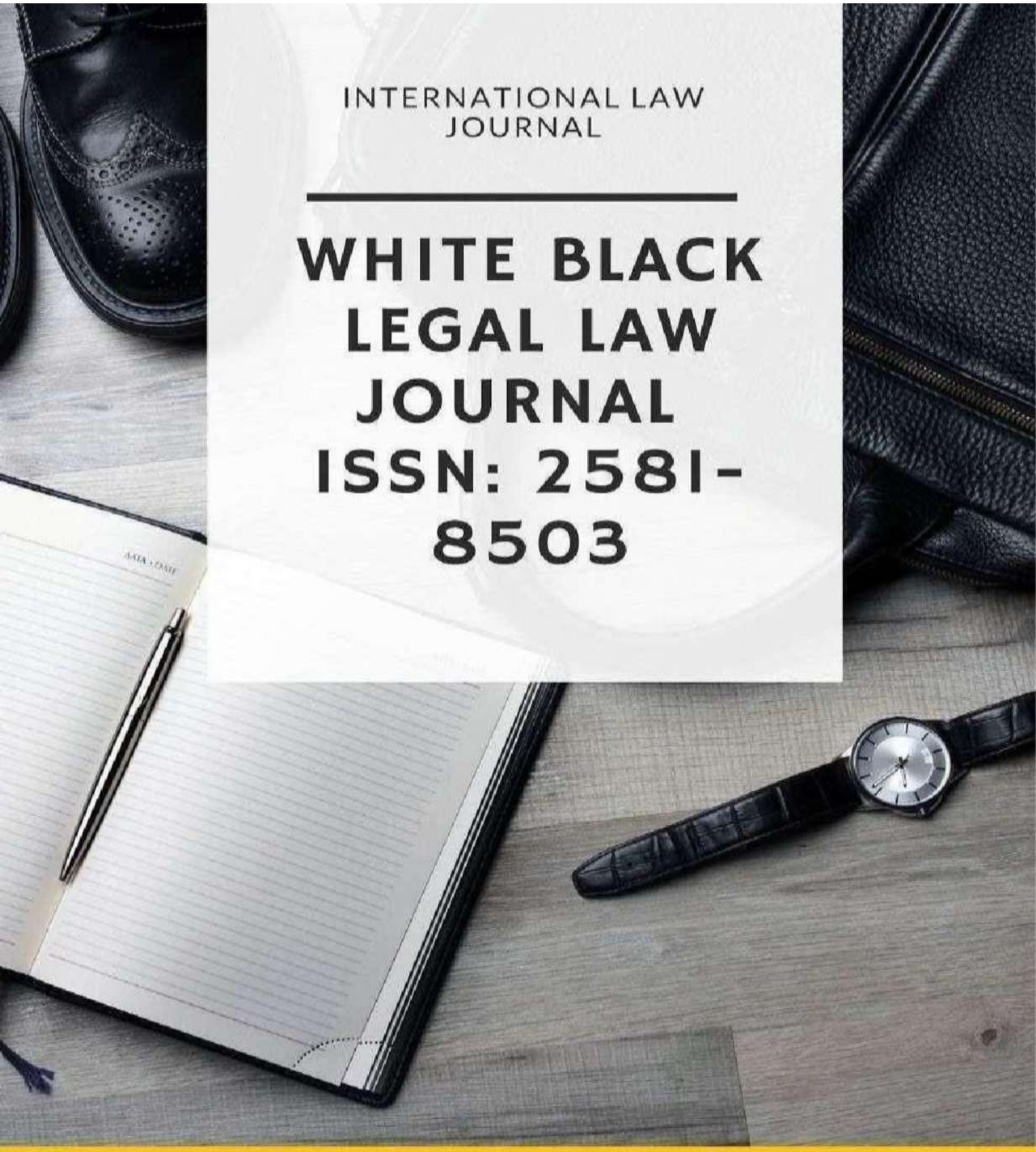

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With this thought, we hereby present to you

RESOLUTION OF MATRIMONIAL DISPUTES THROUGH MEDIATION IN INDIA: EVOLUTION OF THE JUDICIAL THOUGHT

AUTHORED BY - ANUKANKSHA SINGH[1]

