

# **An Insight to the Reasons Behind the Matrimonial Disputes in India and the Necessity of Alternative Dispute Resolution Mechanism in Resolving the said Disputes**

**Ms. Sarojini Sahoo and Prof. Sanjay Choudhury**

Bhagawant University, Ajmer, Rajasthan.

Email: sahoosarojini@gmail.com

**Abstract:** *Marriage is a sacred institution. it is the very foundation of a stable family and civilized society. It accords status and security to the parties and their offspring. When a wedding takes place between two individuals, they bring in different goals into the marriage. Some of these goals relate to the experiences they have had while growing up, previous relationships, etc. These goals keep changing throughout the life of the marriage. This leads to disagreements over how the marriage should function. When such disagreements become persistent, they give rise to envious attitude, suspicions, and strife. How strongly a person feels about their goals, depend on their priorities which in turn are influenced by a person's self-interests. These self-interests create hindrance in resolving the differences and in taking any step towards an agreement.*

**Keywords:** Marriage

## **I. INTRODUCTION**

Marriage is a sacred institution. it is the very foundation of a stable family and civilized society. It accords status and security to the parties and their offspring. When a wedding takes place between two individuals, they bring in different goals into the marriage. Some of these goals relate to the experiences they have had while growing up, previous relationships, etc. These goals keep changing throughout the life of the marriage. This leads to disagreements over how the marriage should function. When such disagreements become persistent, they give rise to envious attitude, suspicions, and strife. How strongly a person feels about their goals, depend on their priorities which in turn are influenced by a person's self-interests. These self-interests create hindrance in resolving the differences and in taking any step towards an agreement.

Due to the unfulfilled needs and desires, matrimonial disputes occur which can ruin one's life and can't be restored again very quickly. It leaves a profound impact on the life of the people having the marital disputes which leads to divorce. Marital conflicts are inevitable. They are not just a difference of opinion, rather, are a series of events that have been poorly handled to damage the marriage relationship deeply. Everyone has their personal preferences and self-interests. If the marriage relationship is to succeed, ideals of compromise and sacrifice need to be practiced. But it is not always right to give in. The marriage relationship grows stronger and healthier only when couples lovingly share and discuss their interests and show a willingness to sacrifice for each other.

The institution of marriage has evolved in today's society. It is no longer believed to be a lifetime commitment. It is no longer possible to regard marriage to be a holy relationship between a husband and a wife. Several marital cases have arisen as a result of the shift in circumstances. The judiciary, which is already overburdened by the growing number of cases, is unable to manage these matters. Alternative conflict resolution is proven to be the next best option in the face of such a load. It establishes a legal framework for settling disputes between private parties.. This study, on the other hand, focuses solely on the function of mediation in resolving marriage issues. Mediation acts as a mediator to assist aside in solving a dispute. When compared to traditional judicial procedures, it gives faster justice. Alternative Dispute



Resolution (here in after referred to as 'ADR') creates a friendlier environment and fosters flexibility as compared to court. In contrast to courts, which are not available to the public, mediation is a private and confidential process. ADR has become the most frequently acknowledged conflict resolution strategy for resolving marital problems now-a-days. Regardless, ADR is now the basic foundation of society to maintain social peace.

Alternate dispute resolution has been a rising dispute resolution mechanism and is considered quicker as well as much more effective and satisfactory for both the parties than the traditional dispute resolution mechanism i.e. Proceedings in a court. ADR deals with resolving the issues and negotiating between the parties to reach an amicable settlement rather than a verdict. *Settlement is the way by which a win-win situation can be achieved between both the parties and both parties gain something rather than nothing.*

### **Reasons behind matrimonial Problems**

Conflict in marriage is inevitable, whenever two people get together eventually some of the belief systems and personal habits of one will annoy the other, regardless of the degree of love. In healthy relationships, couples learn to accept and resolve a conflict. But in case of unhealthy relationship marital conflicts arise due to several reasons. When there is a conflict between role performance and role expectation of the spouses it leads to maladjustment of husband-wife relationships and marital disruptions, as a consequence.

Marital conflicts can be about virtually anything. Couples complain about sources of conflict arising from verbal and physical abuse to personal characteristics and behaviors. Marital dissatisfaction, extramarital sex, problematic drinking, or drug use are other reasons for conflicts.

