation.

To combat the challenges through the legal action there is an urgent need of collaborative approach between the governments and civil society organization. The approach should be integrated and multidisciplinary. Professionals from various fields like lawyers, psychologists, social workers, doctors and others should work together to gain understanding related to cases of domestic violence. Further there is a need to consider the real-life context of the battered woman, her hopelessness, dependency, restricted options, and her consequent need for empowerment while dealing with the case. The overall goal should be considering as developing her capabilities to make her own decision for her future. For this purpose, mediation centers play an important role to deal with the problems of women facing domestic violence.

FINDINGS OF PERCEPTIONS OF VICTIMS OF DOMESTIC VIOLENCE

The present study reveals that majority of respondents had awareness but reluctant to approach the court due to sociological restrictions in their families as shown in table 5.14. Thus, findings of the study can be discussed as under:

- Result of the study reveals that the majority of victims of domestic violence i.e. 60 % came to mediation centers when harassment becomes intolerable more than 3 years of their marriage. The result of the study throws the light on the aspect that mostly women try to make their homes and for that they tolerate the violence against them till they can. After that when they had no option then they came to Mediation centre for solution.
- Study indicates that almost two-third (65%) of the victims of domestic violence agreed that their husbands or in-laws had demand of dowry at the time of their marriage. So even after declaring dowry as a crime, it is still common.

- Study shows that most of the victims i.e. 55 percent accepted that their father were not able to fulfil the total demand of dowry at the time of their marriage. This may be cause of domestic violence in most cases.
- It is observed that even though 75 percent victims of domestic violence had awareness about the dowry prohibition act but 90 percent were reluctant to approach the court. This shows that many women don't even take help of the system and so many cases go un-noticed.
- Study shows that 80 percent of victims who came to mediation centres don't consider dowry system as evil and only 20 percent think that it is bad and should be stopped. This may be due to tradition which is being followed in India from many centuries
- It is evident that every 3 out of 5 victims were facing physical violence and 1 out of 5 both mental and physical abuse. This is because of our patriarchal society where men consider themselves in-charge of the house and controller of the relationship.
- It can be noticed that most commonly victims were facing harassment weekly (27.5%) and twice or thrice monthly (26%).
- Result of the study shows that demand for dowry and alcoholism were most common reasons behind harassment accounting for 30% and 20% respectively. This is indicative of that; dowry is still the common problem in our country in spite of it being an illegal thing and alcohol abuse is also very common cause of abusive nature.
- It is seen that majority of the respondents i.e. 80 percent protested when their husband / in-laws tortured them and 85 percent didn't get any help from their neighbours at the time of harassment. So people often hesitate to interfere in family matters of the others.
- Majority of respondents i.e. 55% filed complaint against their husbands and in-laws to the local police station out of 80% those who protested against the

violence, this shows that many females don't take help of police or law in cases of violence and they file complaint when they had no other option against the violence.

- It is found that those respondents who want to compromise, almost two-third (65%) of them want to do so in the interest of their children and 15% due to lack of economic support. This shows that female partner gets bound even if they want to leave the relationship due to children, natal family members, due to lack of economic support or social security.
- Results of the study pointed out that most of the respondents agreed that it definitely caused or affected the mental condition/personality development of children (45%) or at least affected them to some extent (20%). So around two-third women believe that domestic violence affected their children.
- It can be seen that 40% of respondents didn't approached court because of their children and 20% because of lack of economic support. So these factors cause some kind of binding to the victims not to leave the relationship. Other factors are social security, pressure of natal family members etc.
- Study shows that 57.5 percent victims of domestic violence didn't have any knowledge about "The Protection of Women from Domestic Violence Act. This shows unawareness about various laws made for the women protection.
- It is found out that 65% victims didn't have any knowledge about the family counseling. From this, it is clear that trend of counselling was not very well known to the victims and their families. Mostly couples are counseled by their family members or someone elder in house.
- Results of the study reveals that majority of respondents i.e. 80 percent never visited any family counseling center. It can be seen that most of the respondents i.e. 80 percent wanted to give divorce to their husbands. . So most of them want to give divorce but unable to do so because of children, social insecurity, pressure by family members etc.

- Study indicates that majority of respondents i.e. 90 percent wanted to take maintenance from their husbands after Judicial Separation/ Divorce because of responsibilities they have to fulfil.

FINDINGS ON THE BASIS OF MEDIATORS/COUNSELLORS DEALING WITH PROBLEMS OF DOMESTIC VIOLENCE VICTIMS

- Majority of respondents i.e. 82.86 percent accepted that there is adequate staff available for mediation centre whereas according to 17.14 percent respondents, there is not adequate staff available for mediation centre. So, most of them agrees that adequate staff is provided to mediation centres.
- Almost two- third of the respondents (64%) are of the opinion that staff manning the mediation centre was very good or excellent.
- According to 57.14% respondents, the condition of the infrastructure provided in mediation center is found excellent and 14.28% found it very good.
- Majority of respondents were in favour of Institutionalization of mediation centres. It will give legal identity to the mediation centres and will have proper framework. Also, it will give some power to the mediation centre regarding the decisions.
- In relation to number of sitting required, majority of mediators need three sittings for mediation (71.42%).
- Majority of respondent's i.e. 85.72% accepted that there is need to incorporate mediation as a special subject in syllabus at graduate level in law and/or post graduate level in law as it will help lawyers who become mediators in dealing with cases if they already have knowledge related to the topic.
- Study showed that almost two-third of mediators faced difficulties while referring the case to the mediation process. This may be because, mediation in domestic violence case is very sensitive matter and parties often are not ready to listen to one another and are not ready to forgive other.
- Majority of mediators feel themselves capable of settling the domestic violence dispute when parties that enter into mediation process were reluctant to talk to each other. This is either due to experienced nature of mediator or

changing the mind-set of the parties after talking with them. It shows that most mediators were able to change the mind-set of the parties and were able to handle the domestic violence cases.

