



AN EXPLORATORY ANALYSIS ON THE PRACTICE OF MEDIATION IN MATRIMONIAL DISPUTE CASES IN INDIA

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ABSTRACT

In recent times mediation has emerged as a structured process of dealing with disputes amicably, especially in matrimonial dispute cases in India. This research has focused on the need to utilize the process of mediation as a progressive tool to settle matrimonial disputes amicably and to restore the sanctity of marriage, especially in Indian culture. The dispensation of justice must be beyond the reactive, adversarial, and retributive approaches and include notions such as healing, forgiveness, and reintegration. This research was exploratory in nature. Purposive sampling method, a non-probability sampling technique were adopted for the selection of samples for the study. 152 participants who attended the Mediation process at the Tamil Nadu Mediation and Conciliation Centre on the campus of the Madras High Court, Chennai have been chosen as the sample. A Structured Interview Schedule was used as the research tool to obtain primary data from the couples. The data obtained was analyzed using appropriate statistical techniques. According to the previous literature and the findings of the study, it is evident that mediation not only helps to resolve today's problems but also gives the tools required to resolve future conflicts and allows finding solutions together. Mediation moves quicker than a traditional court divorce. It allows making progress and moving forward in the timeline of the couple.



The study has found a high rate of support for mediation and there is congruence of opinions and expectations among the stakeholders involved in this study. The findings of this study are in line with other evaluations of family mediation programs which consistently concluded that the couples find better satisfaction after participating in the mediation process when compared to the judicial process.

Key words: *Mediation, Matrimonial disputes, conflict, Family*

1.0. INTRODUCTION

India has a tradition of encouragement of dispute resolution outside the formal legal system. Many of these forms exist with little change in rural India. It is one of the most important duties of a welfare state to provide judicial and non-judicial dispute-resolution mechanisms, to which all citizens have equal access for resolution of their legal disputes and enforcement of their fundamental and legal rights. The forum chosen for resolution of disputes by its subjects distinguishes the cultures of the societies. Legal history indicates that down the ages man has been experimenting with procedure for making it easy, cheap, unfailing and convenient to obtain justice. The procedure for justice is indicative of the social consciousness of the people (Supakar, 1986).

The ancient system of dispute resolution made a considerable contribution, in resolution of disputes relating to family, social groups and also minor disputes relating to trade and property. One such example is the tribunal propounded and set up by a brilliant scholar Yagnavalkya, known as Kula, which dealt with the disputes between members of the family, community, tribes, castes or races. Another tribunal known as Shreni, a corporation of



artisans following the same business, dealt with their internal disputes. Puga was a similar association of traders in any branch of commerce. These arbitral tribunals assumed the form of “Panchayats” in the villages wherein the “Panches” decided matters informally untrammelled by the technicalities of procedure and evidence (Kane, 1946). The Panches were village elders elected according to their wealth, social standing and influence in their village. Panchayat, at present, is a system of governance in which gram panchayats were the basic units of administration. It has 3 levels: Gram (village, though it can comprise more than one village), Janpad (taluka or block) and Zilla (district).

With the advent of East India Company rule in India, the British legal system was introduced in our country. They institutionalized the justice delivery system through the establishment of courts and tribunals. Subsequently inadequacy and inefficiency of the formal court system led to the development of ADR mechanisms getting recognition in India (Malhotra, 2002). In recent times, Alternative Dispute Resolution methods have emerged as one of the most significant movements as a part of conflict management and judicial reform (Agarwal, 2005). The search for efficient and better ways to resolve disputes, and the art of managing conflicts, are as old as humanity itself, yet it has only been during the last thirty years or so that Alternative Dispute Resolution (ADR) as a movement came to be embraced enthusiastically by the legal system. More recently, ADR has become institutionalized as part of many court systems and system for justice as a whole throughout the world. India has a long tradition of using Alternative Dispute Resolution processes. The Law Reform Commission (2008) defined Alternative Dispute Resolution as:



'a broad spectrum of structured processes, including mediation and conciliation, which does not include litigation though it may be linked to or integrated with litigation, and which involves the assistance of a neutral third party, and which empowers parties to resolve their own disputes'

The concept of mediation received legislative recognition in India for the first time in the Industrial Disputes Act, 1947. This Act provides the provision both for conciliation and arbitration for the purpose of settlement of disputes. Introduction of section 89 through the 1999 Amendment in the Code of Civil Procedure, 1908 is a radical advancement made by the Indian Legislature in embracing the system of "Court Referred ADR". The insertion of Section 89 is based on the recommendations of the Law Commission and the Report of the Justice Malimath Committee. The Malimath Committee while making a study on 'Alternative Modes and Forums for Dispute Resolution' endorsed the recommendations made in the 124th and 129th Reports of the Law Commission. This Section empowers the judge to refer cases to ADR processes where it appears to him that a settlement between the parties is possible. As per the Section the ADR modes are:

- Arbitration
- Conciliation
- Judicial settlement including settlement through Lok Adalat
- Mediation.

Mediation has significant potential fundamentally, for bringing about qualitative change in the focus of the legal system from adjudication to



amicable settlement of disputes. Under this section the court is under a duty to identify cases where amicable settlement of disputes is possible. The law relating to mediation in India is primarily modelled on the United Nations Commission on International Trade Law (UNCITRAL). Among the most quoted definitions is that of Folberg and Taylor (1984): It can be defined as the

'process by which the participants together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives, and reach a consensual settlement that will accommodate their needs. Mediation is a process that emphasizes participants' own responsibility for making decisions that affect their lives. It is therefore a self-empowering process'

Section 89 of the Code of Civil Procedure, 1908 has introduced the concept of 'Court annexed mediation' and 'Court referred mediation'. In court-annexed mediation, the court is the central institution for resolution of dispute and the mediation services are provided by the court as a part and parcel of the same judicial system as against Court-Referred Mediation, wherein the court merely refers the matter to a mediator.