Some of the most prevalent reasons for Divorce and other matrimonial disputes in India are: –

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

#### **Domestic Violence:**

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

#### **Control:**

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

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

#### **Lack of Commitment:**

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

#### **Lack of Communication:**

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

### **Stages of marital discord**

**Ignorance:** Couples who are newly married and haven't learned how to successfully resolve their differences try to settle things by avoiding confrontation. They try to avoid the problem and never discuss it. This pattern persists for a long time, and eventually, the attitude begins to shift towards the next stage.

**An assertion of Demands:** After a considerable period, couples realize that this attitude has contributed to their misery and suddenly begin demanding the fulfillment of their needs. They start voicing their thoughts and opinions at every opportunity. But unfortunately, this stage doesn't work either and creates further strife between husband and wife.



**Compromising and Negotiating:** As the couple begins to face other pressures and demands due to the nature of a marital relationship, such as time management tensions, hectic schedules, stress from their parenting responsibilities, financial burdens, etc. it coerces them to negotiate and compromise. Consequently, they also begin to question their compatibility.

**Resignation:** It is natural to feel exhausted due to such unending conflicts, and also feel hopeless about resolving these conflicts. It is at this stage that couples feel the need to go for expert marriage guidance, or as a worst-case scenario, seek some legal remedy.

#### ***Necessity Of Alternative Mechanism To Resolve Matrimonial Disputes:-***

*Mahatma Gandhi said "I realized that the true fiction of a lawyer was to unite parties... A large part of my time during the 20 years of my practice as a lawyer was occupied in bringing out private compromise of hundreds of cases. I lost nothing thereby- not even money, certainly not my soul."*

Matrimonial disputes are not just the concern of a family, they are the concern of the whole country because, the termination of a marriage can be a traumatic and emotionally devastating experience for the spouses as well as the other family members involved which can have social, psychological, emotional and even economic repercussions. When there will be more marital conflicts and when court proceeding is determined to find a guilty party and the advocate's getting under your skin will result in making the dispute much more bitter than it was previously before the institution of the case. Eventually, lead to the emotional breakdown of the person involved and that person will not be a good human resource to the country. It will also affect the happiness of the person and ultimately affect the happiness index of the country at large. Hence "the divorce law in many countries are heading towards a no-fault divorce which dispenses the requirements of an allegation, counter-allegations or any proof of matrimonial guilty."

#### **The Necessity of ADR Mechanism in Resolving the Matrimonial Disputes :-**

As it is well said by **Lord Hailsham**, "though the law could not alter the facts of life, it need not unnecessarily exaggerate the hardships inevitably involved. There seems a little doubt that the present law is guilty of just that." This clearly means that marital disputes are not like other disputes as it contains emotional and sensitive issues and hence is sensitive to deal with, therefore in such situations law should be helping out to resolve the matter between the spouses rather than convicting a party guilty. The traditional judicial mechanism used to aim that either one party is convicted of matrimonial guilt and the other receiving the matrimonial reward. However, the alternative methods which are arising in present times aim towards not only resolving the conflict but also creating an emotional balance post the divorce for both the parties. Sometimes these alternative methods are so effective that they help the spouses in resolving the issues and getting away from the idea of divorce by counseling or conciliation's. Sometimes matters such as after divorce conflicts regarding alimony, child custody, matrimonial property etc can be very time consuming and will increase the bitterness in the already bitter relations of both the party if gone with the traditional judicial proceedings, however, if party's approach for dispute resolution mechanisms such as mediation, such conflicts can be resolved quickly and the approach will be more sensitive looking at the nature of the conflict.

**The functional stages** involved in mediation are — i) Introduction and Opening statement, ii) Joint session, iii) Separate Sessions(s) and iv) Closing. The mediator, in the beginning, introduces himself by giving information such as name, areas of specialization if any, and number of years of professional experience. After this, each party makes their statements. He then provides information about his appointment as a mediator, the assignment of the case to him for mediation and experience, if he has successfully mediated a similar case in the past. The mediator then expresses hope that the dispute is resolved peacefully and requests the counsels and the parties to introduce themselves. Some objectives of this stage are establishing impartiality, gaining the confidence of the parties, establishing a comfortable environment, motivating the parties, etc.

The second stage is when the parties are allowed to present their viewpoints and narrate their case, explain perspectives, vent emotions and express feelings without interruption or challenge. Questions may be asked by the mediator to clear certain doubts at this stage for a better understanding between both the parties. The mediator in this session identifies the



areas of agreement and disagreement. The parties may respond to points conveyed by the opposite party and with the permission of the mediator may even ask brief questions to them.