- Majority of mediators (57.14%) feel capable to handle domestic violence cases when it comes to condition where parties don't want to hear any offer from other parties
- In private meeting session more than 85% mediators said that they were able to deal with the victims successfully. This is because in the presence of other party victims tend to hide details or were not comfortable to share it with mediators. But without presence of other party, they feel more safe and more comfortable to tell the mediator.
- 64.28% of the mediators were capable of gaining information in the private meeting whereas 35.72% were not able to do so. It is clear from the results that most of the mediators were doing well in gathering information in the meeting with the victims.
- When parties with fixed mind-set come to mediation centre and they insist with their own offer without consideration for revision of the offer, percentage of mediators drops from 71.43% to 57.14% who feel capable of handling the situation when parties were reluctant to talk with each other because parties already made their mind even before entering the mediation centre and with this attitude, changing their mind-set is difficult task for the mediators.
- Majority of mediators accepted that every mediator needs to have the soft skills syllabus in their courses to become the accredited mediator. Which shows the need of having this kind of skill in handling the sensitive issues like domestic violence where parties were already non-cooperative with each other.
- Majority of mediators (50%) found good response of parties during mediation related to domestic violence cases.
- Majority of mediators found good response of Advocates of the parties during mediation process in relation to domestic violence cases (41.42%).
- Majority of mediators realized the need of Refresher Training Programme for the trained mediators for domestic violence cases as laws are ever evolving and knowledge of latest development is required to properly deal with the cases.

SUGGESTIONS:

After analyzing the data and the observations made during the research, the following suggestions are proposed:

(i) Awareness Programs

Mediation should be encouraged through special and specific awareness programs. Mediation is now a well-developed concept and has different features that should not be combined with other procedures such as free legal aid, Lok Adalat etc. The public and plaintiffs should have accurate knowledge of how the mediation process works. At the time of the current study, the lack of awareness of the true concept of knowledge of mediation was found to be a major stumbling block in its success. People should know that they have the opportunity to go to court for a trial before knocking on the door of the court. Excessive awareness can do wonders in the legal profession and can result in a new era of peaceful coexistence in legal disputes.

(ii) Pre-Trial Adjudication

It was found during the study that only the court had accepted the settlement which gained public favor and trust. Many experts have admitted that they advise their clients to intervene during cases. It is a stage where parties have already hired their own lawyers and filed lawsuits. They are already incurring the required costs of litigation. The purpose of mediation is to provide social justice in a more efficient and cost-effective way. The first phase in favour of peaceful settlements should be improved.

(iii) Code of Conduct for Mediators

The behaviour of mediators also needs to be improved through priorities. It was observed during the study that some mediators were reluctant to participate in the current study on the ground that they would not be benefited from their shared experience or did not want to disclose their real intentions for the program. In addition, people were found dissatisfied with the conduct of mediators. Mediators should know that they are the facilitators of the mediation process and should make every effort to

resolve the parties' dispute. The role of the arbitrator is separated from the judicial officers. As judges, mediators do not have the power to adjudicate the case but can be very helpful in the administration of justice. They are just promoters and should provide their services accordingly. It was also observed during the study that some lawyers are unwilling to send their clients to mediation centers so that they do not lose their clients. This is a serious moral problem. Mediators should avoid these types of bad habits. Integrity and quality of work will earn a name and a reputation. Undoubtedly, mediator misconduct may apply under the Attorneys Act, 1961 but related provisions must be provided directly under the rules and must be part of the mediators' training phase during their training courses. Moral values are crucial in all areas that earn respect and faith in society as a whole. Therefore, this aspect needs to be considered first.

(iv) Training of mediators

Mediation is a process in which an arbitrator enables parties to make their own independent decisions without coercion and pressure, and is most appropriate for those involved. Sometimes there are some hidden reasons for the parties that are not shown especially in court that needs to be resolved. Mediators should be trained to identify the nature of the dispute. Prosecutors should be given amnesty sessions by retired judges to teach them to clarify their doubts about their legal rights. Different mediators can also be appointed at different stages according to their expertise. A panel of mediators with experience in related matters may be appointed in the first phase. Mediators should be provided with on-the-job training to remind them of their core responsibilities and ethics to be followed.

(v) Lack of Infrastructure

There should be adequate space for mediation of parties, lawyers and mediators. The mediation center must be within or outside the court premises. The building should also have a waiting area. There should be a place for drinking water, a toilet and other learning materials can also be found in the mediation Centre. The state of the mediation center should be informal. There should also be an effective liaison at the mediation center to liaise between the referral judges and the mediators and to

regulate the affairs of the mediation and proceedings. Employees and officials referred to mediation centers should have systems in place for incentive and regular proceedings to make them friendlier and develop the positive attitude required for the mediation center to function properly.

It is advisable to provide these mediums at the door of the courtroom. Until the establishment of arbitration mechanisms and poor infrastructure, it may be appropriate to at least provide arbitration centers with private arbitration agencies that are regulated by Bar Associations and / or non-governmental organizations and may be provided with appropriate funding or grants.

(vi) Lack of Mediation Management

To overcome the point of lack of arbitration management, it is necessary that a full-time Adjudicator appointed to the Chief Justice should be appointed to the Arbitration Center to liaise between the referral judges and arbitrators and to regulate the arbitration and proceedings. In addition, there should be periodic testing of the functioning of the mediation centers. There is a need for periodic reviews of mediation performance. The panel of mediators may be reviewed every 2 to 3 years. In addition, if there is communication between the mediators of different states so that they can share and exchange good practices, it may benefit the mediation process. Such communication can also be held between the mediators of various mediation centers in the country.

There should be standard structures for archiving statistics and general statistical data by introducing standard software location at all mediation and call and email and Fax centers for details and feedback.

(vii) Lack of adequate funding

The amount of costs associated with mediation must be controlled and funding is required from the government to operate the mediation facilities. The importance of the mediation process in reducing backlogs and opportunities for the

prevention of new cases coming to the courts should be informed by the Government of intentional free funds.

. **(viii) Appointment of Mediators**

The selection of the appropriate mediator is very important in the mediation process itself. Knowledge, experience, skill and how to deal with an opponent play a major role. Therefore, care must be taken to select the appropriate mediator.

In order to have a fruitful mediation effect, the mediator must use the same language as the parties or hold a meeting with the parties in a comfortable group setting which can make a significant difference in achieving the mediation objectives. The personal differences of the opposition parties are influenced by their social conditions which should be understood by the interested mediator.

(ix) Avoid misunderstandings

To avoid misunderstandings in a conflict situation, during mediation, the mediator should encourage the parties to speak directly to the other party and explain their feelings and views rather than focusing on the opponents' intentions, wrongdoing or failure. Inflammatory language should be changed and groups should speak intentionally only as more communication can be productive. The arbitrator should urge the parties to listen carefully and understand the opponent and respect the other party. Participating in in-depth discussions can also reduce misunderstandings by improving relationships, by providing more contexts for communication, and by breaking down ideologies that contribute to negative perceptions or worldviews.

(x) Neutrality

In order to avoid the loss of neutrality, the Mediator must be aware of the need for the parties to be seen as neutral by focusing equally on both parties during the merger and especially by not taking their positions which could hurt the Mediator's mind. The Mediator should strive to provide an opportunity for both parties to present

their options and to identify potential power inequalities during the arbitration process. In such a case, it is up to the Mediator to know and manage his or her values and prejudices and to encourage the parties to come up with solutions to the issues by using content to determine the agenda.

