NATIONAL JUDICIAL ACADEMY, BHOPAL

CONFERENCE FOR DISTRICT JUDICIARY ON MATRIMONIAL LAWS (P-1317)

20TH NOVEMBER, 2022

'OPTIMAL APPROACHES FOR ADJUDICATING FAMILY DISPUTES'

ENCOURAGING MEDIATION IN FAMILY DISPUTES: ROLE OF REFERRAL JUDGES

PRESENTATION BY
JUSTICE SUDHIR KUMAR JAIN
JUDGE
HIGH COURT OF DELHI

- DISPUTES IN HUMAN LIVES NATURAL,
 NORMAL, INEVITABLE AND EVER PRESENT
- MINIMISED, DIVERTED OR RESOLVED
- SATISFYING CREATIVE SOLUTIONS POSSIBLE IF HANDLED PROPERLY
- FORMAL LEGAL METHODS PERCEIVED AS EXPENSIVE, COMPLICATED, AND SLOW
- HOSTILITIES, DELAY, EXPLOITATION, INJUSTICE PERCEIVED BY ONE PARTY
- NEGOTIATION, CONCILIATION, MEDIATION ETC. INFORMAL METHODS



MATRIMONIAL DISPUTES

MATRIMONIAL DISPUTES

MARRIAGE ENABLES COUPLE TO SETTLE DOWN IN LIFE AND LIVE PEACEFULLY

LITTLE QUARRELS BETWEEN YOUNG COUPLES ASSUME SERIOUS MATRIMONIAL DISPUTES

OUTBURST OF MATRIMONIAL DISPUTES

NOT ARISE DUE TO IRRECONCILABLE
DIFFERENCES IN IDEOLOGY

DOMESTIC INCOMPATIBILITIES AND COMPETITION FOR ECONOMIC AND SOCIAL RESOURCES ARE CAUSES

INVOLVE EMOTIONS, EGO, SOCIAL COMPULSIONS, PERSONAL RESPONSIBILITIES OF PARTIES

RESOLVED BY INTERVENTION OF ELDERS IN EARLIER DAYS

NOT AVAILABLE IN PRESENT TIME DUE TO NUCLEAR FAMILY SET-UP OR INVOLVEMENT IN CRIMINAL CASES

BE RESOLVED AMICABLY BY MUTUAL AGREEMENT

EFFORTS BE MADE FOR AMICABLE RESOLUTION OF DISPUTES

- MATRIMONIAL DISPUTES: CAUSES
- EGO/PRIDE
- BEHAVIOURAL DISORDERS
- PERCEPTION
- SELF INTERESTS OF PARTIES
- INCOMPATIBILITY
- PSYCHOLOGICAL PROBLEMS
- ADJUSTMENT EXPECTATIONS
- MEDICAL REASONS
- SECTION 498A IPC



FAMILY COURTS IN INDIA

FAMILY COURTS IN INDIA

ESTABLISHED WITH OBJECTIVE OF AMICABLE SETTLEMENT OF MATRIMONIAL DISPUTES

LAW COMMISSION IN 59TH REPORT SPEAKS FOR CREATION OF COURTS CONCERNING FAMILY DISPUTES WITH SIMPLIFIED PROCEDURE

FAMILY COURTS ACT, 1984 ENACTED FOR SPEEDY DISPOSAL OF FAMILY DISPUTES AND TO PROMOTE CONCILIATION AND SETTLEMENT

RECOGNIZED CONCILIATION FOR SETTLEMENT OF MATRIMONIAL DISPUTES OR INITIATE RECONCILIATORY PROCESSES

CONCILIATOR PLAYS PRO-ACTIVE ROLE AND ENCOURAGES PARTIES FOR RESOLUTION SECTION 9 DEALS WITH DUTIES OF FAMILY COURTS TO MAKE EFFORTS FOR SETTLEMENT

PROVIDES THAT IN EVERY SUIT OR PROCEEDING, ENDEAVOUR SHALL BE MADE BY FAMILY COURTS IN FIRST INSTANCE, WHERE IT IS POSSIBLE TO DO SO CONSISTENT WITH NATURE AND CIRCUMSTANCES OF CASE, TO ASSIST AND PERSUADE PARTIES IN ARRIVING AT A SETTLEMENT IN RESPECT OF SUBJECT MATTER OF SUIT OR PROCEEDINGS