ABSTRACT

The settlement of matrimonial disputes is a sensitive issue in the legal sphere, owing to the considerations that must be borne by the courts and parties involved, in public interest. Mediation has emerged as a favourable alternative to the traditional court system of litigation and adjudication. It provides speedier justice, a friendlier environment, greater flexibility, and privacy and confidentiality. The courts have found that in matrimonial disputes, a variety of factors come into play to produce complicated results, with all parties to blame, to some extent. It is often—though not always—more appropriate to refer such disputes to mediation, where disputes can be settled amicably or with the least inimicality, rather than letting the situation snowball into an irreparable one. Courts should be approached only as a last resort. The Indian judiciary has opined that matrimonial disputes, particularly where they involve the custody of children, maintenance, etc., are 'pre-eminently fit for mediation'. Through some landmark judgments, like *K. Srinivas Rao*, the courts have recognised the suitability of mediation for resolution of matrimonial disputes, and devised ways to make such processes more beneficial and accessible. This article aims to trace the development and evolution of judicial thought on the resolution of matrimonial disputes through mediation, by looking at judgments of the Supreme Court and various High Courts in India, so as to reduce the burden on courts, streamline judicial processes, and further the fundamental right to access to justice for every person in India.

Keywords: *mediation; matrimonial disputes; amicable settlement; harmony; Section 498-A; family courts; access to justice.*

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1. INTRODUCTION

Marriage, though earlier considered a sacred, eternal and unbreakable institution, no longer enjoys the same paramountcy in today's world. Consequently, legal disputes regarding matrimonial matters have also started cropping up. With the extreme burden on the judiciary to deal with cases of all sorts, alternative dispute resolution (ADR) is considered the next best bet, which provides a legal structure for resolving issues involving private parties. Matrimonial disputes are hence being increasingly solved through ADR, specifically mediation.

Mediation is an ADR mechanism wherein a third party known as the mediator helps to solve disputes by encouraging the parties to reach a voluntary agreement. Mediation provides speedier justice, a friendlier environment and more room for flexibility compared to litigation, and is private and confidential. Mediation is used in the corporate world as well to settle disputes. However, this paper only talks about the role of mediation in solving matrimonial disputes.

In 1984, the Family Courts Act was passed to provide for the establishment of family courts, with the aim of promoting conciliation in, and securing speedy settlement of, disputes relating to marriage and family affairs, and for related matters. Section 7, relating to jurisdiction, in its Explanation, gives us an idea as to the matrimonial disputes that can be dealt with by the same. Clause (a) deals with decrees of nullity of marriage or restitution of conjugal rights or judicial separation or dissolution of marriage; clause (c) is with respect to the property of the parties; clause (d) deals with a suit or proceeding for an order or injunction; and clause (f) is for maintenance.

2. SECTION 498-A, IPC AND ITS INVOCATION IN MATRIMONIAL DISPUTES

Section 498-A of the Indian Penal Code has been oft used provision in matrimonial disputes. Such usage has been much contested. The section provides for punishment of the husband or his relative, for subjecting a woman to cruelty, which may be mental or physical cruelty of a grave nature, or even harassment, economic cruelty, etc.

Though the number of cases reported for cruelty are far lesser than the real figures, it has been found that in a large number of cases, the implication of the husband's relatives was often unjustified.

The Justice Malimath Committee in its Report on Reforms of Criminal Justice System (2003) observed that rather than helping genuine victimised women, the provision has become a source of blackmail and harassment. When the husband and his relatives are arrested, any chances of salvaging the marriage are lost, without any possibility of amicable reconciliation being explored beforehand. Moreover, long and protected criminal trials lead to acrimony and bitterness. While dealing with matrimonial matters, due regard must be given to the fact that such sensitive family problems should not be allowed to be aggravated by overzealous or callous actions on part of the police, especially since the offence is non-compoundable and non-bailable. It is also argued that the low conviction rate u/s 498-A is due to ineffective investigation by the police, who resort to immediate arrest.

On the other hand, it is argued that Section 498-A is intended to protect a vulnerable section of the society who have been victims of cruelty and harassment. Abuse or misuse of the law is not specific to the instant provision, and cannot be the reason for diluting the rigour of the provision. The existing law should be allowed to take its own course. Police are also right in acting swiftly in cases where further torture and cruelty against the complainant by the respondents may arise, as a result of the complaint.