(xi) Reference to Court

The court-based communication has gained a lot of popularity and trust from the prosecutors. The first stage of the court's decision for arbitration is due to a court hearing. Courts should take action and refer them to mediation centers. It is the court, in the first instance, that imposes a sense of reliance on the mediation process by properly directing the defendants. Therefore, to make the court a successful connection, the courts need to play a significant role. Court references at mediation centers should be expanded. References should be so natural that there is no need to set goals for a court reference. Cases referred to mediation facilities should be appropriate for mediation. There should be no formal barrier to collective bargaining.

(xii) Interest of Advocates

The interest of attorneys should be further enhanced in the mediation process. It was confirmed by the general public that lawyers did not care much about the process. It is a common perception that mediation institutions are dangerous to their work. It is a common myth that if matters are resolved in a peaceful manner, then no one can go to them to complete and dispute their cases. It will reduce the number of court cases. This method of expert thinking is very dangerous in mediation facilities and needs to be worked on initially. Young lawyers can find new ways in the ADR process and experienced should provide their valuable experience and services at mediation facilities. Advocate participation in the mediation process reduces the burden on mediators and enhances the positive outcome of the mediation process.

(xiii) Part of the scholars

Mediation should be part of academics in law colleges. In general, it is apparent that the topic of 'ADR' is often part of the subject of your choice. Moreover,

while teaching 'ADR' only a large part of Arbitration is covered and the concept of 'reconciliation' is given a second priority. It should be ensured that mediation should be part of the real syllabus so that law students learn the feeling of living peacefully in legitimate wars. The foundation stone of a different high-level opposition system should be laid in the core subjects. Attendance of law students at mediation centers should be guaranteed. The visit will achieve its learning process objective and provide mediators who are committed to the legal profession.

(xiv) Remuneration Hall

The salaries of mediators must be decent and in accordance with their legal obligations. It is evident that at times some professional arbitrators are appointed in special cases and are given high salaries according to the will of the Supreme Court Judges and the Supreme Court. This can undermine ordinary and effective mediators who devote their full time to mediation institutions and perform their duties with integrity. Some mediators consider it as an honorable position. At present, the remuneration provided by resolved or unresolved cases is satisfactory but can be continued on an hourly basis.

There is an issue of non-granting 'Traveling Allowance' to senior arbitrators. Older mediators are obliged to provide training for younger or new mediators in remote areas but have not provided travel allowance for any assignment of that function. Therefore, some mediators avoid taking responsibility. Delivery can be provided for a specific day as there are many vehicles provided by the district authorities. In the event that no delivery is available, appropriate travel expenses should be provided to senior trainers for this purpose.

(xv) Administrative Obligation

It appears that there are senior legal officers in the ranks of Magistrates appointed to mediation centers. They work very well with mediators and other staff. Along with the mediators, they also deserve credit for the successful mediation centers in Punjab but the level of success of the mediation centers is not up to standard. Supervisors should ensure that no one who opposes the charges should feel harassed in

the arbitration process. With the increasing number of institutional referrals mediation agencies can also take another court process where cases have to wait all day. Appropriate screens should be adjusted where the case number is displayed. There should be suitable waiting halls where opposers can sit comfortably. The nomination process is widespread in the arbitration centers of the high courts which must be strictly adopted at the regional level.

(xvi) New Strategies

There is need of new strategies best suitable to the Indian scenario. The counseling of parties and their near and dear ones is needed at an appropriate stage so that parties may take independent decisions. The parties are required to be motivated especially women and uneducated old litigants who are remained dependent on other family members.

OTHER SUGGESTIONS:

- A website of mediation with all the relevant rules, articles and information about mediation should be developed.
- The Training Manual released in the Conference be accompanied with PowerPoint presentations, with DVDs for each trainee
- Training of Court Administrators as well as In-charges of the Mediation Centres should be imparted.
- The role of advocates is very important in the success of mediation and there needs to be a harmonized balance of mediation and other forms of alternative disputes resolutions with focused and specialized emphasis, on mediation.
- There is the need for both qualitative mediation and adequate number of trained mediators.
- Institutionalized of the entire mediation system is essential with guidelines for selection of mediators, certification and decertification of mediators, the

authority for such certification and decertification, and the parameters for the same.

- Mediation needs to be promoted as a professional career and payment to mediators is essentially required to be made, especially at the District Courts level to propagate mediation effectively.
- Mediation should be given focused attention in as much as it should be separated from the Lok Adalat movement;
- Mediation needs to be institutionalized and legislation on Mediation is required.
- Uniform software with data for linking all the Mediation Centres across the country with the MCPC and State Mediation Centres should be created, which would be of aid in planning for the future.
- The process of selection of potential mediators must be systematic and regulated. The judicial officers and advocates with a positive mind-set for mediation should be selected as mediators.
- There should be adequate number of Mediators in a Mediation Centre who have undergone 40 Hours of training as prescribed by MCPC. However, there should not be surplus Mediators.
- The Practice Groups of mediators should be formed to share and exchange Best Practices followed by mediators under the supervision of the coordinator.
- The functioning of the Legal Aid Authority and Mediation Centres should be separated and both should be given distinct identity, but there should be positive coordination between Legal Aid Authority and Mediation Centres.
- The Code of Conduct and Ethical Principles to be observed by Mediators should be prepared so as to develop confidence of the public in the mediation process and also to serve as a guideline for mediators.

SCOPE FOR FURTHER RESEARCH

Scope of Mediation is very promising in India by bringing equitable governance and a sense of justice and justice to society, mediation skills, especially non-discriminatory communication skills and influential negotiation strategies to be included.

Mediation builds power and at the same time promotes culture by providing conflict resolution to society. It helps to advance the resolution of the foundation between the organizations. At the same time, such a process brings about a dynamic and complete solution that is more and more appropriate, accordingly.

By placing control over the resolution of disputes in the hands of the parties, the State has little power to interfere with the resolution of private disputes, and by reducing the burden of the Court, political parties can reduce courts' power to negligence.

Mediation reduces corruption incentives because a third party does not have the authority to bind parties to the outcome of his or her election. This lack of power in the parties and the inability to govern through dispute resolution by courts often means that officials have great difficulty in renting to the plaintiffs. Both parties are able to avoid unnecessary costs and reach the same agreement which shows that it is beneficial for both of them.

