


Mediation in Delhi Family Courts: Advantages and Procedure

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The Use of Mediation by the Family Courts in India

Introduction

Mediation is a procedural requirement and an attempt by Indian family courts to reduce litigation, promote cooperation, and provide a less adversarial way of resolving family disputes. The mediator facilitates discussions and helps parties find common ground, but the decisions reached are voluntary. Mediation can be a cost-effective and quicker alternative to a full-fledged court battle. The article focuses on the legal basis on mediation in Indian family courts, understanding the procedure and advantage of mediation, and it lastly provides recommendations for mediation in family courts of India.



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The purpose of the establishment of a Family Court is to promote conciliation and speedy resolution of disputes related to marital and family affairs. Section 9 of the Family Courts Act, 1984, details the duty of the Family Court to make efforts for settlement. It is the duty of the family court to make efforts for settlement in cases of conflict within family disputes. The first step in every suit and procedure within the Family Court is to assist and persuade parties to resolve and arrive at a settlement. Procedure followed by family courts in this regard includes power to adjourn matter and provide parties relevant time at any stage if there is reasonable possibility of settlement.

While settlement is the main aim of the Family Courts, in India the Family Courts are overburdened with the pendency of cases which defeats the aim of the speedy settlement of setting up family courts. With issues such as delays in judgments, case pendency, and expenses incurred by parties, there have been a lot of families that have not been able to seek justice or reconciliation from the courts.

Mediation is the resolution of the dispute by a trained, independent, guided, and impartial third person, known as a mediator. The Family Court hears matters relating to marriage and family affairs and for matters connected therewith. It involves cases such as divorce, adoption, disputes related to will, property disputes, and other family matters. In such cases, mediation can assist the parties in reconciliation or come to a settlement without imposing a decision that is agreeable to all the parties.

The Advantages of Mediation

Mediation is often provided as an alternative to the judicial decision by the Family Court. The procedure for court-appointed mediation is provided under Section 89 of the Civil Procedure Code, 1908. Through Section 89, the courts can recommend cases that are pending in the court for mediation. While private mediation which is meditation opted by parties outside the family courts in a case to resolve a dispute through qualified mediators, Family Court mediation has majorly six steps: 1. Introductory Remarks

2. Statement of the Problem by the Parties
3. Information Gathering time
4. Identification of the Problems
5. Bargaining and generating options
6. Reaching an Agreement.

The procedure goes as the following:

First, introductory remarks are laid down to set ground rules and discuss the process of the mediation. Then there are the stories in the form of statements from both the parties, the issues according to them, and the emotional state are heard uninterrupted, this is called a statement of the problem, then is information-gathering process which involves questions and reiteration of facts to uncoil the emotions. After collecting the information, the mediator identifies the issues that can be worked on first and the issues that would require more time. The mediator then proposes plausible options to discuss and negotiate, this can involve different methods and activities depending on the moderator. The decisive step is to reach an agreement.

Some advantages of this mediation process include:

Alternative to court proceedings – Mediation helps in saving time, cost, and risk of court proceedings. According to national judicial data grid as of today there is a pendency of more than one crore civil cases are pending during pandemic this figure has increase with worsening situation, meditation can help in reducing this burden. The Court proceedings lack privacy and take a long span of time which defeats the purpose of family courts. There is a risk involved in court proceedings of not coming to a decision and ending up in a yearlong court case. As an alternative to court proceedings and litigation, mediation helps save time and cost and reduces the burden of the courts. In case of minor conflicts, where an intervention between the

parties can potentially resolve the conflict without the state's intervention. It is more comforting, gives more time and it is quicker to come to an agreement on the resolution and settlement of a dispute in front of the mediator than in front of the judge.

Aiming for settlement - In the case of family affairs, mediation is a better option to resolve conflicts as it proves to be a reconciliatory approach rather than a more confrontational adversarial approach. Mediation aims at settlement and coming to a common ground to resolve a conflict if it is possible.

Confidentiality - A lot of family affairs turn chaotic in a court, and this could lead to concerns regarding the privacy of information. Due to the paucity of time and lack of infrastructure, the courts are not able to provide a safe space for the matters to be discussed. A mediation process helps in keeping the information confidential and without any other bystander present.

Voluntary and flexible in nature - The proceedings in courts lack flexibility and delays take place due to the unavailability of parties on the dates provided by the court. In the case of mediation, the process is voluntary and flexible to accommodate the needs of the parties. In courts due to lack of time and privacy, when one party files a case against the other, there is a compulsion to be present on the hearing dates and accept the court's order, on the contrary when the parties have the willingness to settle and discuss while they are not compelled or ordered by the authoritative mediation, this process is more successful.

Lack of empathy in family matters, while the Family Courts were set up to resolve conflicts and promote families through trained individuals as judges in the field of conflict resolution, the Indian courts have failed to achieve their aim. In this case, mediation judges are skilled to resolve conflicts with time and empathy. Further, the family courts reaffirm the patriarchal mindsets, meanwhile, a mediation process can be more gender and emotion sensitive. While a lot more focus is required in the area, as per the training programmes followed by mediation centers, gender and emotional sensitivity is at the core of trainings.

Empowering the parties - The communication to reach common ground through the help of mediators and settle without lawyers is an empowering and encouraging process for people.

No restriction in time - In courts, due to the constraint of time, the parties do not get enough space to individually present their case in front of the judge. However, in mediation, the process is more effective in understanding both sides in joint or individual sessions. The parties get ample time and more individual attention which is missing in the court proceedings.

Long-lasting- As the process of mediation is consensual, the settlement reached by the parties through mediation is more likely to long-lasting and durable due to the common resolution and interest of parties that is reached through consensual process of mediation.

The Limitations of Mediation

Mediation does not compel parties to conclude, and the decision taken by the parties is not legally binding. As the process is flexible, the parties' cooperation is the key factor to decide the success of the mediation.

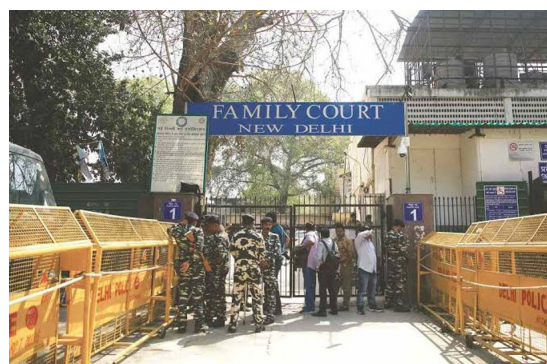


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The Next Step: Recommendations and Conclusion

Mediation can safeguard the purpose of Family Courts and encourage people to resolve disputes and move toward settlements. While mediation is a facilitator in resolving family disputes, the success of mediation, or even litigation, depends on a case-to-case basis. The disputes that might require state intervention, such as cases of cruelty or other criminal offences in marriages, the mediation process would not be effective. But mediation is a recommendation provided by courts and there is a need for this process to gain more awareness and act as a catalyst for harmony in social settings.

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