Separate sessions in the third stage provide the mediator with more specific information and to follow-up on the issues which were raised by the parties during the joint session. The mediator here takes into consideration emotional factors while dealing with sensitive issues at hand at a deeper level. It helps parties to realistically understand the case.

The final stage, closing, is where the parties having agreed upon the terms of the settlement re-assemble the case with their advocates and the mediator confirms the terms of the settlement orally. The terms are reduced to writing and the parties sign the agreement. A copy of the signed agreement is furnished to the parties and the original signed agreement is sent to the referral Court to pass an appropriate order by the agreement. The mediator thanks the parties for their participation and congratulates them. During all these stages the mediator should ensure that he is impartial and should create an environment where the parties are comfortable opening up. He should ask effective questions and understand the issues. The mediator should be accurate, be brief and acknowledge the problems and emotions of the parties.

### **Resolving The Matrimonial Disputes :-**

ADR system is one of the most essential and primary benefits of mediation as a mechanism for dispute settlement is that it can save a lot of time, cost, and also ensure confidentiality.

There is a mutual consensus between the parties towards reaching a solution that is acceptable to both where they can exercise some control over the resolution. Mediation is generally less stressful than the court litigation, couples are not only the ones who experience financial loss; the government and the community also incur a loss. ADR promotes finality. There is no scope for any appeal or revision or further litigation in it.

Chances also are that it can help to improve or restore the relationship because there are many such cases where the dispute is caused by trivial reasons.

Mediation is also way more participative and parties get an opportunity to present their case in their own words. It leads to better compliance as the parties themselves have agreed and signed on the settlement.

## **II. CONCLUSION**

In court litigation, couples are not only the ones who experience financial loss; the government and the community also incur a loss.

The implementation of a non-adjudicatory, non-judicial mechanism for dealing with matrimonial breakdown would compel a basic reassessment of the society's conception of divorce.

The realities of contemporary divorce — the number of cases pending and the general dissatisfaction should prompt legislative bodies to make alternative mechanisms available for divorcing couples. Finally, mediation can also lead for settling of related or connected cases.

Other areas of matrimonial disputes are in the form of denying education, exposure to child maltreatment or witnessing violence in the family, silent experience of harmful use of alcohol, attitudes accepting of violence and gender inequality.

Though there are enough laws with an object to curtail violence against women in India, it is still continuing. Hence, a comprehensive study to evaluate the effectiveness of the present statutory provisions intended to curb the menace of Matrimonial Disputes, has become the need of the hour.

The premarital counseling is required to be given through the Expert Family Counselor to teach couples information about married life, to enhance their communication skills, to encourage them to develop conflict resolution skills and to allow them to speak about certain sensitive topics.

## **REFERENCES**

- [1]. Mahatma Gandhi, The Story Of My Experiments With Truth, (CWMG, Vol.44: 190-1)
- [2]. Paul R. Amato and Juliana M. Sobolewski, The Effects Of Divorce and Marital Discord on Adult Children's Psychological Well-Being, 66 ASR 900, 900-921 (2001).



- [3]. 3.The Family Courts Act, 1984, No64, Acts of parliament, 1984 (India).
- [4]. The Code of Civil Procedure, 1908 no.5, Acts of Parliament, 1908 (India).
- [5]. Niranjana J.Bhatt, Court Annexed mediation, Law Commission of India (April. 21, 2019, 05.00 PM)
- [6]. The Hindu marriage Act, No.25, Acts of Parliament, 1955 (India).
- [7]. The Special marriage Act, 1954, No.43, Acts of Parliament, 1954 (India).
- [8]. The Special Marriage Act, 1954, No.43, Acts of Parliament, 1954 (India).
- [9]. K.Srinivas Rao v. D.A. Deepa, (2013) 5 S.C.C. 226 (India).
- [10]. Justice Manju Goel, Successful Mediation in Matrimonial Disputes Approaches, Resources, Strategies & Management, Law Faculty, Delhi University (April 21, 2019, 05.30 AM).
- [11]. Law Reform Commission, Report Alternative Dispute Resolution :Medication and Conciliation (November 2010).
- [12]. Mediation Training Manual of India, Supreme Court of India.