EMPOWERS FAMILY COURTS TO ADJOURN PROCEEDINGS DUE TO REASONABLE POSSIBILITY OF SETTLEMENT



MEDIATION IN MATRIMONIAL DISPUTES

MEDIATION IN MATRIMONIAL DISPUTES

SECTION 89 CPC DEALS WITH RESOLUTION OF DISPUTES BY ADR INCLUDING MEDIATION

EMERGING AS EFFECTIVE AND WORKABLE MECHANISM FOR DISPUTES RESOLUTION

LEGALLY RECOGNED AFTER SECTION 89

EFFICIENT, SPEEDY, CONVENIENT AND LESS EXPENSIVE TO RESOLVE A DISPUTE WITH DIGNITY, MUTUAL RESPECT AND CIVILITY

ADOPTED, ACCEPTED AND SUITED FOR SETTLEMENT DESPITE ACT PROVIDES CONCILIATORY APPROACH VOLUNTARILY, FLEXIBLE, NON-ADJUDICATORY, PARTY CENTRED AND STRUCTURED NEGOTIATION PROCESS IN WHICH A NEUTRAL THIRD PARTY ASSISTS PARTIES IN AMICABLE RESOLUTION OF DISPUTES BY USING COMMUNICATION AND NEGOTIATION TECHNIQUES

PARTIES RETAIN RIGHT OF SELF DETERMINATION

INFORMAL, PRIVATE, CONFIDENTIAL

NOT CASUAL/NOT COVERED BY PROCEDURAL RULES

FACTUAL/LEGAL ISSUES AND UNDERLINED CAUSES OF A DISPUTE ADDRESSED

GOAL TO FIND A MUTUAL ACCEPTABLE SOLUTION SATISFYING NEEDS, AND INTEREST OF PARTIES

PRAGMATIC REMEDY IN MATRIMONIAL DISPUTES INVOLVING EMOTIONS, SENTIMENTS, SOCIAL COMPULSIONS AND RESPONSIBILITIES OF PARTIES BESIDES UNIQUE NATURE OF MATRIMONIAL LAWS

DIFFERENT IN ITS FORM AND CONTENTS
FROM OTHERS DISPUTES

RESOLVE MATRIMONIAL DISPUTES TO SATISFACTION OF PARTIES DESPITE FAILURE IN CONCILIATION

RESOLVE ENTIRE RANGE OF MATRIMONIAL DISPUTES

MEDIATOR ASSISTS PARTIES BY FACILITATING COMMUNICATION

TRIAL CASE FLOW PLEADINGS

MEDIATION CASE FLOW

PARTIES PREFFERED TRIAL

PARTIES EVIDENCE

DEFENCE, ARGUMENTS

JUDICIAL VERDICT

WIN/LOSE

PARTIES AGREE FOR MEDIATION

REFERRAL

MEDIATOR SELECTED

MEDIATION SESSIONS

PARTIES REACH IMPASS

BACK TO TRIAL

PARTIES SETTLED

RESOLUTION OF DISPUTES

WIN/WIN

JUDICIAL PROCESS ADJUDICATES IN FAVOUR OF ONE PARTY

MEDIATION SETTLEMENT ARRIVED AT WITH CONSENT OF PARTIES

JUDICIAL PROCESS FOCUSES ON PAST BASED ON LEGAL RIGHTS AND OBLIGATIONS

MEDIATION FACILITAES MUTUALLY ACCEPTABLE AGREEMENT SATISFYING EVERYONE'S INTERESTS.

MEDIATION CHANGES DISPUTES FROM "WIN-LOSE" TO "WIN-WIN".