The Law Commission of India, in its 243rd Report on Section 498-A, IPC (2012), observed that in the course of implementing Section 498-A, three problems arise:

a) The haste of the police in arresting the husband and his relatives mentioned in the FIR, which lead to acrimony and dangerously reduce—and perhaps even eliminate—chances of reconciliation, as the offence is non-compoundable;
b) The tendency of complainants to implicate the relatives of the husband, sometimes with little or no justification, whether they reside in the marital home or not, due to feelings of emotion, vengeance, or even on account of wrong advice; and
c) The lack of a professional, sensitive and empathetic approach on part of the police, when it comes to the problems of the woman under distress.

Further, the Law Commission referred to the Report of the Parliamentary Committee on Petitions (Rajya Sabha), which summarised the view of the National Commission of Women, that “in case of

matrimonial disputes, the first recourse should be effective conciliation and mediation between the warring spouses and their families. Recourse of filing charges u/s 498-A IPC may be resorted to in cases where such conciliation fails and there appears a prima facie case of Section 498-A and other related laws."

In such cases, it has fallen upon the judiciary to fill the lacunae in the provision, in order to make the current framework workable.

3. JUDICIAL OPINION ON MEDIATION IN MATRIMONIAL DISPUTES

Recognising that in cases of matrimonial disputes, both parties go through one of the most stressful phases of their lives, the Indian judiciary has tried to promote ADR processes in various judgments, as an alternative to the cumbersome judicial process. It has further been admitted that in matrimonial disputes, there is hardly any case where one party is entirely to blame. Often, though not always, the cause of misunderstanding in such a dispute is trivial and can be sorted out.

The Supreme Court has cautioned over the years that before the dispute assumes alarming proportions, someone must make efforts to make the parties see reason—particularly through the legal route of mediation. This is because matrimonial disputes, particularly those relating to the custody of children, maintenance, etc. are 'pre-eminently fit for mediation', and several of such disputes referred to mediation centres get settled amicably.

For instance, in G.V. Rao v. L.H.V. Prasad,[2] the Supreme Court made some apt observations in relation to matrimonial disputes. Little matrimonial skirmishes sometimes tend to escalate at times, assuming serious proportions and resulting in the commissions of heinous crimes, involving other members of the family too. Thus, if marriage breaks down, adjustment of various relations is required, rupturing the usual structure and peace of the family. It is for this reason that family law and family courts majorly encourage reconciliation and settlement by amicable agreement in matrimonial disputes, rather than litigation.

[2] (2000) 3 SCC 693.

3.1 Judgments of the Supreme Court:

a) *Jagraj Singh v. Birpal Kaur*:[3]

After the parties got married, they went to a foreign country. The wife was unable to find a job, so she returned to India to live with her parents. The relations between the two spouses became strained and finally the wife filed a petition for divorce on the ground of desertion and cruelty. Issues regarding lack of jurisdiction of the court were raised by the husband, but the court entered into the merits of the matter and held that the husband had neither treated the wife with cruelty nor deserted her.

The matter went to the High Court in an appeal, and the Court, intending to bring about reconciliation between the parties, issued notice to the husband (still in the foreign country) and directed both parties to remain present in person on the date specified. The case was adjourned many times but despite several such opportunities, the husband did not appear, and finally a non-bailable warrant was issued against him to be executed in the foreign country.

An appeal was filed before the Supreme Court by the husband, submitting that the personal appearance was not mandatory and the matter could be considered ex parte at most.

Dismissing the appeal, the Supreme Court observed that the intention of the parliament behind enacting S. 23 of the Hindu Marriage Act, 1955 was to preserve the sanctity of marriage, thereby making the endeavour by courts for reconciliation between parties to the matrimonial dispute essential, as far as possible.

S. 23(2) of the aforementioned Act provides that before proceeding to grant any relief, in every case where possible (consistently with nature and circumstances of the case), the court of first instance must make every endeavour to bring about a reconciliation between the parties, provided that the relief should not be sought on any of the grounds from clauses (ii)–(vii) of S. 13(1) – (ii): conversion to another religion; (iii): unsound mind; (iv): leprosy4; (v): venereal disease in communicable form; (vi): renunciation; and (vii): missing for seven years.