The success of the mediation process is demonstrated not only in cases resolved through mediation but also in the merging of parties to pre-trial mediation. The ultimate goal of conflict resolution should be to treat cases as their last resort.

Conflict resolution through mediation is enlightening

1. Mandatory reference to an Mediation Centre,
2. "Case management by judges (case management includes identifying the issues in the case; summarily disposing of some issues and deciding in which

order other issues are to be resolved; fixing timetables for the parties to take particular steps in the case; and limiting disclosure and expert evidence.)”

3. Committed terms of Judges and Lawyers.

The aim should be to find a quick and effective solution to legal and conflict issues by increasing the chances of counseling and assistance to help people resolve their disputes quickly and effectively and by increasing the chances of people involved in court cases resolving their disputes out of court and reducing delays.

The help of psychologists, social scientists, retired managers and other knowledgeable people from various walks of life without bias can be taken to improve community mediation and appropriate infrastructure including trained mediators and the insertion of mediation cells, designed to strengthen the growth of mediation process. Involvement of dignitaries from the community in the mediation process after considering social, economic and cultural issues, empowering the community to resolve their disputes through mediation may to educate the public on various campaign programs.

Mediation has great power, basically to bring about a change in quality in the focus of the legal system from the adjudication to the peaceful resolution of disputes. The temples of the judiciary should not be places of dispute resolution, but rather place where disputes end after other means of resolving disputes which are the first means.

By summing up, it can be said that the prevalence of domestic violence in India especially against women is a cause of concern not only for society as a whole but also for the courts of law, upon whom the responsibility is cast to deliver justice in these cases. The excessive burden on the courts may be relieved through the use of alternative dispute resolution mechanisms such as mediation; however, this raises the question as to the concerns of using mediation in resolving domestic violence cases. Mediation can be a worthwhile and viable option when important relationships are in jeopardy (colleagues, employee / employer, clients, family and neighbours). Communication breakdown is frequently at the root of many relationship conflicts.

Mediation can help people to openly and respectfully discuss their differences, look at the situation objectively and to try to understand the other person's perspective. This can lead to lasting, long-term solutions which meet the needs of the parties, usually at a fraction of the time and cost associated with more formal processes.

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http://mediationbhc.gov.in/PDF/concept_and_process.pdf
<http://webcache.googleusercontent.com/search?q=cache:dw7ql2j4k40J:www.legal-serviceindia.com/legal/article-620-meditation-clearing-the-minefield-of-matrimonial-disputes.html+&cd=1&hl=pa&ct=clnk&gl=in>
<http://webcache.googleusercontent.com/search?q=cache>
<https://www.mediate.com/articles/sgubinia2.cfm&hl=pa&gl=in&strip=1&vwsr>
[http://lawfaculty.du.ac.in/files/course_material/VI_Term/LB-602%20Alternative%20Dispute%20Resolution/\(17\)%](http://lawfaculty.du.ac.in/files/course_material/VI_Term/LB-602%20Alternative%20Dispute%20Resolution/(17)%)
<https://blog.ipleaders.in/matrimonial-dispute-settling/>
<https://webcache.googleusercontent.com/search?q=cache:fpraJFic8gQJ:https://www.counsellingconnection.com/index.php/2009/06/02/principles-of-active-listening/+&cd=1&hl=pa&ct=clnk&gl=in>
<https://webcache.googleusercontent.com/search?q=cache:MDJZzAlINJ4J:https://www.counselling-directory.org.uk/separation.html+&cd=1&hl=pa&ct=clnk&gl=in>
https://webcache.googleusercontent.com/search?q=cache:K4MbRY_O7nIJ:
<https://www.mediate.com/articles/sgubinia2.cfm+&cd=11&hl=pa&ct=clnk&gl=in>
<http://www.legalservicesindia.com/article/1383/The-Ways-of-Mediation-In-Matrimonial-Disputes.html>
http://lawcommissionofindia.nic.in/adr_conf/chandrachud3.pdf

[http://www.sci.gov.in/pdf/mediation/MT%20MANUAL%20OF%20INDIA.pdf](https://webcache.googleusercontent.com/search?q=cache:fn664HNSIv4J:https://www.wipo.int/amc/en/mediation/guide/+&cd=13&hl=pa&ct=clnk&gl=ihttps://positivepsychology.com/familytherapy/&hl=pa&gl=in&strip=1&vwsrc=https://webcache.googleusercontent.com/searchhttps://adr.findlaw.com/mediation/mediation-vs-arbitration-vs-litigation-whats-the-difference.html+&cd=1&hl=pa&ct=clnk&gl=inhttps://webcache.googleusercontent.com/search?q=cache:iTuCjBoIH3MJ:https://delhicourts.nic.in/dmc/articles.htm+&cd=1&hl=pa&ct=clnk&gl=inhttps://delhicourts.nic.in/dmc/articles.htm+&cd=1&hl=pa&ct=clnk&gl=inhttps://www.longdom.org/open-access/role-of-patriarchal-norms-in-deprivation-of-women-from-their-political-rights-in-pukhtoon-society-2332-0915-1000181.pdfhttp://wost201hdomviol.tripod.com/groupactionproject/id4.html.https://www.mentalhelp.net/advice/best-way-to-deal-with-verbal-abuse/+&cd=1&hl=pa&ct=clnk&gl=inhttp://lawfaculty.du.ac.in/files/course_material/VI_Term/LB-602%20Alternative%20Dispute%20Resolution/(17)%20Successful%20Mediation%20in%20Matrimonial%20Disputes.pdfhttp://webcache.googleusercontent.com/search?q=cache:dyFQoEoHRUkJ:https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4886584/&hl=pa&gl=in&strip=1&vwsrc=0http://www.napsipag.org/PDF/NEENA_JOSEPH.pdfhttp://www.sci.gov.in/pdf/mediation/Mediation%20Training%20Manual%20for%20Refere rral%20Judges.pdfhttp://www.legalline.ca/legal-answers/the-role-of-each-party-in-a-mediation/https://www.otc-cta.gc.ca/sites/all/files/was/Mediation-Roles-EN.pdfhttps://www.monash.edu/__data/assets/pdf_file/0015/232530/douglas.pdf<a href=)https://hetv.org/india/nfhs/pnfhs2.htmlhttps://www.nfhsindia.orghttp://hetv.org/india/nfhs/nfhs3/NFHS-3-Chapter-15-Domestic-Violence.pdfhttp://rchiips.org/NFHS/nfhs4.shtml

<http://rchiips.org/NFHS/NFHS-4Report.shtml>

APPENDICES

QUESTIONNAIRE FOR MEDIATORS OF DOMESTIC VIOLENCE

1. Name: _____

2. Age: _____

3. Gender: Male Female

4. Religion: _____

Q.5 Whether there is adequate staff available for mediation centre?