ROLE OF REFERRAL

JUDGES RELEVANT

SELECTION OF SUITABLE CASES IMPORTANT





UNFIT CASES NOT TO BE REFERRED

REFERRAL IMPORTANT **EXERCISE**





APPROPRIATE REFERRALS REDUCE COURT WORK LOAD

REFERRAL BE MADE

PARTIES WILLING FOR SETTLEMENT

PARTIES NOT WILLING FOR SETTLEMENT BUT READY TO EXPLORE POSSIBILITY OF SETTLEMENT

AREFERMUNDSESATISTESASOUT BASTENGEOFFELEMENTOFSETTEMENT

ROLE OF REFERRAL JUDGES

PRE MEDIATION

POST MEDIATION

MEDIATION

REFERRAL OF SUITABLE AND ADEQUATE CASES

MOTIVATING AND PREPARING PARTIES

PASSING OF APPROPRIATE REFERRAL ORDER

TO CORSIDER RECOURSE TO ADR MARIDATORS



OBJECTIVE ASSESSMENT OF CASE BEFORE REFERRAL

SUMMERY OF DISPUTES NATURE OF DISPUTES

ACTUAL REFERENCE
TO ADR NOT
MANDATORY

15. Therefore the only practical way of reading Section 89 and Order 10, Rule 1-A is that after the pleadings are complete and after seeking admission/denials wherever required, and before framing issues, the court will have recourse to section 89 of the Code. Such recourse requires the court to consider and record the nature of the dispute, inform the parties about the five options available and take note of their preferences and then refer them to one of the alternative dispute resolution processes.

17. Therefore, having a hearing after completion of pleadings, to consider recourse to ADR process under section 89 of the Code, is mandatory. But actual reference to an ADR process in all cases is not mandatory. Where the case falls under an excluded category there need not be reference to ADR process. In all other case reference to ADR process is a must.

AFCONS

STAGE FOR REFERRAL

AS PER SECTION 89 READ WITH ORDER X RULE 1A CPC CASE BE REFERRED

- AFTER COMPLETION OF PLEADINGS
- BEFORE FRAMING OF ISSUES

CASE MAY BE REFERRED

- AFTER FRAMING OF ISSUES
- AFTER COMMENCEMENT
 OF EVIDENCE

REFERRAL IN FAMILY/MATRIMONIAL DISPUTES
AFTER SERVICE OF RESPONDENTS
AND
BEFORE FILING OF WRITTEN
STATEMENT

29. the stage at which the court should explore whether the matter should be referred to ADR processes, is after the pleadings are complete, and before framing the issues.

However, if for any reason, the court had missed the opportunity to consider and refer the matter to ADR processes under Section 89 before framing issues, nothing prevents the court from resorting to Section 89 even after framing issues.

30. in family disputes or matrimonial cases, the ideal stage for mediation will be immediately after service of respondent and before the respondent files objections/written statements.

AFCONS

ENCOURAGE LAWYERS/LITIGANTS

HIGHLIGHT PROCESS AND BENEFITS

ADDRESS CONFIDENTIALITY
AND RIGHT OF SELF
DETERMINATION

FIND PREVIOUS ATTEMPTS SETTLEMENT

ASCERTAIN CAUSE OF REFUSAL





CONSENT NOT MANDATORY

26. If the parties are not agreeable for either arbitration or conciliation, both of which require consent of all parties, the court has to consider which of the other three ADR processes (Lok Adalat, Mediation and Judicial Settlement) which do not require the consent of parties for reference, is suitable and appropriate and refer the parties to such ADR process.

AFCONS

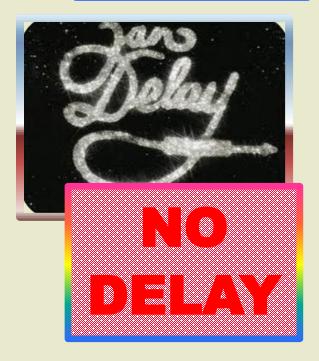


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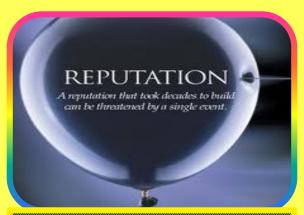








OUELITY



REPUTATION



TRAINED AND EXPERIENCED



SELECTION OF MEDIATOR

COMMUNICATION WITH MEDIATOR

NO EX-PARTE COMMUNICATION

MEDIATOR COMMUNICATES FINAL OUTCOME

BE IN WRITING AND APPROVED BY PARTIES

MEDIATION RULES PROHIBIT DIRECT COMMUNICATION

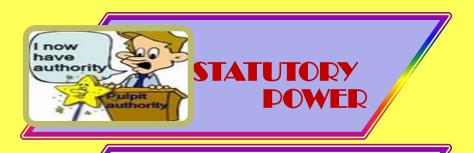


REFERRAL ORDER

REFERRAL BY JUDICIAL ORDER SET GROUND FOR **MEDIATION** NOT TO BE PASSED **CASUALLY** ADEQUATE DETAILS BUT NO ELOBORATE ORDER