1.2.APPLICATION OF MEDIATION IN MATRIMONIAL DISPUTE CASES

Family and marriage are the two pillars of any society and are important societal institutions. In India, traditionally and from time immemorial, marriage has been considered as sacred; and marriage for most Indians is not merely a sacrament but is sacrosanct. Once the couple enters the bond



of marriage, the relationship is considered perpetual i.e., till death does them apart. In other words, marriage used to be for life, and it worked as a bulwark against social vulnerabilities. It had an inbuilt system of checks and balances, and roles and priorities were defined by the society for the couple. What distinguished marriage in India from marriage in the West was the sanctity attached to marriage: a sense of perpetual bonding and an element of divinity in it (Ramachandrappa, 2012). Families in India are undergoing vast changes like increasing divorce and separation rates, domestic violence, inter-generational conflicts, social problems of drug abuse and juvenile delinquency. These changes indicate the inability to cope with the pressures of the modern life. In India, family disputes were resolved by the elders of the family who acted as conciliators or mediators. Even today, the elders of the family and in villages, the elder people of the village have such a role. Panchayats also perform a similar function and are preferred by villagers over courts due to their easy accessibility and prompt dispute resolution.

Matrimonial disputes may be due to any reason, but they culminate into civil or criminal proceedings. Civil proceedings in matrimonial disputes are proceedings for grant of divorce, permanent alimony, maintenance, restitution of conjugal rights, child custody, visitation rights. Whereas criminal proceedings in matrimonial disputes can be proceedings under the anti-dowry laws for prosecution of the husband under Section 498A, 406 IPC, Section 125 of CrPC, proceedings under the Domestic Violence Act etc. In 1975, the Committee on the Status of Women recommended that all matters concerning the family should be dealt with separately. The Law



Commission of India in its 59th Report (1974) had stressed that in dealing with disputes concerning the family, the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. In view of the above background, The Family Courts Act 1984 was enacted, and Family Courts (specialized civil courts) were set up to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs and disputes within the family should be solved differently from the generally adopted approach by traditional courts. Accordingly, concerned state governments established Family Courts in different parts of our country to try the matrimonial matters exclusively. Cases related to family and marriage disputes are resolved in the Family Court. The following types of cases are handled in Family Courts:

1. Dissolution of marriage, i.e. divorce-related suits
2. Suits related to restitution of conjugal rights
3. Suits related to declaration of a marriage as null and void
4. Suits regarding legality or validity of marriages
5. Suits regarding property of married couples
6. Suits related to maintenance and alimony
7. Suits related to the custody and guardianship of children.

The Supreme Court of India directed Family Courts in view of section 9 of the Family Court Act to make all possible efforts to settle matrimonial disputes especially in relation to maintenance and child custody, through the process of mediation and to refer parties to mediation centres with the consent of parties. The apex court observed that the family courts should endeavour settlement of disputes through the process of mediation even



after the filing of failure reports by counsellors. The Family Courts take the help of Counsellors in settling matrimonial disputes during trial. The Court further observed that family court should set reasonable time-limit for the completion of the mediation process by the mediation centre to not cause any further delay in resolution of disputes by the family courts and observed that they may extend the time limit for mediation proceedings.

1.3. THEORETICAL FOUNDATIONS FOR MEDIATION

1.3.1. RESTORATIVE THEORY

Mediation is based on the values of restorative justice. The term restorative justice has been defined in many ways by different scholars and practitioners. The most succinct definition of restorative justice is offered by Howard Zehr, whom many consider as the leading visionary and architect of the restorative justice movement and the Father of the Restorative Justice. His seminal book, *Changing Lenses* (Zehr, 1990), provided the conceptual framework for the movement and has influenced policy makers and practitioners throughout the world. According to Zehr,

“Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.”

According to Braithwaite and Strang (2001), restorative justice has two important aspects: first it is ‘a process that brings together all stakeholders affected by some harm that has been done’ and secondly, it denotes the ‘values that distinguish restorative justice from traditional punitive state justice’. However, Braithwaite (2003) also notes that:



'there is no blueprint for how an ideal restorative justice system should work. There are restorative values that inform a vision for reform'

Van Ness and Strong (1997) articulate three core principles which suggest more specific standards and provide independent and compatible dimensions for assessing what might be called the "restorativeness" of any justice intervention (Bazemore and Schiff, 2005).

- a. *The Principle of Repair:* Justice requires that we work to heal victims, offenders and communities that have been injured by crime. The primary *goal* for any restorative intervention is to repair, this harm.
- b. *The Principle of Stakeholder Involvement:* Victims, offenders and communities should have the opportunity for active involvement in the justice process as early and as fully as possible. The principle of stakeholder involvement is focused on the *goal* of maximizing victim, offender and community participation in decision-making related to the response to crime.
- c. *The Principle of Transformation in Community and Government Roles and Relationships:* We must rethink the relative roles and responsibilities of government and community. In promoting justice, the government is responsible for preserving a just order, and community for establishing a just peace (Van Ness and Strong, 1997).



Zehr (2002) identified three principles of restorative justice in addition to the identification of three stakeholders. The first, harms and needs, focuses on the importance of identifying victims' needs first and foremost. The objective is to repair harm as much as possible using both symbolic and concrete methods. This means that victims' needs should be considered even when there is no offender identified. The second principle described by Zehr (2002) is that harm results in obligations, which means that the offender's accountability and responsibility should be a main focus of restorative interventions. Rather than the retributive stance in which accountability equals punishment, restorative principles infer that offenders must be held accountable in order to better understand the harm caused so they may take responsibility and make amends. Finally, the third restorative principle described by Zehr (2002) is that interventions should promote engagement by the stakeholders; those affected by the crime should have a role in the justice process. In some cases, this means dialogue between parties; in others indirect communication or other involvement is suggested.

1.3.2. PROCEDURAL JUSTICE THEORY

Procedural justice research suggests that there is another possible route to effective social regulation besides punitive punishment (Tyler & Huo, 2002). This route involves treating people with procedural justice and respect. When people are so treated, they view law and legal authorities as more legitimate and entitled to be obeyed. As a result, people become self-regulating, taking on the personal responsibility for following social rules. This approach has been labeled a process-based model of regulation. These procedural justice findings can be put within a larger framework of social



engagement, in which we seek to understand how to constructively engage people in society and social institutions. Research suggests that the key to doing so is to create groups, organizations, and societies within which people experience procedural justice (Tyler & Blader, 2000; Tyler & Huo, 2002). Two types of procedural justice are key: justice in the quality of decision-making procedures and justice in the quality of treatment that people receive from others. When people experience these forms of justice, they are found to accept social rules, and voluntarily engage in self-regulatory behaviour (Tyler & Blader, 2000; Tyler & Huo, 2002). The importance of procedural justice research is that its findings point to the potential viability of models of regulation that rely upon self-regulatory motivations. Research suggests that people will obey laws, without the threat of sanctions, when they experience the criminal justice system and its authorities as acting justly.

