



## RESOLUTION OF MATRIMONIAL DISPUTES IN INDIA THROUGH MEDIATION AND LOK ADALAT: A COMPARATIVE ANALYSIS

Ms. Puja Banshtu

(Assistant Professor in Law, Rayat College of Law, SBS Nagar, Punjab, India)

pujabanshtu24@gmail.com

**Abstract:** British model of judicial system followed in India is tumbling down due to humungous backlog of cases and its adversarial nature. It puts the parties in dispute against each other and causes long lasting enmity between the disputing parties and thus in the long run hampers the social fabric of the society. In the same manner the courts in India are clogged with cases and needs a serious overhauling. In order to lessen the burden of regular courts and to dispose of the matter speedily and to restore the harmony between the disputing parties Alternative Dispute Resolution mechanism were adopted. We have adopted these ADRs from America which deals in resolving Commercial disputes, Matrimonial and Family disputes, Rent disputes, Bank recovery cases and Motor Accident Claims etc. The present paper deals with two kinds of ADRs i.e. Mediation and Lok Adalat in resolving matrimonial disputes. Mediation has been adopted throughout the world as a mechanism to resolve disputes amicably with the help of neutral third party. In the same manner Lok Adalat or 'People's Court' settles dispute through discussions, persuasion and negotiations. Lok Adalat is an Indian contribution to the world jurisprudence, which got its statutory recognition through the enactment of the Legal Services Authorities Act, 1987. Likewise mandatory Mediation has got legal recognition through Section 89 of the Code of Civil Procedure, 1908. Various kinds of disputes may come before Mediation, Lok Adalat or both based on the nature of the dispute. This article attempts to discern the characteristics of Mediation and Lok Adalat including similarities and difference between the processes, further this research paper delves into finding advantage of Mediation over Lok Adalat especially in matrimonial disputes in Indian context.

**Keywords:** Mediation, Dispute resolution, Lok Adalat (People's Court), Matrimonial dispute

### 1. Introduction

India is a country which has second largest population<sup>1</sup> in the world and enjoying its demographic dividends; but these dividends can be fully cherished if their demands are satisfied. Out of various such demands one of the most prominent is 'access to justice'. Indian judicial system is an adversarial system where one party loses and other wins, which creates animosity between parties and have bad implication on the society at large. This Anglo-Saxon judicial system has alienated people from knocking at the doors of justice. The system is further clogged with humungous backlog of cases. Hence there is a dire need to overhaul this adversarial system and to introduce a mechanism which is indigenous and meet the needs of the country, a mechanism where people feel free to approach and seek redressal while becoming a

part of the system. One of such system is called “Alternative Dispute Resolution Mechanism”. This innovative mechanism settles the dispute amicably by bringing litigants to settlement terms through arbitration, conciliation, persuasion, mediation and negotiation etc.

The Indian Constitution by virtue of Article 21 provide ‘speedy justice’ as a Fundamental Right which emerges from Right to life and Article 14 provides ‘equal justice’ and ‘access to justice for all’. The Alternate Dispute Resolution mechanism tries to achieve these constitutional mandates. Mediation and Lok Adalat are such Alternate Dispute Resolution mechanism which settles disputes amicably through negotiation and conciliation. Though the process of settling disputes by both are overlapping but the functioning of both these institutions are completely different. The present research is carried out to understand the mechanism of mediation and Lok Adalat as the working of both over-lap each other. This paper also brings out the advantages of mediation over Lok Adalat in settling the matrimonial disputes.

## **2. Meaning of Mediation**

Mediation involves neutral third party to resolve disputes and to assist settlement of disputes drafted between two litigating parties. This form of Alternative Dispute Resolution is constructed to settle disputes through mutual consent.<sup>ii</sup> The neutral third party (usually an experienced lawyer or a retire judge) in mediation facilitates the contending parties to come to a settlement through discussions and negotiations. This feature or the objective of mediation makes it different from normal litigation in regular courts. In mediation both the parties comes out as winners. It is a consensual or voluntary process and parties takes decisions for themselves mutually. Matters like commercial disputes, matrimonial disputes and other civil matters come before these forums.