(a) Yes (b) No

Q.6 Opinion as to the response of staff manning the mediation centre:

(a) Excellent

(b) Very Good

(c) Good

(d) Average

(e) Poor

Q.7 Opinion regarding the infrastructure facility at the Mediation centre:

(a) Excellent

(b) Very Good

(c) Good

(d) Average

(e) Poor

Q.8 Whether there is any need of institutionalization of Mediation?

(a) Yes (b) No

Q.9 Average number of sitting required for mediation:

(a) Three sittings (b) Five sittings

(c) Seven sittings (d) More than seven

- Q.10 Whether there is need to incorporate mediation as a special subject to be included in syllabus at graduate level in law and/or post graduate level in law?
- (a) Yes (b) No
- Q.11 Have you faced any difficulties while referring the case to the mediation process?
- (a) Yes (b) No
- Q.12 How long have you serve as accredited mediator?
- (a) 1-3 years (b) 4-6 years
- (c) 7-10 years (d) More than 10 years
- Q.13 Do you feel yourself capable to settle the domestic violence dispute when parties that enters into mediation process reluctant to talk to each other?
- (a) Yes (b) No
- Q.14 Do you feel yourself capable to handle domestic violence cases when it comes to condition where parties don't want to hear any offer from other parties?
- (a) Yes (b) No
- Q.15 In the mediation process, there is the private meeting call cause where the mediator meets with the victims of domestic violence without attendance of the other party. Do you feel yourself capable to deal in that session?
- (a) Yes (b) No
- Q.16 Do you feel yourself capable in gaining information in the meeting?
- (a) Yes (b) No
- Q.17 In the mediation process, the mediator act as independence parties that not offer the solution but be the person that channel the parties to find the solution. Do you feel yourself capable when it comes to situation where the parties still insist with his/her offered and have no intention to revise the offer?
- (a) Yes (b) No

Q.18 Should every mediator need to have the soft skills syllabus in their courses to become the accredited mediator?

- (a) Yes (b) No

Q.19 Response of parties during mediation related to domestic violence cases.

- (a) Excellent
(b) Very Good
(c) Good
(d) Average
(e) Poor

Q.20 Response of advocates of the parties during mediation process in relation to domestic violence cases.

- (a) Excellent
(b) Very Good
(c) Good
(d) Average
(e) Poor

Q.21 Is there any need of Refresher Training Programme for the trained mediators for domestic violence cases?

- (a) Yes (b) No

Q.22 Suggestion and remarks for better improvement of mediation process.

QUESTIONNAIRE FOR VICTIMS OF DOMESTIC VIOLENCE

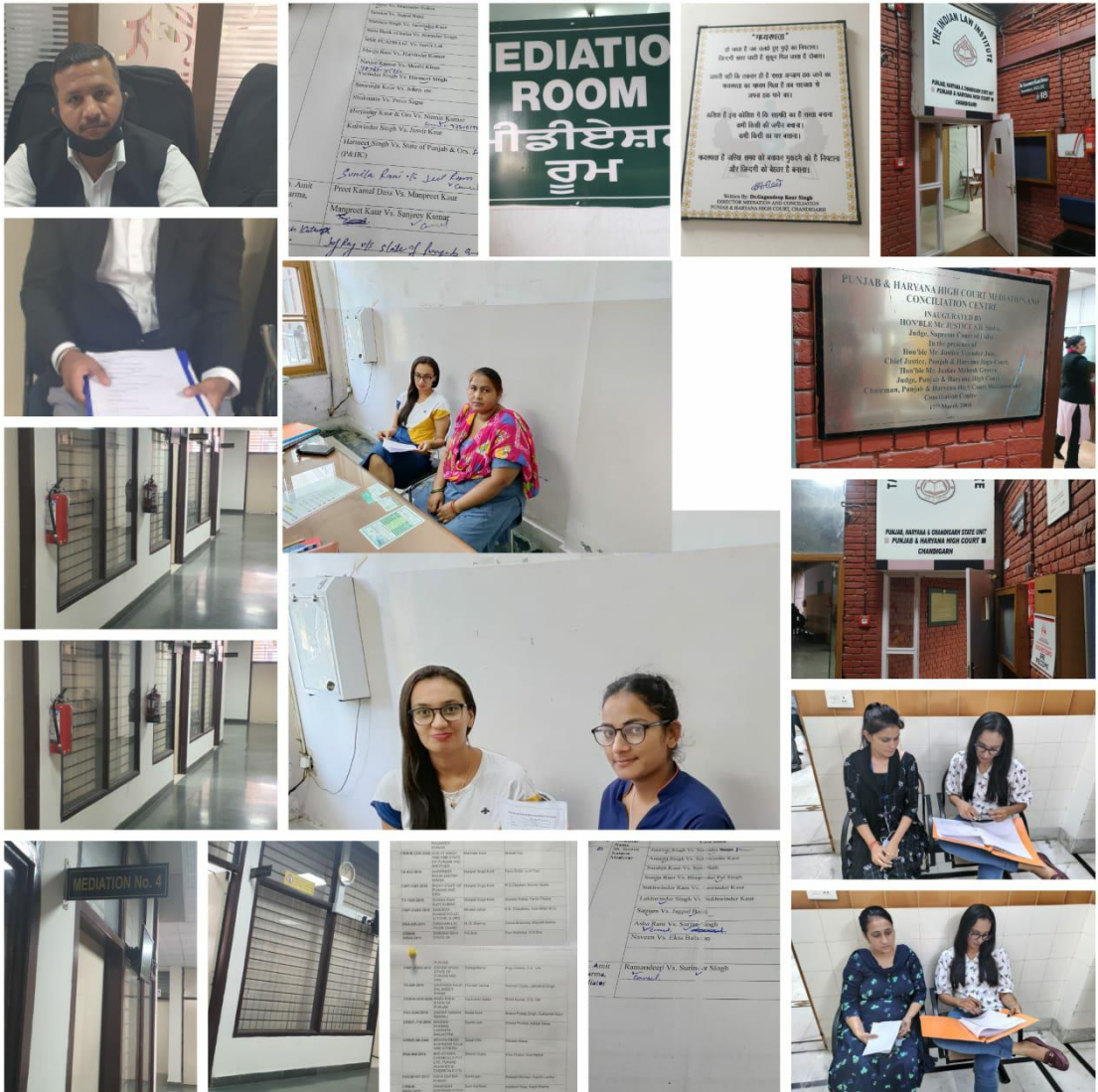
1. Name: _____
2. Age: _____
3. Religion: _____
3. Social Status:
(a) House wife (b) Service Holder
(c) Professional. (d) Any other
4. Address: _____