1.3.3. FAMILY SYSTEMS THEORY

Murray Bowen's family system theory describes important aspects of family and human functioning through a systemic lens, one that views human behaviour through an intricate web of emotional processes linked to that of all living systems (Bowen, 1971). While Bowen Theory was initially developed as an alternative, comprehensive, and systemic understanding of families, its unique perspective on humans and human behaviour as a function of both interpersonal and intrapersonal forces has led to the theory's application and expansion beyond the family to other complex, human interactions. This theory can be applied to another area of human interactions, namely, conflict resolution through mediation. Bowen Theory offers a profound way to conceptualize both the process and the content of the mediation experience. The emotional functioning of the



system's leadership is the single most important variable for effective functioning of the system and in mediation, the mediator is the leader.

One of the hallmarks of Bowen Theory is the notion that humans are social animals who have developed the capacity to move beyond their systems 'programming' and respond thoughtfully rather than instinctively (Friedman, 1991). While humans have this capacity for independent response, Bowen said that in a stressful and thus emotional times, it must be carefully cultivated or else we are likely to react reflexively rather than respond creatively, with mindfulness. He defined this capacity for greater self-determination as differentiation. In mediation, disputant's differentiation levels, that is, their capacity to think clearly and thoughtfully or react more automatically and defensively is significant factor regarding success. The mediator's differentiation level, or ability to self-soothe and self-regulate is an even more important variable in mediation. Differentiation can be conceptualized on a theoretical scale from 0 to 100 (Kerr and Bowen, 1988) with 0 representing a person without any sense of self, capacity to self-regulate, or ability to relate to others and 100 on the scale represents a person who can fully self-regulate, has a completely developed sense of self, and can relate to all people under all circumstances. Even the most self-differentiated humans are likely to only approach 65-75 on this theoretical scale.

Another concept of Bowen Theory that is relevant to mediation is that of the emotional triangle. The sides of the triangle are conduits through which the emotional energy or anxiety flows. The distance or closeness between any two people in an emotional triangle designates which two are on the inside position of the triangle and which one is on the outside position of



the triangle. Those on the inside position keep their closeness by keeping the third out. If conflict or tension increases between two individuals on the inside position of an emotional triangle, one person may move closer to the person on the outside position of the triangle to reduce conflict. This creates a new inside position with the third person, originally on the inside, now on the outside of the triangle (Kerr and Bowen, 1988). The emotional energy flowing through emotional triangles is chronic anxiety. When chronic anxiety attaches itself to a person, object, substance, symptom or idea, it is called anxiety binding. Anxiety binders are ways in which people who get reactive with one another stay connected through their attachment to the conflict.

The parties in mediation are triangulated by the conflict and their positions. The emotional flow of anxiety is bound up in the issue, person, or thing being mediated. The issue, person, or thing, then becomes the anxiety binder for the parties. In mediation, each party is usually vying for the inside position of the triangle with the third point of the triangle, the issue or dispute itself, as the anxiety binder. The stronger the degree of attachment or fusion with the anxiety binder, the more the person's self is wrapped up in and invested with the anxiety binder, which, in turn, makes it more difficult to reach a mediated solution. Positions become hardened and impassable are more likely (Regina, 2011).

1.4. SIGNIFICANCE OF THE STUDY

The human mind is very complicated to understand. Especially when it comes to marital problems, it is always difficult to understand the problem, find a solution or seek an alternative way of resolving the issue. When



these disputes leave the private sphere and enter into the public domain through courts to find solution, the court respects the decision of the parties and handles these disputes delicately. Mediation has significant potential, for bringing about qualitative change in the focus of the legal system from adjudication to amicable settlement of disputes. As the field of mediation continues to evolve and develop all over India, evaluating the functioning of the mediation process is essential and becomes an important indicator of its acceptability by the society. It helps to identify problems and needs from the perspective of the parties attending the mediation. Mediation is a dynamic process and understanding its different dimensions is essential to make the system more responsive to the needs of the parties. The dispensation of justice should be beyond the reactive, adversarial and retributive approaches and must include notions such as healing, forgiveness and reintegration. This study plans to assess the functioning of mediation process at the Tamil Nadu Mediation and Conciliation Centre and whether it fulfills as a competent alternative dispute resolution mechanism.

1.5. STATEMENT OF THE PROBLEM

The success of Mediation derives from the mutual understanding between the couples as well as the inherent flexibility and creativity of the agreements reached during the process. Assessment of the Mediation process, particularly in the context of the growth of Alternative Dispute Resolution mechanism has been an important aspect of the development of the process (Sourdin, 2005). Assessment is crucial in order to meet the growing demands for accountability and improved services. The researcher intends to find out whether the Mediation serves the purpose of



settling the disputes amicably and delivering justice promptly. The following objectives were formulated for the present study.

1.6. OBJECTIVES OF THE STUDY

1. To study the role of mediation in amicable settlement of disputes.
2. To explore the effect of Mediation on the healing of relationship through the level of understanding reached between the parties.
3. To examine the outcomes of the Mediation process in terms of the agreement.
4. To analyse whether the participation of the parties in the judicial process through Mediation helped them attain justice.

1.7. RESEARCH QUESTIONS

Based on the major exploratory areas of investigation and in the absence of empirical studies available in the area of research -practice of Mediation in matrimonial dispute cases, the following research questions were formulated, which the study has attempted to answer:

1. What are the reasons for participating in the mediation process?
2. Did Mediation process help the parties to discuss the core issues of the dispute amicably?
3. What is the outcome of the mediation process in matrimonial dispute cases?



4. What is the level of understanding between the parties after participating in the mediation?
5. Did the parties feel that participation in the judicial system helped them to attain justice?
6. Would the parties consider Mediation over adjudication in the future?
7. Is there a significant association between the outcome of the mediation and participation in the judicial process?