S. 23(3) further states that proceedings may be adjourned for a reasonable period of time, not more

[3] (2007) 2 SCC 564.
[4] Omitted by the Personal Laws (Amendment) Act, 2019, § 5, No. 6, Acts of Parliament, 2019 (India).

than 15 days, if the parties so desire or the court thinks it just and proper to do so. Further, the matter may be referred to any person named by the parties or nominated by the court, directing such other person to report to the court as to whether reconciliation can be and has been effected. Due regard shall be had to the report when the court is disposing of the proceedings.

b) *Gaurav Nagpal v. Sumedha Nagpal*:[5]

This was a case regarding the custody of the child following a dispute between the parents which was solved through litigation. However, the opinion of the Supreme Court regarding amicable settlement of matrimonial disputes is worth noting.

The appellant (father) and the respondent (mother) had a dispute which they solved through litigation. The High Court allowed the custody of the child to the father, with visitation rights to the mother. However, the visitation rights granted to the mother were not complied with, and thus, the mother was allowed to file a contempt petition and an application under S. 6 of the Hindu Minority and Guardianship Act, 1956 by the District Court, and the custody of the child was also transferred to her. The father's appeal to the High Court was dismissed, and further, when the appeal came to the Supreme Court, it was again dismissed.

The sheer number of cases in courts, relating to divorce or judicial separation was remarked by the Supreme Court to be very disturbing. The Court observed that merely because the Hindu Marriage Act, 1956 provides grounds on which a decree for divorce or judicial separation can be sought, parties to matrimonial disputes should not ordinarily resort to the same. The emphasis should be on saving the marriage and not breaking it, and people should approach courts only as a last resort, when marriage has been irretrievably broken and is beyond repair.

c) *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*:[6]

In the landmark judgment of Afcons Infrastructure Ltd., the Supreme Court remarked that results of mediation should be showcased to the court, and when the mediation is court-annexed, the reasons for choosing mediation shall be recorded. The judgment, in paragraph 19, enumerates the categories

[5] (2009) 1 SCC 42.
[6] (2010) 8 SCC 24.

of cases that are normally suitable for ADR processes. One such category, in clause (ii), includes all cases arising from strained or soured relationships, with special emphasis on disputes relating to matrimonial causes, maintenance, custody of children.

d) *K. Srinivas Rao v. D.A. Deepa*:[7]

The judgment is lauded for the directions laid down by the Supreme Court regarding mediation in matrimonial matters.

The husband prayed for a divorce decree on grounds of mental cruelty, alleging that the wife had filed a false criminal complaint against him and his family.

The case was ruled in favour of the husband, and the Supreme Court placed importance on pre-litigation mediation in settling family disputes. The chances of successful resolution are higher when parties approach mediation at the earliest instance, rather than pursuing litigation for disputes that often arise due to trivial reasons.

While observing that mediation is an effective method of ADR in such cases, the Apex Court issued directions to the courts that deal with matrimonial matters:

a) Family courts shall make all efforts to settle matrimonial disputes through mediation. Even if counselors submit a failure report, the family courts shall refer the matter to the mediation centre, with the parties' consent. A reasonable time limit shall be set in order to avoid delay in resolution of the disputes by the family courts;
b) Criminal courts dealing with the complaint under S. 498-A, IPC, should, at any stage and particularly before taking up the complaint for hearing, refer the parties to the mediation centre if they feel that there exist elements of settlement, and both parties are willing. However, in this exercise the rigour, purport and efficacy of S. 498-A must not be diluted. The concerned court must work out the modalities in each case, taking into consideration the facts; and
c) All mediation centres shall set up and publicise pre-litigation desks/clinics and make efforts to settle matrimonial disputes at the pre-litigation stage.

[7] (2013) 5 SCC 226.