5. Educational Qualification:
(a) Illiterate (b) Class I - V
(c) Class VI -VIII (d) Class IX- X
(e) Intermediate (f) Graduate
(g) Post – Graduate (h) Technical Education
6. Victim's occupation and monthly income:
(a) 5000-10000 (b) 10000-20000
(c) 20000-30000 (d) More than 30000
(d) None
7. Family Status:
(a) Joint Family (b) Nuclear Family
8. Duration of marriage
(a) < 1 year (b) 1 year – 3 years
(c) 3 year-5 years (d) More than 5 years
9. Husband's Occupation
(a) Private (b) Government
(c) Any other
10. Monthly Income:
(a) 5000-10000 (b) 10000-20000
(c) 20000-30000 (d) More than 30000
(d) None

11. Nature of Marriage:
- (a) Arranged Marriage
 - (b) Love Marriage
12. When the harassment became intolerable for the victim:
- (a) 0 - 1 Years (b) 1 - 3 Years
 - (c) 3 - 5 Years (d) 5 - 7 Years
 - (e) 7 year and above
13. Was there any demand of dowry at the time of your marriage by your husband or in-laws?
- (a) Yes (b) No
14. Was your father able to fulfill the total demand of dowry at the time of your Marriage?
- (a) Yes (b) No
15. Do you have any knowledge about Dowry Prohibition Act?
- (a) Having awareness
 - (b) No awareness
 - (c) Having awareness but reluctant to approach the court.
16. What is your opinion about dowry system?
Practice of dowry is-
- (a) Bad and should be stopped
 - (b) Social custom.
 - (c) Not bad if it is within one's capacity
17. Nature of harassment or torture-
- (a) Verbal abuse
 - (b) Mental abuse
 - (c) Physical violence
 - (d) Both mental and physical abuse

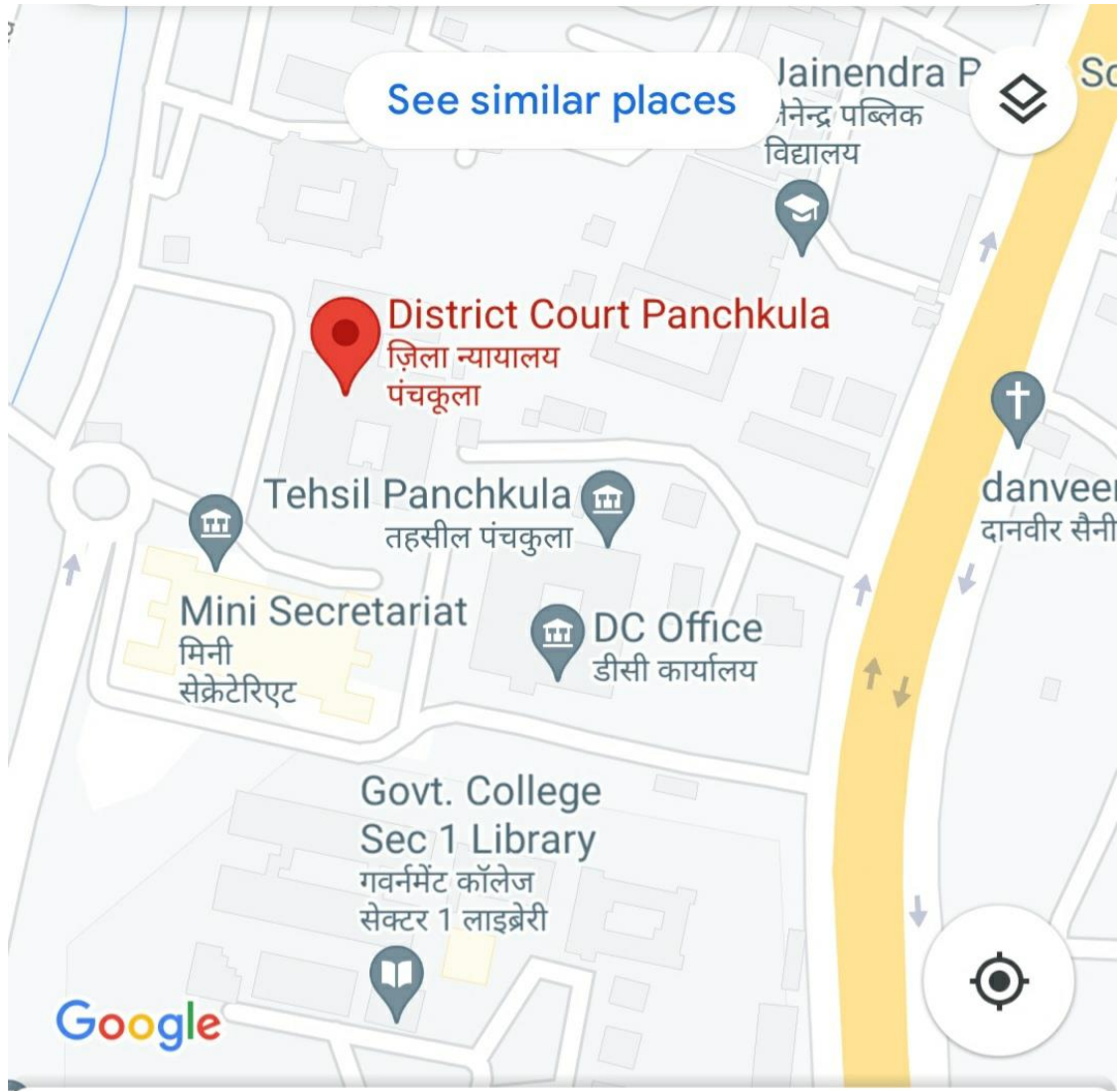
18. Perpetrators of violence
- (a) Husband only
 - (b) Father-in-law
 - (c) Mother-in-law
 - (d) Brother-in-law
 - (e) Sister-in-law
19. Frequency of harassment:
- (a) Daily
 - (b) Monthly once
 - (c) Occasionally.
 - (d) All the above persons
 - (e) Weekly
 - (f) Monthly twice or thrice
20. What is the reason for such harassment or torture:
- (a) Demand for dowry
 - (b) Incompatibility
 - (c) Ego conflict
 - (d) without any reason
 - (e) Alcoholism
 - (f) Extra marital relationship
 - (g) Unsatisfied sexual relation
 - (h) any other reason (mention)
21. Did you ever protest when your husband / in-laws tortured you or you remained silent all the time?
- (a) Yes
 - (b) No
22. Did you get any help from your neighbours?
- (a) Yes
 - (b) No
23. Did you file any complaint against your husband and in-laws to the local police station?
- (a) Yes
 - (b) No
24. Did you want to file a case or move to the Court for Justice?
- (a) Yes
 - (b) No
25. If compromised, reason for such compromise-
- (a) In the interest of the children.
 - (b) In the interest of the natal family members.
 - (c) Lack of economic support.
 - (D) For her social security.