2.0. RESEARCH METHODOLOGY

This research was an exploratory form of research to foster an understanding about what lies behind a phenomenon that has not been examined much at the time of research. The main aim of the study is to explore the potential of the mediation process in resolving matrimonial dispute cases in the Tamil Nadu Mediation and Conciliation Centre and the role of the mediators in facilitating the process. The outcome of this study therefore forms the basis for further research as there is no previous empirical research on mediation in India on the subject. As the study also attempts to describe systematically the services of the mediation process, it is descriptive in nature.

2.1. POPULATION AND SAMPLE

The population of the study is the couples who attended the Mediation program to resolve matrimonial disputes at the Tamil Nadu Mediation and Conciliation Centre in the campus of the Madras High Court, Chennai. The study was conducted at The Tamil Nadu Mediation and Conciliation Centre set up by the Madras High Court in the High Court campus to facilitate the



settlement of disputes pending in courts. It has a panel of trained mediators who mediate the cases referred by the Court. The Tamil Nadu Mediation and Conciliation Centre was the first mediation centre of India inaugurated by Justice Y.K. Sabharwal, judge of the Supreme Court at the Madras High Court campus on 9th April 2005. Mr. Justice Markandey Katju,

Former Chief Justice of the Madras High Court, to whom the centre owes its creation, refers to mediation as the need of the hour (Panchu, 2003). This centre is mainly created to implement section 89 of the Code of Civil Procedure. The centre becomes the first of its kind in the country, a court-annexed mediation institution. Appropriate cases for referral include commercial and contractual matters, family and personal disputes, property and partition issues, and several others. All cases are registered at the concerned courts only. When the trial proceedings are initiated, if the Judge finds a ground for mediation, he / she immediately seeks the consent of the parties to try a mediation session and directs the case to the centre which are normally to be conducted within 60 days and sometimes even 90 days if the mediator is able to give an explanation that the case needs more time to reach an agreement. Once the case is referred to the centre, a date and time for the session are fixed and mediators are allotted. The court will pass enforceable orders in terms of the agreement reached. If no agreement is reached, the case will go back to court.

According to Mrs, Uma Ramanathan, Organizing Secretary and a trained Senior Mediator, The Tamil Nadu Mediation and Conciliation Centre, there are 160 trained mediators in Chennai and 965 Mediators trained throughout the state. 20 trainers have travelled throughout India to impart



mediation skills and 32 programmes were conducted for referral judges. The sample of the study includes the couples who attended the Mediation program to resolve matrimonial disputes at the Tamil Nadu Mediation and Conciliation Centre in the campus of the Madras High Court, Chennai. Purposive sampling method which is one of the non-probability techniques for sampling was adopted for the selection of samples for the study. 152 participants who attended the Mediation process (about 5% of the population at the Centre were chosen as the sample size.

2.2. DATA COLLECTION

Data was collected through primary as well as secondary sources to understand the research problem. Data collected from secondary sources such as statistics obtained from the court records at the Tamil Nadu Mediation and Conciliation Centre, Books, Journals, News Papers, and Websites were utilized in this study. A Structured Interview Schedule was the research tool used to obtain primary data from the couples keeping in view the basic objectives and the major variables of the study. The interview schedule contained a predetermined set of questions, open ended as well as closed, in a face-to-face interaction which the researcher used to investigate core opinion areas of Mediation on the couples involved in matrimonial disputes. These core areas include reasons for participating in Mediation, role of mediators, healing of relationship, outcome of Mediation process and participation in judicial process.

Questions related to healing of relationship were derived from a standardized scale called The Victim Satisfaction with Offender Dialogue Scale (prepared by Mark S. Umbreit and William Bradshaw in 2000). The



use of this scale can encourage more specific feedback from participants in mediated dialogue that can be used to maintain and improve the quality of program services. The Victim Satisfaction with Offender Dialogue Scale (VSODS) is a short 11- item scale. It can differentiate satisfaction along multiple dimensions which include restitution, experience of the judicial system, and experience of the mediation. This scale was used for the study as it is a useful measure of general satisfaction with mediated dialogue services. Coefficient alpha for the VSODS was .87. It has a high degree of internal consistency and has been used in a four site United States victim satisfaction study. Open –ended questions can be added to the measure if programs need specific information on other topics. The interview schedule for the parties for the study consisted of 48 items broadly divided into four sections, namely, socio- demographic details of the respondents, healing of relationship, outcome of the Mediation and participation in the Judicial process.

The mediation process was assessed using four sub-scales:

1. ***Healing of relationship*** between the couples was measured by thirteen statements (Cronbach's alpha= .922).
 - Able to express feelings and concerns in the session
 - Helpful to talk about the dispute directly to the spouse
 - Helpful to meet the spouse
 - Reduced fear that the spouse may create problem
 - Got sufficient time to talk in the sessions
 - Spouse showed understanding about the dispute



- Better understanding of the dispute
- Amicable discussion of the core issues of the dispute
- Felt safe while participating in the session
- Meeting reduced the level of pain
- Felt better after meeting the spouse
- Attitude towards the opposite party after the mediation
- General atmosphere during the sessions

Outcome of the mediation process was measured by eight statements (Cronbach's alpha= .832).

- Happy with the agreement
- Happy with the outcome of the case
- Happy with the mediation centre
- Happy with the mediation process
- Agreement reached with the opposite party
- Favourable outcome
- To recommend mediation to others
- Rate the results of the mediation process

2. **Participation in the judicial process** was measured by seven statements

(Cronbach's alpha= .849).

- Participation made Judicial process more responsive to your needs
- Received justice as a victim



- Mediation saves time
- Mediation saves money
- Happy to participate in the Judicial process
- Happy to involve in the decision-making process
- Preference for which process

2.3. LIMITATIONS OF DATA COLLECTION

- ❖ Data from the court records are efficient means of gathering important secondary data. However, access to the records was limited and refusal to allow access to certain portions of the data occurred.
- ❖ During data collection, the researcher did not get cooperation from all the couples at the mediation centre. Owing to lack of time, their disturbed state of mind and lack of trust in confiding personal details to the researcher, several couples refused to take part in the study.
- ❖ It was not possible to secure control groups of the couples who participated in the conventional adjudication process as permission from the higher authority was not given for the same.