## **3. Meaning of Lok Adalats**

Lok Adalat in English terminology means ‘People’s Court’ these are also one of the Alternative Dispute Resolution Mechanism. It’s an Indian contribution to the world jurisprudence; also an indigenous judicial process which is in force since Vedic age. Lok Adalat is an ancient adjudicatory process (known by different names in history) which was in force in all the periods in Indian history viz. Ancient Period, Medieval Period and British Period (though it lost its relevancy during British period as stress was laid on Anglo-Saxon model of administration of justice).

The Lok Adalat retrieved its significance during post-independence of India, as demand of indigenous judicial mechanism was strongly felt and another reason was large number of backlog of cases. It received a statutory recognition by the Legal Services Authorities act, 1987 which was enacted to provide speedy and equal justice to all. It is para-judicial body where contending parties settle their disputes consensually. Therefore these are those Alternative Dispute Resolution forums where dispute is resolved through conciliation, persuasion, discussion and counselling. In these courts neutral third party is usually a sitting judge. Different kind of Non-Compoundable cases and civil matters comes before it viz. Motor Accident claims, Bank cases, Matrimonial and family disputes, Rental disputes etc. These are organised at regular interval by National Legal Services Authority, State Legal Services Authority, District Legal Services Authority, Supreme Court Legal Services

Committee, High Court Legal Service Committee and Taluk legal Services committee, as per the needs of the people. These courts are set up in order to help regular courts clear backlog of cases and to stop fresh litigation from approaching courts.

#### **4. Process of Mediation And Lok Adalat**

In Mediation mainly disputing parties and neutral third party (called as mediator) are involved. Mediator plays a very vital role in order to make parties come to an agreement. Parties are encouraged by mediator to discuss the whole background of the case and sometimes can go beyond the matter in dispute in order to form options for settlement of disputes. Nothing is recorded and even if dispute does not come to a settlement terms reasons for the same is not recorded and it is sent back to the regular court. To make parties form an agreement a skilled and talented mediator is required who can motivate or encourage parties to come to negotiated terms.

Lok Adalat administers participatory justice, where contending parties and judges participate and settle disputes through mutual consent. There are generally two stages where disputes are resolved by Lok Adalat i.e.: at Pre-Litigation stage or at Post-Litigation stage. At Pre-Litigation: cases comes directly before the Lok Adalat and endeavour is made to settle these disputes in these Lok Adalat itself so that these cases cannot enter the threshold of ordinary courts and further add on the backlog of cases. Further at post-litigation stage cases are referred by the ordinary courts to the Lok Adalat where court sees the possibility of amicable settlement of disputes.

#### **5. Mediation And Lok Adalat Resolving Matrimonial Disputes**

As discussed above Mediation and Lok Adalat deals with many kind of civil matters but the present paper deals with matters pertaining to matrimonial disputes. Mediation in relation to resolving matrimonial dispute is varied from the resolving other kinds of disputes. Matters relating to matrimonial disputes are many like divorce, alimony/maintenance, custody, family, property etc. are all covered under it. These issues are of sensitive nature and need a therapeutic outlook. Therefore a very advanced mechanism of administration of justice is required in order to handle such issues with care and caution and also to settle dispute amicably so that family structure would not be disturbed. Hence endeavour is made to make parties come to a negotiated terms for settlement. The matrimonial disputes are different from other types of disputes as they are not just confined to one aspect relating to the litigation but rather includes plethora of matters like personal liabilities, social obligations, responsibilities, emotions of the parties. Therefore while dealing with such disputes many factors (including rational, irrational, humanitarian or emotional factors) are taken into consideration in order to find a workable solution. Mediator plays a very vital role in finding solutions and persuading parties to reconcile the differences to protect the institution of marriage.