COMPONENTS

DETAILS OF CASE NAME OF REFERRAL JUDGE CASE NUMBER PARTIES NAME DATE OF INSTITUTION NATURE OF SUIT/ CASE DESERVE FOR REFERRAL STAGE OF TRIAL NUMBER OF HEARINGS AT TIME OF REFERRAL NEXT DATE OF HEARING BEFORE REFERRAL COURT









CONSENT



FFF







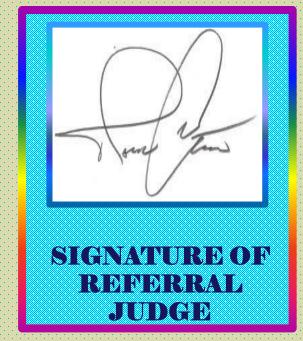


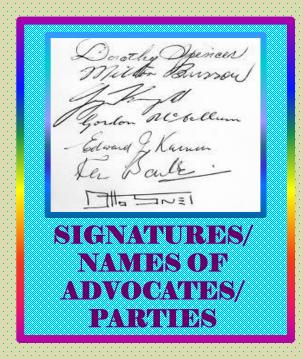


SUBSTANTIAL PART













POST MEDIATION

IF MEDIATION SUCCESSFUL

IF **MEDIATION FAILS**

EXAMINE SETTLEMENT DECREE AS PER ORDER 23 RULE 3 IF SETTLEMENT INCLUDES NOT SUBJECT MATTER OF SUIT, APPLY S21, LEGAL SERVICES AUTHORITIES ACT,1987

IF SETTLEMENT ex facie ILLEGAL/UNFORCEABLE DRAW ATTENTION OF PARTIES



PROCEEDS WITH TRIAL



SETTLEMENT

28. Where the reference is to a neutral third party (`mediation' as defined above) on a court reference, though it will be deemed to be reference to Lok Adalat, as court retains its control and jurisdiction over the matter, the mediation settlement will have to be placed before the court for recording the settlement and disposal. Whenever such settlements reached before adjudicatory ADR Fora are placed before the court, the court

should apply the principles of Order 23 Rule 3 of the Code and make a decree/order in terms of the settlement, in regard to the subject matter of the suit/proceeding. In regard to matters/disputes which are not the subject matter of the suit/proceedings, the court will have to direct that the settlement shall be governed by.....Section 21 of the Legal Services Authorities Act, 1987 (in respect of settlements by a Lok Adalat or a Mediator). Only then such settlements will be effective

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ACCESSIBILITY

VOLUNTARINESS

FACILITATIVE

RIGHT TO SELF DETERMINATION

CONFIDENTIAL

ROLE OF PARTIES IN DECISION MAKING

INFORMALITY

PRIVATE

OUTCOME

COMMUNICATION

LONG TERMS AND UNDERLYING INTERESTS

CREATIVITY

FINALITY



THE SUPREME COURT

RECOGNIZES MEDIATION AS AN EFFECTIVE METHOD OF RESOLUTION

DESIRED PARTIES TO EXPLORE POSSIBILITY OF MEDIATION

FAMILY COURTS TO MAKE EFFORTS FOR MEDIATION DESPITE FAILURE IN CONCILIATION

FAMILY COURTS TO REFER DISPUTES WITH CONSENT OF PARTIES

COURTS TO REFER CASES U/S 498-A IPC TO MEDIATION IF EXIST ELEMENTS OF SETTLEMENT

STRESSED IMPORTANCE OF PRE LITIGATION MEDIATION AND ITS WIDE PUBLICITY

JUDICIAL DECISIONS

K. SRINIVAS RAO V D.A. DEEPA, (2013)5SCC226

THE SUPREME COURT EMPHASIZES RELEVANCE OF MEDIATION IN MATRIMONIAL DISPUTES INCLUDING COMPLAINTS U/S 406/498A IPC. IT WAS OBSERVED THAT PURELY A CIVIL MATRIMONIAL DISPUTE CAN BE AMICABLY SETTLED BY DIRECTING THE PARTIES TO EXPLORE THE POSSIBILITY OF SETTLEMENT THROUGH MEDIATION. THE COURTS HAVE ALWAYS ADOPTED A POSITIVE APPROACH AND ENCOURAGED SETTLEMENT OF MATRIMONIAL DISPUTES AND DISCOURAGED THEIR ESCALATION.