2.4. DATA PROCESSING AND ANALYSIS

A pilot study with a sample size of thirty was done prior to the main study with a view to establish the reliability of the interview schedule. Necessary modifications were carried out in the interview schedule based on the pilot study. A research tool or instrument will be considered as reliable if that tool is consistent and stable and hence, predictable and accurate. In this study, in order to establish the reliability of the tool, Cronbach's Alpha (α) value for the interview schedule was calculated and the value was found to



be 0.822. The validity of the tools was determined by face validity method wherein the tool was given to experts in the field of criminology, penology, social work and other allied fields. These experts examined the items in the tools and made some corrections and modifications. Thus, the ability of the tools to elicit correct responses, the validity, was confirmed.

After establishing the reliability and validity of the tool, the main study was conducted. The Structured interview schedules administered to the couples who had approached the Tamil Nadu Mediation and Conciliation Centre, Chennai were taken for the final analysis. The responses obtained were coded according to the respective variables and entries were made in using the IBM SPSS version 20 (Statistical Package for Social Sciences). The statistical measures used were descriptive statistics- frequencies, inferential statistics – Chi square test of independence and Spearman's correlation.

3.0. RESULTS

The major findings of the study are discussed below:

3.1. DEMOGRAPHICS OF THE RESPONDENTS

The sociolect-demographic profiles of the 152 respondents who had approached for mediation in the Tamil Nadu Mediation and Conciliation Centre have given us an insight into their lives. The fact that 51% of the respondents belong to the age group 26-35 years coupled with the fact that 33% have just had a marital duration of 4 to 7 years implies that divorce rates in the younger population are rapidly rising within a short span of marriage. Most parents in mediation did not have a high level of formal education. A majority of the respondents follow Hinduism, and they belong to the nuclear family structure. Considerable percent of the respondents



are educated at least with a higher secondary certificate. Majority of the respondents does not have children, and this could be a contributing factor for the rise in divorce cases.

3.2. REASONS FOR PARTICIPATION IN THE MEDIATION PROCESS

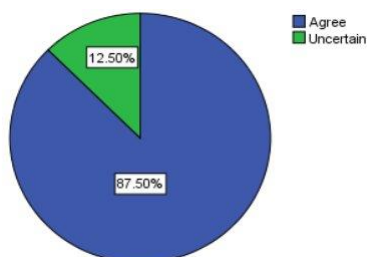
A majority of the respondents participated in the mediation to understand exactly the underlying causes of the dispute, to receive justice quickly in a harmonious manner and to receive financial compensation. This finding is important as it is apparent that the parties look beyond the case and look for long-term healing. Umbreit et al., (2003) listed reasons for participation in the mediation process which includes: “to seek information, to show offenders the impact that they have done, to have a human face-to-face interaction with the offender, to hold the offender accountable, to advance their own healing, to prevent further crime, to express forgiveness”. 82% of the respondents said that their cases were referred by the Court and all the participants voluntarily participated in the mediation. This is very interesting because shows that people are eager to explore new ways for dispute resolution rather than the conventional adjudication process in order to resolve cases quickly. According to Stuart (1997) voluntary participation ensures a higher degree of cooperation from the participants and a willingness to create an outcome appropriate for all involved. This finding is in consonance with several studies (Latimer et al., 2001; Umbreit et al., 2004). 80% of the respondents approached the centre for divorce and 13% for settlement of money post-divorce.

3.3. AMICABLE SETTLEMENT OF DISPUTE THROUGH MEDIATION



Mediation helps to identify the disputed issues and to generate options that help couples to reach a mutually satisfactory resolution. Through mediation, many angry couples learn to put their anger aside so they can reach a settlement that is truly in their best interests and not one that satisfies a need for revenge or punishment. It is a relatively flexible process; and any settlement reached should have the agreement of all parties. The pie chart below shows the frequency of the parties who had amicable discussion of the dispute. It reveals that 87% of the respondents agree that they had amicable discussion of the core issues of the dispute and 12% were not certain about it.

Figure1-Amicable discussion of the dispute.



In mediation, the couples deal with the problems and issues under dispute in a timely fashion and in privacy. It is a cooperative rather than an adversarial process, so couples are often able to repair their strained relationships. When they develop their own solutions, it reflects in their satisfaction with the outcome and these resolutions tend to be workable and long lasting. According to Umbreit (1997), most conflicts develop within a larger emotional and relational context characterized by powerful feelings of disrespect, betrayal, and abuse. Lund (2000) has shown that training to understand and manage strong emotions helps a mediator build



tolerance for expression of emotion, reduction of stress, increased patience and promotion of settlement.

3.4. HEALING OF RELATIONSHIP

Mediation is ideal when the couples in dispute need a way to communicate to find solutions, in order to balance future plans with practical decisions. The couples need to listen to each other's point of view without interruption, identify issues which need to be resolved, share relevant information explore ideas and options, test possible solutions, put decisions and agreements in writing. The table below shows the level of understanding between the couples after participating in the mediation.

Table 1 -Level of understanding between the couples after participating in the mediation.

<i>Sl. No.</i>	<i>Variables</i>	<i>Strongly Agree</i>	<i>Agree</i>	<i>Uncertain</i>	<i>Disagree</i>	<i>Strongly disagree</i>
1.	Able to express feelings and concerns in the session	44	107	1	-	-
2.	Helpful to talk about the dispute directly to the spouse	4	106	27	15	-
3.	Helpful to meet the spouse	2	113	26	11	-
4.	Reduced fear that spouse may create problem	2	107	33	10	-



5.	Got sufficient time to talk in the sessions	4	148	-	-	-
6.	Spouse showed understanding about the dispute	2	84	51	15	-
7.	Better understanding of the dispute	2	143	7	-	-
8.	Felt safe while participating in the session	4	142	6	-	-
9.	Meeting reduced the level of pain	4	107	36	5	-
10.	Felt better after meeting the spouse	4	102	29	17	-

One of the main objectives of the mediation process is healing and preservation of relationships. When approaching the court, couples tend to have feelings of hatred, animosity between them which gets worsened with the involvement of parents as well as the counsels representing them. There are times when the court witnesses bitter arguments between the parties and their families which may even get physical, and the matter goes out of control. The role of the court ends with the judgment and animosity prevails within the couple throughout their lives. If children are involved, it does have a huge impact on them and even affects them psychologically. Mediation can play an important role and helps the couple to co-exist in society.