27. Has it caused or affected the mental condition/personality development of your children?
- (a) Definitely not
 - (b) Unable to asses
 - (c) To some extent
 - (d) Any other (please specify)
28. Reasons for not approaching the Court
- (a) Wife battering / harassment is common
 - (b) In the interest of children
 - (c) lack of economic support.
 - (d) In the interest of natal family members.
 - (e) Social insecurity.
29. Do you have any knowledge about "The Protection of Women from Domestic Violence Act"?
- (a) Yes
 - (b) No
30. Do you have any idea about family counselling?
- (a) Yes
 - (b) No
31. Did you ever visit any family counselling center?
- (a) Yes
 - (b) No
32. Do you want to divorce your husband?
- (a) Yes
 - (b) No
33. Do you want any maintenance from your husband after Judicial Separation/ Divorce?
- (a) Yes
 - (b) No

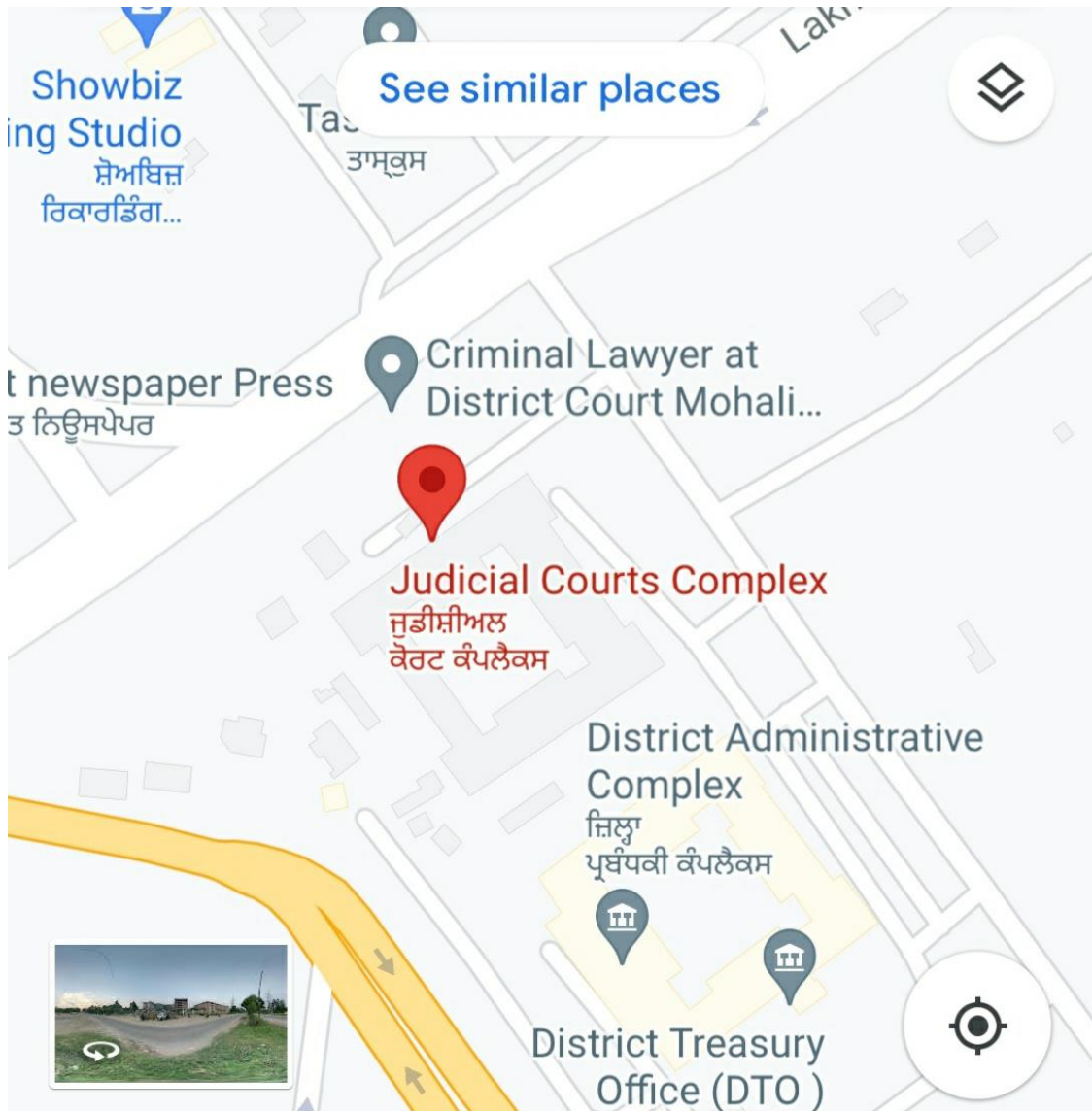




**Mediation centre, District court,
Chandigarh**



Mediation centre, District court, Panchkula



Mediation centre, Judicial court complex, Mohali



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P ROFESSIONAL
U NIVERSITY

Centre for
Research Degree Programmes

LPU/CRDP/EC/20190704/0003

Dated: 29 May 2021

Simarpreet
Registration Number: 11719474
Programme Name: Doctor of Philosophy (Sociology)

Subject: Letter of Candidacy for Ph.D.

Dear Candidate,

We are very pleased to inform you that the Department Doctoral Board has approved your candidacy for the Ph.D. Programme on 06 Mar 2019 by accepting your research proposal entitled: "ROLE OF MEDIATION CENTERS IN DEALING WITH DOMESTIC DISPUTES" under the supervision of Dr. Sukanya Das.

As a Ph.D. candidate you are required to abide by the conditions, rules and regulations laid down for Ph.D. Programme of the University, and amendments, if any, made from time to time.

We wish you the very best!!

In case you have any query related to your programme, please contact Centre of Research Degree Programmes.

Head

Centre for Research Degree Programmes

Note:-This is a computer generated certificate and no signature is required. Please use the reference number generated on this certificate for future conversations.