Regarding the offence punishable under S. 498-A, the Court kept in mind that it is not compoundable, and mediation should be pursued only in "appropriate cases" if parties are willing and there appear to exist elements of settlement. The erring spouse should not use mediation to get out of the clutches of the law. However, settlement allows the parties to be saved from the trials and tribulations of a criminal case, and also reduces the burden on courts, which is in the larger public interest.

e) *Sneha Parikh v. Manit Kumar*:[8]

The parties got married as per the Hindu rites and customs in February 2015, but due to disputes/temperamental differences, both parties started residing separately in October 2015. The petitioner filed a complaint against the husband and his family u/s 498-A, 406, 506 of the IPC. The respondent husband thereafter filed for divorce u/s 13, Hindu Marriage Act. The matter was referred to the Supreme Court Mediation Centre, and the parties arrived at an amicable mutual settlement, for divorce by mutual consent.

The Supreme Court, reading Ss. 13 & 13-B of the Hindu Marriage Act with Art. 142 of the Constitution, invoked the latter and exercised its powers thereunder to quash the FIR lodged by the wife, and the marriage was dissolved on mutual consent in terms of the settlement through the Supreme Court Mediation Centre.

f) *Soumitra Kumar Nahar v. Parul Nahar*:[9]

This was again a case majorly dealing with child custody after matrimonial differences arose between the spouses. On the amicable settlement of such disputes, it was observed that all endeavours are to be made to resolve the matrimonial disputes in the first instance through the process of mediation, which is one of the most effective ADR mechanisms in resolving personal disputes. If, however, the same is not possible, future endeavours must be made by the Court through its judicial process to resolve such personal disputes as expeditiously as possible. It is always in the interest of the parties to resolve such disputes amicably sitting across the table.

[8] (2018) 4 SCC 501.
[9] (2020) 7 SCC 599.

3.2 Certain High Court pronouncements:

a) *Manas Acharya v. State*:[10]

The petitioner and respondent were married, and due to disputes and differences, the respondent lodged an FIR u/s 498-A of the Indian Penal Code, 1860 (IPC) and also a complaint u/s 12 of the Domestic Violence Act, and a petition u/s 125 CrPC. The parties subsequently resolved all their disputes and differences by way of an agreement before the Mediation Centre, Tis Hazari Courts, Delhi. After some time, the marriage was also dissolved by a decree of divorce by mutual consent, and the ex-husband filed a petition for quashing the FIR. The respondent opposed the quashing of FIR on the ground that her entire jewellery/stridhan was not returned.

The case came before the Delhi High Court, which was of the view that the stand taken by the respondent was contrary to facts and neither fair nor just. The agreement executed before the Mediation Centre clearly stipulated that the settlement amount was a total lump sum amount towards stridhan, maintenance as well as dowry articles and permanent alimony. Her averment that the agreement was silent in that regard was false.

Relying upon precedents, the High Court observed that the settlement agreement executed between the parties through mediation was a comprehensive legal, valid and binding document, and hence one of the parties could not wriggle out of the decision taken in the mediation process. This case demonstrated a greater preference of the courts for mediation, as far back as in 2012.

b) *Gurudath K. v. State of Karnataka*:[11]

The High Court of Karnataka similarly stated herein that even if the offences are non-compoundable, if they relate to matrimonial disputes and the Court is satisfied that the parties have settled the same amicably, Section 320, CrPC does not act as a bar to the power of the criminal court to quash the FIR or criminal complaint in respect of such offences.

c) *Alok Jaiswal v. State of U.P.*:[12]

The Allahabad High Court referred to relevant judgments of the Apex Court, where guidelines have

[10] 2012 SCC OnLine Del 4462.
[11] 2014 SCC OnLine Kar 12715.
[12] Application No. 27720/2019.

been laid for quashing of criminal proceedings on the basis of compromise and amicable settlement of matrimonial disputes between parties, including the G.V. Rao case.

Guidelines from Parbatbhai Aahir @ Parbatbhai v. State of Gujarat13 were specially referred to. Criminal proceedings involving offences which arise from relationships that essentially have a civil flavour (for example, financial, commercial, etc.) may in appropriate situations be quashed where parties have settled the dispute, especially when the possibility of a conviction is remote in view of the compromise, and the continuation of a criminal proceeding would cause oppression and prejudice. This is, however, subject to exceptions, regarding gravity and nature of the offence, etc.