In India there is a tradition of resolution of dispute with the help of elderly at home and through the institutions likes 'Panchayats' or 'Lok Adalat' at the village level. In these institutions group of elderly people or judges sit and resolve the dispute of the parties which is binding on the parties. Such institutions were always been part of Indian system of administration of justice at the local level. The Lok Adalat deals with matrimonial disputes where the prerogative of the presiding officer (sitting or a

retired judge and a social worker or a lawyer) to persuade disputing parties to settle dispute harmoniously.

In order to put an end to the litigation the Legal Services Authorities Act, 1987 and Section 96 of the Code of Civil Procedure, 1908 makes decisions of Lok Adalat non-appealable as the parties settle dispute through mutual consent. Therefore the award passed by the Lok Adalat has the force of decree of a court. No court fee has to be paid by the parties and nor any lawyer's fee or other expenses are to be borne by them. Mediation and Lok Adalat as a mechanism of alternative dispute resolution can be very effectively used especially in matrimonial and family disputes. The matrimonial disputes mainly divorce cases require to be treated separately through mediation to restore the peace and harmony in the family which will ultimately affect the society at large.

#### **6. Legal Recognition Of Mediation And Lok Adalat In India**

In India mediation was legally recognised for the first time by the Industrial Disputes Act, 1947. Section 4 of the Act provides that conciliators appointed under the Act are charged with the duty of mediating in and promoting the settlement of Industrial disputes. Further statutory recognition to mediation has been provided by the Arbitration and Conciliation Act, 1996 and the Code of Civil Procedure, 1908. Section 30(1) of the Arbitration and Conciliation Act, 1996 encourages parties to dispute to seek mediation and conciliation even when arbitral proceedings have been initiated and empowers the arbitral tribunal to use mediation as a method to settle disputes. This provision is not practiced as Act, 1996 does not prescribe any detailed rules about mediation. By virtue of the Code of Civil Procedure (Amendment) Act in the year 1999, a new Section 89 was incorporated dealing specifically with Alternate Dispute Resolution Mechanisms. Sub-section 2 (d) provides for the proceedings to be followed relating to the mediation i.e. in its mandatory for the courts to follow to effect compromise between the disputing parties and while doing so courts should follow procedures as may be prescribed. There no clear statutory rules relating to mediation but there are many judicial decisions<sup>iii</sup> by the Supreme Court relating to it and nowadays mediation is followed as a first step whenever matrimonial dispute comes to the court. All the courts in India are bound by Section 89 of Code of Civil Procedure to form a term of settlement and have recourse to one of the Alternative Dispute Resolution mechanism. A general rule especially in matrimonial cases is followed that the matter first goes to the mediation if court sees any possibility of reconciliation. Even if mediation is not successful and if matter is referred back to the regular court the same matter may be sent to the to the Lok Adalat where presiding officer may endeavour to resolve dispute amicably.

#### **7. The Advantages of Mediation over Lok Adalat in Resolving Matrimonial Disputes:**

In an attempt to avoid taking matrimonial disputes to court and to resolve such disputes amicably; mediation has proved to be of a great help. There are various advantages of mediation over Lok Adalat, some of them are discussed as following:

- a. Mediation is an informal form of administration of justice as parties can discuss their matters directly with mediator who acts as a facilitator for resolution of dispute. While Lok Adalat is more formal

as it is presided over by a judge who happens to be a same judge of the regular court who has referred the matter to the Lok Adalat (in post-litigation stage).