Jalandhar-Delhi G.T.Road, Phagwara, Punjab (India) - 144411

Ph : +91-1824-444594 E-mail : drp@lpu.co.in website : www.lpu.in

REQUEST FOR PERMISSION TO CONDUCT RESEARCH IN MEDIATION CENTRES IN
CHANDIGARH, PANCHKULA & MOHALI DISTRICT COURTS

To
The Nodal Officer,
Mediation and Conciliation centre,
Punjab and Haryana High court,
Chandigarh
Respected Mam/Sir,

My name is Simarpreet and I am a Research scholar at LPU, Phagwara in the field of Sociology .The research I wish to conduct for my PHD thesis involves the Role Of Mediation centres in dealing with domestic disputes .The research will be conducted under the supervision of Dr Sukanya Das Assistant Professor at Lovely Professional University Phagwara.

I am hereby seeking your permission to collect data from mediators regarding the working and infrastructure of the mediation centers and domestic disputes victims who are coming to mediation centres located in Chandigarh, Panchkula and Mohali District courts. Kindly allow me to visit the mentioned mediation centers for collection of data from 3rd June 2019 to february 2020.

I have attached Letter of candidacy letter from university, bonafide Certificate from the university and one reference letter from a Bar member of Punjab and Haryana High court .

Your Approval to conduct the study will be greatly Appreciated. Thanking you for your valuable time.

Respectfully yours,

Simarpreet

H.NO -141, Sector 27A , Chandigarh

Contact no-8360487886

Simarpreet


Dr. GAGANDEEP KAUR
Director Mediation & Conciliation Center
Punjab & Haryana High Court

TO WHOM IT MAY CONCERN

Respected Sir/mam

This is to Certify that the Mrs Simarpreet is currently Pursuing her PHD in Sociology from LPU Phagwara, Punjab . She is my Sister- in Law.

As part of her studies, She is Required to collect data from mediation centres under Punjab and Haryana High Court . (Chandigarh, Panchkula, Mohali).

Any assistance given to her will be highly appreciated. Please contact in case of any further clarifications.


RISHU GARG
A-3013/2014
Punjab & Haryana High Court, Chandigarh
Phone : 87278-11110

Yours Faithfully,

Advocate Rishu Garg

Punjab and Haryana High Court Chandigarh



Provisional Academic Transcript

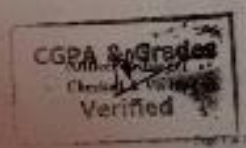
Student Name : Simarpreet
 Registered as : 11118474
 Father's Name : Mr. Balbir Singh
 Mother's Name : Ms. Indrajit Kaur
 Programme : B.Ed. / Bachelor of Education in Sociology
 Mode : Regular
 Date of Initial registration : August, 2011

TERM-I		CGPA : 8.33		Equivalent percentage : 83.33 %	
S.No.	Course	Credits	Grade		
1	GENERAL COURSE OF RESEARCH METHODS	2	B		
2	GENERAL COURSE OF RESEARCH METHODS/SOCIAL SCIENCES	4	A+		
3	GENERAL COURSE OF RESEARCH METHODS/SOCIAL SCIENCES	3	A+		

This is a provisional transcript and is valid till a regular transcript is issued. Student set not completed the programme.
 CGPA : 8.33
 Equivalent percentage : 83.33 %

[Signature]
 Dy. Dean Examination
 Lovely Professional University
 Phagwara (Punjab)

Print Date: 18-05-2018
 Place: Phagwara (Punjab)
 9870712282



List of Mediators

1)Adv N.K Nanda
2)Adv Munish Chaudhary
3) Adv Vinod kumar verma
4) Adv Harsh Tandon
5)Adv Inderjit bassi
6) Adv Arvind Thakur
7) Adv Shweta Siali
8) Adv Adarsh pal
9) Adv Sarabjit kaur
10) Adv Avtar kaur
11) Adv Deepak Jindal
12) Adv Aditya jain
13) Adv Robin hooda
14) Adv Harshvardhan singh
15) Adv Maninder singh Saini
16) Adv Manjit kaur
17) Adv Balwinder kaur
18)Adv Ajay sood
19) Adv kapil walua
20)Adv Anil mehta
21) Adv Dhiraj thakur
22)Adv Harish bansal
23) Adv Baljit singh
24)Adv Seema parischa
25) Adv Suresh Kataria
26)Adv Sanjeev gupta
27) Adv Rajat Gautam
28)Adv Amit Bhatia
29) Adv Taranpreet

30) Adv Sanjeev gupta
31) Adv Kanchan bhala
32) Adv Bipin Ghai
33)Adv Maninderjit singh
34)Adv Vikas malik
35)Adv Randhir Singh
36)Adv Abhishek Khanna
37)Adv Rohit sud
38)Adv Vipul Joshi
39)Adv Kanica Sachdeva
40)Adv Angad chahal
41) Adv Sukhbir Hooda
42)Adv Sandeep Sihal
43)Adv Ravi Joshi
44)Adv Anil Bansal
45)Adv Manjit kaur
46) Adv Nirbhay Garg
47)Adv Gautam
48)Adv Akash chibber
49)Adv Gulbir Singh Grewal
50) Adv Narinder kumar gupta
51) Adv O.P Goyal
52) Adv Ambuj kumar
53)Adv Arjan singh Likhari
54) Adv Rituraj
55) Adv Sachin jain
56) Adv Manjeet singh kohli
57) Adv Amarbir singh
58)Adv Satpal Garg
59) Adv Mukul Aggarwal
60)Adv Puneet Rajta
61)Adv Arun Punia

62)Adv Pradeep singh
63) Adv Sushil garg
64) Adv Sandeep balhara
65) Adv Monika Jalota
66)Adv Karan Bhardwaj
67)Adv Maninder kaur
68)Adv P.S brar
69)Adv sunil Agnihotri
70)Adv swam Sandhir

List of Publications and conferences

	Title of the Publications papers	Name of the journals	Published date	ISSN NO/ VOL NO, ISSUE NO	Impact factor
1.	domestic dispute against women with disabilities in Chandigarh	International journal of Multidisciplinary & Educational research	4 april,2020	2277-7881 4(4) April/ volume 9	7.816
2.	Role of mediation centres in dealing with domestic disputes	(ICSMSSAAHP(20),International Journal of Psychosocial Rehabilitation	10 May,2020	1475-7192/ volumme24. Issue 07, 2020	0.03
3.	Marital Maladjustment	International journal of Multidisciplinary & Educational research	April,2020	2277-7881 volume-9 issue 4(7) April,2020	7.816
4	Comparative study of domestic dispute against women with or without disabilities in Chandigarh	International journal for innovative research in multidisciplinary field	April 2020	2455-0620 vol6, issue -4 april,2020	6.719