Mediation is the steppingstone towards healing wounds and it helps them to co-exist for the better upbringing of their children. Majority of the couples had amicable discussions, though there was display of emotions and they had a better understanding of the dispute post mediation.

According to Daly and Immarrigeon (1998) restorative justice “emphasizes the repair of harms and of ruptured social bands resulting from crime; it focuses on the relationships between crime victims, offenders and society.”

It allows for the process to heal the parties involved and creates a sounding board for meaningful reparation, rather than meting out abstract punishments that are entirely unrelated to the offence committed. It should be noted that the process itself is intended to be restorative, not only the end result; the reparative effect of the voluntary nature of the process and opportunity for participants to actively partake in the distribution of justice should not be underestimated. The general atmosphere during the sessions for most of the couples was quite friendly which reassures the fact that mediation has a positive impact irrespective of the final agreement.

3.5. OUTCOME OF MEDIATION

Mediation attempts to change disputes from “win-lose” to “win-win”. Mediation is a non-adversarial process of helping people come to agreement on issues like divorce, parenting arrangements, support of children and spouses etc. The table below shows the responses from the couples on the outcome of the mediation process.



Table 2: Outcome of the Mediation process in matrimonial dispute cases - I

<i>Sl.No.</i>	<i>Variables</i>	<i>Strongly Agree</i>	<i>Agree</i>	<i>Uncertain</i>	<i>Disagree</i>	<i>Strongly disagree</i>
1.	Happy with the agreement	11	119	14	8	-
2.	Happy with the outcome of the case	9	121	21	1	-
3.	Happy with the mediation centre	17	132	3	-	-
4.	Happy with the mediation process	81	60	11	-	-

Majority of the respondents were happy with the agreement. It is evident that majority of the respondents agree that their views were considered for the agreement. Majority of the respondents were happy with the outcome of the case. 86% of the respondents were happy with the services rendered at the mediation centre. The above table reveals that majority of the respondents agree that they were happy with the mediation process.

Table 3: Outcome of the mediation process in matrimonial dispute cases - II

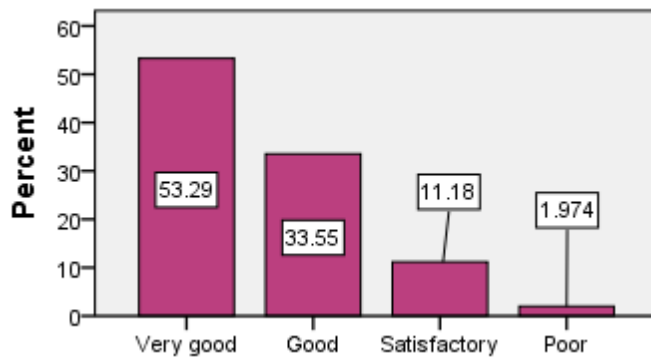
<i>Sl.No.</i>	<i>Variables</i>	<i>Yes</i>	<i>No</i>	<i>Not Sure</i>
1.	Agreement reached with the spouse	103	49	-
2.	Favourable outcome	109	43	-



3.	To recommend mediation to others	149	-	3
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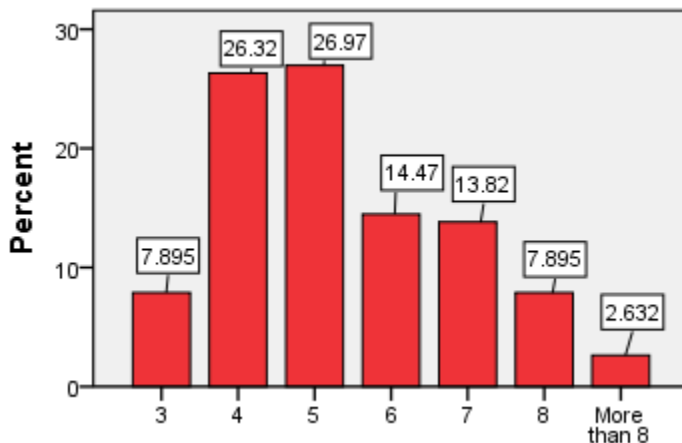
Majority of the participants had come to an agreement with the spouse and agree that the agreement was favourable to them. 98% of the respondents had suggested that they will definitely recommend mediation to others.

Figure 2: Rate the results of the mediation process



45% of the respondents rated the mediation process as very good, 80% rated the process as very good, 20% rated as satisfactory.

Figure 3: Number of sessions





It took around 4-5 sessions for nearly half of the respondents to reach an agreement with the opposite party. 22% of the respondents took 6 sessions, 21% took 7 sessions to reach an agreement.

Mediation is about finding solutions. It's about facing the issues and challenges and dealing with the practicalities of family life. The couples often come up with unique and creative outcomes that offer the very best compromise. Mediators use a variety of negotiating techniques to help spouses reach a mutually agreeable solution to their differences. The final decisions are the spouses', not the mediator's because both have had a say in how to deal with the issues that are important to them. When a case settles at mediation, the mediator helps the parties to write an agreement. Thus, Mediation is a process that may help the parties to the dispute to resolve their case so they can have an opportunity to unite again or to have a divorce by mutual consent without hurting the sentiments. Mediation is particularly useful in situations involving children since it is in the interests of the children that their parents "get along" even if they will no longer live together as husband and wife.

3.6. PARTICIPATION IN THE JUDICIAL PROCESS

Many parties had their share of bitter experiences at the trial process in the court. So, Mediation was a refreshing approach for most parties. Majority of the parties were happy to involve in the decision-making process of the criminal justice system. They felt that they have received fair and impartial treatment and they had received quality justice irrespective of the final judgment. They agreed that mediation does save time and money and recommended mediation process at the pre-litigation stage.