- b. Sensitive and private nature of matrimonial dispute requires proceedings to be held behind closed door. This spirit is followed in mediation as under it hearing is kept confidential, no one is allowed to witness the proceedings even mediator is not forced to testify in any court regarding the content or progress of mediation.
- c. Nothing is kept on record in mediation even mediator destroys their notes after mediation is over. Whereas under Lok Adalat everything goes on record. This makes parties uncomfortable in discussing incidental facts related to the case.
- d. To make disputing parties form settlement mediation serves effectual communication between the parties and the parties sit across the table in the presence of a mediator and communicate their grievances against the opposite party. This has a very healthy and psychological aspect in dealing the sensitive or emotional nature of matrimonial disputes. This also helps in making people come to a negotiated term. Whereas in case of Lok Adalat parties can talk to the presiding officer directly but not to the opposite party as they are allowed to do so only through the presiding officer.
- e. Though the parties approaching Lok Adalat are not required to pay any court fee or lawyer's fee or bear other expenses but still this participatory feature of its justice delivery is not followed in letter and spirit. While in mediation disputing parties present their own case in their own words before the mediator and thus participate directly to come to a negotiated term.
- f. Proper training to mediator is imparted in order to make them interact with parties and help them in finding agreeable solutions. While under Lok Adalat no such specialization is required.
- g. The case which comes before the Lok Adalat are the ones where settlement has already taken place and in one sitting the matter is either disposed of or sent back to the regular court. Whereas in mediation there is proper process in which through various rigorous sittings parties are motivated to settle their dispute through negotiations and persuasion.
- h. The level of impartiality is lesser in case of mediation as comparatively to that of Lok Adalat as the mediator working as a neutral third party do not know the disputing parties at all. In case of Lok Adalat the presiding officer is generally the same who drafted terms of settlement between the parties. Therefore there is more likelihood of partiality in case of Lok Adalat as there can be some perceptions or preferences.

- i. In case of Mediation parties are more involved in forming a settlement of dispute. While in the Lok Adalat disputing parties are come a form a settle dispute but the ultimate control lies with the judge.
- j. Mediation is not required to confine itself to the matter in dispute only it can go beyond and discuss such facts which are not in issue. This aspect of mediation has made it a very successful especially in matrimonial dispute because in such matters the grievances between the parties have deep roots and need more counselling than other kinds. In case of Lok Adalat matters discussed are dispute specific.

### **8. Difference Between The Mediation And Lok Adalat**

Lok Adalat or People's Court in India has disposed of huge number of matrimonial disputes since its inception at the same time mediation has also facilitated the disputing parties to come to a settlement. Since both forums deals with disposing of the matrimonial disputes therefore it is required to understand the difference between the both. *Firstly* the Lok Adalat is conducted in the Court premises which makes it quite a formal proceeding (though judges do not sit on their dice sit across the table) as comparatively to the Mediation; which are conducted in a private conferences only (at the Alternative Dispute Resolution Centres). *Secondly*, the morphology followed by the Lok Adalat is persuasion, negotiation and discussion whereas in case of mediation there is a encouragement, conciliation, mediation, negotiation, discussion and suggestions. *Thirdly*, the mediation is a structured process where the mediator controls the proceedings while the process followed in Lok Adalat is not structured and the actual control lies with the presiding officer. *Fourthly* in mediation parties have a fair say in the selection of mediator working as neutral third party while in Lok Adalat parties do not have any say in the selection of presiding officer.

### **9. The Role Of The Mediator: Facilitation Not Adjudication**

The success or failure of Mediation lies on the fact that how a mediator facilitates the disputing parties. The Mediator has a significant role in settling a matrimonial dispute. While playing such role of a neutral third party the mediator's role is altogether different than that of a judge. Therefore unlike judge who adjudicates the matter, the mediator is there to help parties to come to a negotiated terms and form an acceptable solution. He facilitates the parties by firstly understanding the core issue between the parties and its offshoots along with ancillary facts. To achieve this mediator while acting as neutral third party communicates with the parties and also make them sit together and discuss the issue in his presence. He does not have any preconceived notions regarding any party and therefore tries his level best to make both parties understand the issue well and its repercussions and finally how a settlement can be beneficial for both the parties. The mediator makes all possible efforts in order to facilitate parties to come to a negotiated term through rigorous dialogues and sittings.