The Allahabad High Court finally observed that the object of criminal law is primarily to visit the offender with certain consequences, but it is not necessary in every case, particularly when the victim wants to bury the hatchet. If the offender and victim want to move on in a matrimonial case, they may be allowed to compound the offences in terms of settlement. On making settlement between the parties in a matrimonial dispute, the chance of ultimate conviction is bleak and therefore, no useful purpose is likely to be served by allowing a criminal prosecution against the applicants to continue.

d) *Shiju Joy A. v. Nisha*:[14]

The Supreme Court asked the Kerala High Court to resolve the problems caused to litigants on account of the serious delay in disposal of cases by Family Courts. The problems faced were multifaceted and of different dimensions, such as lack of infrastructural facilities, ever increasing number of cases, lack of training of officers, inefficient case management, etc. The petitioners, being parties to different proceedings, invoked Art. 227 of the Constitution and requested directions to the Family Courts for expeditious disposal of cases.

The High Court noted that Family Courts are expected to deal with disputes relating to marriage and family affairs with sensitivity and consideration. The procedure under the law is to assist the parties for resolution of the disputes in a constructive manner, rather than adversarial litigation. Even the requirement of engaging counsel is also not there. Often, counsel may not be interested in resolving the disputes as they generally are the beneficiaries of prolonged litigation. The rules and procedures

[13] Criminal Appeal No.1723 of 2017.
[14] 2021 SCC OnLine Ker 1391.

formulated for Family Courts are the casualty on account of this. The objects and reasons in establishing Family Courts, to deal with matrimonial disputes, with informal setting are to break the shackles of rigid rules and procedures followed in civil courts.

Directions were issued for streamlining a uniform procedure for disposal of cases pending before the Family Courts.

e) *Sh. Chhatter Pal v. State*:[15]

The High Court of Delhi recently issued guidelines to be followed by mediators while drafting settlement agreements in cases of matrimonial disputes. S.K. Sharma, J., observed that for the essential conditions for enforcing a mediation settlement agreement, common understanding of the parties is crucial. Expressing intentions and commitments through clear and concise language is critical for the effective enforcement of the agreement.

The mediator, sensitive to the level of understanding of parties according to their social backgrounds, should remain attentive and alert to the circumstances, capacity and linguistic abilities of the parties involved, considering their backgrounds and language proficiency. Parties' understanding of a language can significantly impact the effectiveness and execution of the settlement agreement. Opining that a majority of the parties who approach the Court are more adept at speaking and understanding Hindi than English, the Court directed the mediation centres in Delhi to draft agreements in Hindi where required.

The Court further held that, the aim of mediation being to reduce or resolve litigation and not to escalate it, the mediator should also be careful of future consequences of any agreement, since it can make or break many lives.

[15] 2023:DHC:3396.

4. CONCLUSION

The large number of pending cases in courts regarding matrimonial disputes presents the shocking truth of the disintegration of the family culture, and the anomie faced by the society16. In the past, conflicts were resolved amicably, but today, alienation and aloofness is common, from individuals within a family to society and the community at large. Disputes soar to fierce battles, which are combated through adversarial litigation.

Even in Family Courts, causes are projected to establish one's rights sans their obligations, forcing the Family Courts to drift from their role as conceived under law and to embark the lines of a normal court.

There are diverse views on the usage of mediation for dealing with matrimonial disputes. On one hand, it is considered to safeguard family relationships, especially in the context of children who are saved from going through the stress and trauma in the litigation process. On the other hand, mediation is also seen as ineffective as the "wrongdoer" escapes without being punished through the proper penal order of the State.

Nevertheless, mediation forms the very basis of society to maintain harmony in the social fabric, and has widely emerged as the most accepted mechanism for settling matrimonial disputes.

As commented by N.V. Ramana, C.J. (as he then was), only a few people can afford courts while the majority suffers in silence. In that light, employing mediation in cases like matrimonial disputes not only reduces pendency and backlog in the judiciary, but also provides speedy justice to affected parties—thereby upholding their fundamental right to access to justice under Article 21 of the Indian Constitution.

[16] Shiju Joy A. v. Nisha, 2021 SCC OnLine Ker 1391.