Table 4: Participation in the Judicial process

<i>Sl. No.</i>	<i>Variables</i>	<i>Strongly Agree</i>	<i>Agree</i>	<i>Uncertain</i>	<i>Disagree</i>	<i>Strongly disagree</i>
1.	Participation made judicial process more responsive to your needs	12	137	3	-	-
2.	Received justice	10	119	23	-	-
3.	Mediation saves time	92	50	10	-	-
4.	Mediation saves money	92	50	10	-	-
5.	Happy to participate in judicial process	61	80	11	-	-
6.	Happy to involve in the decision-making process	61	76	15	-	-

The above table shows that majority of the respondents agree that participation made the criminal justice system more responsive to their needs. 78% of the respondents agree that they received justice for their case and 15% were not certain about it. Majority of the respondents agree that they were happy to participate in the criminal justice system through mediation process. Majority of the respondents agree that mediation saves time and money. Majority of the respondents were happy to participate in the decision-making process for their own case. 95% of the respondents stated that they preferred mediation over adjudication.



3.7. IS THERE A SIGNIFICANT ASSOCIATION BETWEEN THE OUTCOME OF THE MEDIATION AND PARTICIPATION IN THE JUDICIAL PROCESS?

- ✧ There is a significant association between Understanding between the parties and outcome of the mediation with a statistical significance of $\rho = .820$ and $p < .01$.
- ✧ There is a significant association between Outcome of the mediation and participation in the Judicial process with a statistical significance of $\rho = .797$ and $p < .01$.
- ✧ Majority of the respondents whose case ended in an agreement were happy with the mediation process with a significance of calculated chi-square value (25.018) for df 2, found to be significant at level of $p < .01$.
- ✧ There is a significant association between agreement reached with the spouse and happy to involve in the decision-making process. Majority of the respondents whose case ended in an agreement was happy to involve in the decision-making process with a significance of calculated chi-square value (19.013) for df 2, found to be significant at level of $p < .01$.
- ✧ There is a significant association between agreement reached with the spouse and happy to participate in the Judicial process. Majority of the respondents whose case ended in an agreement were happy to participate in the Judicial process with a significance of calculated chi-square value (11.868) for df 2, is found to be significant at level of $p < .01$. There is a significant association between agreements reached with the spouse and received justice.



- ✧ Majority of the respondents whose case ended in an agreement agreed that they received justice with a significance of calculated chi-square value (24.602) for df 2, found to be significant at level of $p < .01$. There is a significant association between agreements reached with the spouse and amicable discussion of the core issues of the dispute. Majority of the respondents whose case ended in an agreement agreed that they received justice with a significance of calculated chi-square value (45.644) for df 1, found to be significant at level of $p < .01$.

There is a significant, positive and strong correlation between outcome of the mediation and participation in the judicial process. This implies that participation in the judicial process had yielded positive outcome in the mediation process. Parties were happy to involve in the decision-making process in their own cases. This is one of the main reasons for them to be content with the mediation process. The significant association between the agreement reached and justice received implies that when settlement was reached, the parties felt that they had received justice. If mediation is successful, the decisions taken by the parties are usually put in writing.

The counsels of the parties assist in ensuring that the content and wording of this agreement are compatible with all applicable laws. The significant association between the agreement reached and happy to involve in the decision-making process mean that the parties whose cases ended in agreement were happy about the mediation process as well as contented to involve in the judicial system by taking final decisions in their own cases through mediation process. In the adjudication process, the parties were not given an opportunity to share their views in the final decision given by



the judge. This is one of the main reasons for the parties to choose mediation over the litigation process.

Mediation as a method of alternative dispute resolution ensures wide access to justice for all sections of the people. It gives people an involvement in the process of resolving their disputes that is not possible in public, formal and adversarial justice system perceived to be dominated by the abstruse procedure. It offers choice: choice of method, of procedure, of cost, of representation, of location.

4.0. OVERALL DISCUSSION

Mediation has risen in popularity in recent years as an alternate mode of dispute resolution between parties looking for a quick, cost effective and confidential process and outcome. Mediation Centres have now been established at many courts and the courts have started referring cases to such Mediation Centres. It is a process in which the parties have a direct, active and decisive role in arriving at an amicable settlement of their disputes. The focus is on resolving the dispute in a mutually beneficial settlement. A typical mediation process includes preparatory phase where the mediator first meets with each party separately before bringing them together in order to “listen to their story of what happened, to explain the program, to invite their participation, and prepare them for the meeting. The mediator’s separate advance meeting with the parties enables him to get information about the issue, to establish rapport, and to understand the behaviour of both parties ahead of time. The third phase i.e., the mediation phase, the heart of the mediation process, which involves the joint meeting, and focuses on the discussion about the particulars of the dispute and



hearing of the parties` feelings. It is the “story telling” stage in which the parties are given an opportunity to present their version of the events. The disputant is able to let the opposite party to receive answers to questions he/she may have, and the opposite party is able to know the full impact of his\her action, to take direct responsibility for his\her behaviour and express remorse, and to participate in the determination of a plan for making amends. The third stage of Mediation usually culminates in the parties reaching an agreement to restore losses incurred in the form of the offender`s punishment, and how and in what modality he\she can repair the harm caused by his/her wrong. The final phase involves the follow up and enforcement of any negotiated reparation agreement by the mediator or the court and intervening if another conflict arises between the parties in the meantime (Ness and Strong, 2010).

It is mandatory in India to refer parties to Mediation Centres to settle disputes through settlement under mediation. Majority of the cases of the parties chosen for this study were divorced. Most couples would probably express a preference for this type because of its speed, simplicity, convenience, privacy, and inexpensiveness. The court also sometimes uses the discretionary power and refers the cases of Divorce by mutual consent to the centre to give another chance for the couples to reconsider reconciliation. There are instances where the couples in divorce cases reunite after numerous sessions of intense discussion of the core issues underlying the dispute with the help of the mediator and they take pride in such reunions. Parties find mediation useful for negotiation of monetary settlement as they have a say in it unlike in the adjudication process.



Further, couples with children discuss about visitation rights in these sessions too. Another interesting observation from the field is that in the adjudication process, generally children are avoided and fathers in most of the cases hardly get to see their children, in few cases, more than two years. But during mediation, it is made possible with the help of the mediator and reunion of the father and child often triggers positive progress of the case. There are instances where the couples in divorce cases reunite after numerous sessions of intense discussion of the core issues underlying the dispute with the help of the mediator and they take pride in such reunions. Parties find mediation useful for negotiation of monetary settlement as they have a say in it unlike in the adjudication process.