### **10. Basis Of Mediation**

The basis of mediation is primarily the needs and interests of the parties. It let the parties to decide for them and even the sittings are flexible and are conducted as per the conformability of the parties. These sittings are very confidential which are conducted privately sometimes between the mediator and the party or between the

parties and the mediator. The mediator guides the parties throughout the mediation process and gain the confidence of the parties in order figure out a possible settlement acceptable to both the parties. Mediation as a process is formulated in such an intricate way that tries all possible effort to make disputing parties resolve the dispute amicably. In mediation proceedings are informal because the main role of mediation is not to adjudicate or persuade but to facilitate parties to settle their dispute.

**11. Procedure Of Mediation**

Like other kind of Alternative Dispute Redressal Mechanism there is no statute explaining the procedure of mediation at length exists. Generally in order to initiate the proceeding of mediation; either the disputing parties refer to the mediation voluntarily or Court refers the disputing parties to mediation under section 89 of the Civil Procedure Code, 1908. By virtue of Section 89 of the Civil Procedure Code, 1908, it is obligatory for the courts to refer the dispute to any of the Alternative Dispute Resolution mechanism. Further Section 23 of the Hindu Marriage Act, 1955 provides for the reconciliation proceedings as it’s the duty of every court to make every endeavour to bring about reconciliation between the disputing parties.

STATISTICAL INFORMATION - IN RESPECT OF CASES SETTLED THROUGH MEDIATION (April, 2016 to March, 2017) **Table 1<sup>iv</sup>**

Total SL SA	ADR Centres	Existing at the beginning of the month	Established During the Month	Total Functional	Under Construction	Existing Mediation Centres other than ADR Centres	Judicial Officers	Lawyers	Any other	Judicial Officers Deployed	Lawyers Deployed	Any other Deployed	cases pending as on the beginning of the month
36	435	395	23	548	149	948	43399	67695	24286	18562	34089	9836	1809289

STATEMENT SHOWING THE NUMBER OF LOK ADALATS HELD BY STATE LEGAL SERVICES AUTHORITIES UNDER LEGAL SERVICES AUTHORITIES ACT 1987 AND CASES SETTLED (from April, 2016 to March, 2017). **Table 2<sup>v</sup>**

Total No. of the State Authority	No. of Lok Adalats held	Pre-Litigation			Pending in Courts			Total		
		Taken up	Disposed of	Settlement Amount (Rs.)	Take n up	Dispose d of	Settlement Amount (Rs.)	Take n up	Dispose d of	Settlement Amount (Rs.)
36	119020	2107916	758633	3691967177	1940459	965675	20739903224	4048375	1724308	24431870401

**12. Conclusion**

In divorce cases either side concentrates on winning the suit. Parties have mounting claims on each other, which are often bases on exaggerated narratives and on false facts. Parties in matrimonial disputes need a mechanism which provides proper counselling to them as a ‘first legal aid’ in order to avoid breaking of nuptial bond.

Mediation has emerged as one of the most significant mechanism which involves trained mediators, lawyers and judges all together working in a harmony to resolve disputes amicably and where both the parties comes out as winners. Whereas other form of Alternate Dispute Redressal Mechanisms involves bit formal procedure which are sometimes not suitable to the parties involved in matrimonial disputes. In mediation the proceedings are conducted behind closed doors and are kept confidential which helps parties to speak their heart. This and many other advantages of mediation as discussed in this paper makes mediation outshine rest of the alternative dispute resolution forums and most importantly Lok Adalats. This paper delves to find out the areas where mediation has shown its efficiency over Lok Adalats in resolving matrimonial disputes