B.S. JOSHI & ORS. V. STATE OF HARYANA & ANR., (2003) 4SCC 675

THE SUPREME COURT HELD THAT COMPLAINT INVOLVING OFFENCE **UNDER SECTION 498-A OF THE IPC** CAN BE QUASHED BY THE HIGH **COURT IN EXERCISE OF ITS POWERS UNDER SECTION 482 OF** THE CODE IF THE PARTIES SETTLE THEIR DISPUTE.

GIAN SINGH V. STATE OF PUNJAB & ANR., (2012) 10SCC 303

THE SUPREME COURT EXPRESSED THAT CERTAIN **OFFENCES WHICH OVERWHELMINGLY AND** PREDOMINANTLY BEAR CIVIL FLAVOUR LIKE THOSE **ARISING OUT OF MATRIMONY, PARTICULARLY RELATING TO DOWRY, ETC. OR THE FAMILY** DISPUTE AND WHERE THE OFFENDER AND THE **VICTIM HAD SETTLED ALL DISPUTES BETWEEN** THEM AMICABLY, IRRESPECTIVE OF THE FACT THAT **SUCH OFFENCES HAVE NOT BEEN MADE** COMPOUNDABLE, THE HIGH COURT MAY QUASH THE CRIMINAL PROCEEDINGS IF IT FEELS THAT BY NOT QUASHING THE SAME, THE ENDS OF JUSTICE SHALL BE DEFEATED.

K. SRINIVAS RAO

THE SUPREME COURT FURTHER OBSERVED THAT THOUGH OFFENCE PUNISHABLE UNDER **SECTION 498-A OF THE IPC IS NOT COMPOUNDABLE, IN APPROPRIATE CASES IF** THE PARTIES ARE WILLING AND IF IT APPEARS TO THE CRIMINAL COURT THAT THERE EXIST **ELEMENTS OF SETTLEMENT, IT SHOULD DIRECT** THE PARTIES TO EXPLORE THE POSSIBILITY OF SETTLEMENT THROUGH MEDIATION. IF THERE IS SETTLEMENT, THE PARTIES WILL BE SAVED FROM THE TRIALS AND TRIBULATIONS OF A CRIMINAL CASE AND THAT WILL REDUCE THE **BURDEN ON THE COURTS WHICH WILL BE IN THE** LARGER PUBLIC INTEREST.



ROLE OF LAWYERS

IMPORTANT AND SIGNIFICANT

ADVICE AND MOTIVATE PARTIES

PREPARE PARTIES/CONSTRUCTIVE ADVICE

HIGHLIGHT BENEFITS

NEGATIVITY TO PRODUCTIVITY

EVALUATE PROPOSALS/OPTIONS

NEGOTIATE EFFECTIVELY

OVERCOME BARRIERS IN SETTLEMENT

LITIGATION TO MEDIATION

CONCLUSION

NOT ANSWER TO EVERY MATRIMONIAL DISPUTE

JUDICIAL VERDICT ALSO NECESSARY

LITIGATION NOT ANSWER TO EVERY DISPUTE

PROVIDE PRACTICAL AND CREATIVE SOLUTIONS

REDUCES PAIN, MISUNDERSTANDING, BITTERNESS OF LITIGATION

SAVE LEGAL COSTS AND DELAYS

NOT A TOOL TO DELAY ADJUDICATION

Categories of cases	Referred cases	Settled cases	Unsettled cases	Non-starter
125 Cr.P.C.	6708	2937	2343	1277
Divorce	4990	1811	2153	831
498A/406 IPC	11439	4328	5197	1698
Restitution of Conjugal Rights	1521	578	625	233
Guardianship	897	304	373	167
Domestic violence	28130	10812	10156	6443
Total	53685	20770	20847	10639 46

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