In mediation, the parties in dispute retain the right to decide for themselves whether to settle a dispute and the terms of any settlement. It is essentially a negotiation process where the mediator merely facilitates an amicable settlement between the parties. Historically, it has been observed that the parties tend to honour the terms of settlement reached in the process of mediation as such terms of settlement are decided by the parties themselves. It is not in the nature of adjudication by a court of law, but rather a middle path of understanding decided by the parties for their mutual benefit. The mediator therefore is required to ensure that the parties have an in-depth understanding of their case. There is ample time for analysing the facts and law, identifying underlying interests, exploring options and negotiating extensively. However, the mediator is a facilitator and does not exercise authority. If the case settles, the terms are what the parties have decided. It is their chosen action. However, if the parties



decide not to settle and return to court they are doing so after understanding their case, its strengths, weaknesses and the consequences of failing to settle and returning to court. This is again an informed choice and litigation becomes a chosen action and not a spontaneous reaction to conflict (Ollapally, 2012).

The main objective of this research is to assess the effect of mediation in resolving matrimonial dispute cases. Studies on effectiveness of any initiative should be evaluated periodically to ascertain its successful implementation and help the policy makers improve the existing victim reforms. Effectiveness is generally measured through satisfaction with both the process and the outcome, perceptions of Fairness regarding both, attitude towards the spouse and Agreement completion. Mediation helps in focusing on the core issues of the dispute and in solving them. Since, communication is the core of mediation. Communication between all the participants in mediation is necessary for the success of mediation. Communication between the couples helps in clarifying the misunderstandings which may sometimes lead to the reunion of the couple or help them develop a mutually feasible agreement. This helps them in their healing process and returning their lives back to some form of normality.

The study found a high rate of support for mediation and there are congruence of opinions and expectations among the stakeholders involved in this study. The findings of this study are in line with other evaluations of family mediation programs which consistently concluded that the couples are better off after participating in the mediation process when compared



to the judicial process. The Tamil Nadu Mediation and Conciliation Centre in the campus of the High Court of Madras since its inception has been trendsetter for many High Courts in India. The Centre with its dedicated team of experienced trained mediators and the efficient administrative unit is indeed working towards accomplishing its mission to achieve inexpensive and expeditious justice through amicable settlement of disputes and thereby maintain peace and harmony in the society.

The success of mediation derives from the mutual understanding between the parties as well as the inherent flexibility and creativity of the agreements reached during the process. Periodic evaluation is crucial to meet growing demands for accountability and improved services. The researcher has identified the gaps in the functioning of the mediation process based on the previous and the current research findings and theories supporting the mediation process. The focus of the research was to assess the functioning of the mediation process in matrimonial dispute cases. The practice of mediation is yet to evolve throughout India and periodic assessment must be done to improve the process continuously. Future research will be directed toward studying the contributing factors leading to the success/failure of mediation.

- Research on the opinions of the higher judicial officers, lawyers, police personnel, and policy makers must be done as their decisions and action/inaction can have a significant impact on the development and implementation of the mediation process.



- In-depth qualitative analysis of the mediators, the influence of training, their personality, style, skills and their experiences need to be conducted.
- Research must be done on the causes and consequences of failed mediation and study the causes leading to failed mediation.

5.0. CONCLUSION

In a country where marriage is a cornerstone of family life, there has long been a deep social stigma associated with divorce. The older generations generally discourage the legalization of marital separation, and many couples who have been separated for years and do not live together are still not officially divorced. Because of societal shame, divorce has been so scorned or whispered secret, especially among India's older generations. However, with economic prosperity, increased ego between the partners and professional competition, the number of divorce cases is increasing in India. Recently, young married couples have stopped giving value to marriages and for petty reasons, their marriages fall apart. Anger and disappointment are common feelings that may arise during divorce negotiations. In fact, the parties often have a hard time communicating with each other about settling divorce issues such as division of property, child custody, visitation and spousal and child support issues. Besides seeking the support of family, friends and professional advice, some couples are opting for divorce mediation to resolve their divorce issues in order to avoid the stress of a costly and lengthy divorce trial (Provdá, 2013). Many couples are happy to resolve problems about finances and



children via mediation. Since it focuses on the future rather than the past, allowing both to reach a compromise which is considered just and fair.

Mediation teaches the parties to communicate and to work through their issues productively. Therefore, mediation is appropriate in family related matters because it encourages collaborative problem solving by the parties.

Mediation offers an environment well-suited to identifying and addressing the strong emotional issues associated with divorce and parenting conflicts. It is structured to focus parties attention on a common interest: the resolution of the disputed issues and when children are involved, the future of their children. The informality and flexibility of the mediation process allows issues to be discussed that might otherwise be raised in a more adversarial or narrowly focused process.

6.0. RECOMMENDATIONS

The researcher suggests the following to improve the mediation process and they are given below:

- Proper awareness of the mediation process in judicial officers and the police is important in order to convince them to refer more cases to mediation at pre-litigation stage which can be through periodic training, organizing seminars, workshops and information meetings.
- Careful selection and periodic training of the mediators to update them with new conflict resolution techniques.



- Raising public awareness among citizens through mass-media by way of regular articles, producing educational programs and broadcasting them on TV and radio.
- Introducing the subject of mediation and incorporating it in the course curriculum for Law, Social Work and Psychology.
- Inclusion of a trained social worker or a psychologist specialized in handling relationship conflicts, in the mediation process to assist the couples.
- Introducing Family group conferencing and other models of restorative justice in the judicial system to increase the social and moral responsibility of the society.
- Organizing regional, national and international conferences with opportunities to gather all key stakeholders in the field of mediation to discuss the current practices, issues, challenges, shared experiences and develop innovative strategies for the development of mediation process in India.
- Introducing the practice of mediation or any other accepted restorative programme/ ADR method in the Indian judiciary like family conferencing, sentencing circles and its implementation for IPC crimes (excluding violent cases) and juvenile delinquency cases.
- Conducting research and continuous assessment as tools for further implementation to develop mediation based on local cultural traditions.



- Drawing up a national plan for making mediation a regular and recognized alternative disputes resolution process, and provide for inclusive participation of lawyers, judges, NGOs and social workers in the process of mediation.
- Providing for the establishment of mediation centers in all districts with necessary infrastructure.
- Updating the mediation training manual annually and including aspects of training and awareness for the mediators, judicial officers, and lawyers.

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