Adversarial judicial system where one party loses and other wins creates animosity between parties and creates disharmony in the society. Since family is the basic unit of a society so disputes relating to family matter needs special attention and amicable settlement. Mediation and Lok Adalat are such Alternate Dispute Resolution mechanism which settles disputes amicably through negotiation and conciliation. Both are consensual or voluntary process and parties appearing before them takes decisions for themselves mutually and comes out as winners. Parties in matrimonial disputes need a mechanism which provides proper counselling to them as a ‘first legal aid’ in order to avoid breaking of nuptial bond. These issues are of sensitive nature and need a therapeutic outlook. Therefore a very advanced mechanism of administration of justice is required in order to handle such issues with care and caution and also to settle dispute amicably so that family structure would not be disturbed. Hence endeavour is made to make parties come to a negotiated terms for settlement. In India there is a tradition of resolution of dispute with the help of elderly at home and through the institutions likes ‘Panchayats’ or ‘Lok Adalat’ at the village level. In these institutions group of elderly people or judges sit and resolve the dispute of the parties which is binding on the parties. Such institutions were always been part of Indian system of administration of justice at the local level. It attempts to bring parties to a settlement through discussion, negotiation, persuasion and conciliation. While Mediation is an informal ADR mechanism were parties can discuss their matters directly with mediator who acts as a facilitator for resolution of dispute.

All the courts in India are bound by Section 89 of Code of Civil Procedure, 1908 to form a term of settlement and have recourse to one of the Alternative Dispute Resolution mechanism. A general rule especially in matrimonial cases is followed that the matter first goes to the mediation if court sees any possibility of reconciliation. To make disputing parties form settlement mediation serves effectual communication between the parties and the parties sit across the table in the presence of a mediator and communicate their grievances against the opposite party. This has a very healthy and psychological aspect in dealing the sensitive or emotional nature of matrimonial disputes. This also helps in making people come to a negotiated term. Whereas Lok Adalats lack such aspects making it less preferable then mediation in resolving matrimonial disputes. As a result of above study we can say that, in an attempt to avoid taking matrimonial disputes to court and to resolve such disputes amicably;

mediation has proved to be of a great help and has come out as a most successful matrimonial dispute resolution mechanism.

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<sup>i</sup> World Population Review, available at: <http://worldpopulationreview.com/countries/> (Assessed on February 28, 2019).

<sup>ii</sup> Dr. N.V. Paranjape, *Arbitration and Alternative Dispute Resolution* 266 (Central Law Agency, Allahabad, 3<sup>rd</sup> Edition 2008)

<sup>iii</sup> See, *Moti Ram v. Ashok Kumar* (2011) 1 SCC 46; *Afcons Infrastructure Ltd. and Another v. Cherian Varkey Construction Co.(P) Ltd. and Ors.* (2010)8 SCC24; *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226; *Jagraj Singh v. Birpal Kaur* (2007) 2 SCC 564; *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42 etc.

<sup>iv</sup> National Legal Services Authority, available at

:<http://www.nalsa.gov.in/sites/default/files/document/Settlement%20through%20Mediation%20, April%202016%20to%20March%202017>. (Accessed on September 28, 2017)

<sup>v</sup> National Legal Services Authority, available at

:[http://nalsa.gov.in/sites/default/files/document/Lok%20Adalat\(us19\)%20,%20April%20C2%A02016%C2%A0to%20March%20C2%A02017.pdf](http://nalsa.gov.in/sites/default/files/document/Lok%20Adalat(us19)%20,%20April%20C2%A02016%C2%A0to%20March%20C2%A02017.pdf) (Accessed on September 28, 2017)

In Table no. 1 Statistical information has been given relating to the cases settled through Mediation from April, 2016 to March, 2017. The statistical data shows that 36 State Legal Service Authorities all over India constituted 435 ADR (Alternative Dispute Resolution) Centres. Out of these 395 were existing at the beginning of the month and 23 ADRs were established during the month. Total functional ADRs during the above year were 548. While existing mediation centres other than ADR Centres were 948. In these centres total judicial officers deployed were 18,562 whereas total lawyers deployed were 34089. Before these centres total pending cases on the beginning of the month was 18,09,289 which shows huge number of pending cases before these centres according to their number.

In Table no. 2 data shows the number of Lok Adalats held by the State Legal Service Authorities from the April, 2016 to March, 2017. It manifests that total 36 State Legal Service Authorities in India held 119020 Lok Adalats during the above period and total taken up or pending cases before them were 40,48,375 (including both pre-litigation and post-litigation stage) out of which they settled 17,24,308 number of cases.