

# **NATIONAL JUDICIAL ACADEMY, BHOPAL**

## **REFRESHER COURSE FOR FAMILY COURTS (P-1126)**

**12<sup>th</sup> – 16<sup>th</sup> OCTOBER, 2018**

**‘COUNSELLING, CONCILIATION & MEDIATION IN  
RESOLVING FAMILY DISPUTES-RELEVANCE AND  
IMPORTANCE’**

**PRESENTATION BY**

**DR. SUDHIR KUMAR JAIN**

**PRINCIPAL JUDGE**

**FAMILY COURTS (W)**

**TIS HAZARI COURTS**

**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**

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**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 59<sup>TH</sup> 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**

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**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<sup>2</sup>**

**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**



## **MEDIATION V/S JUDICIAL PROCESS**

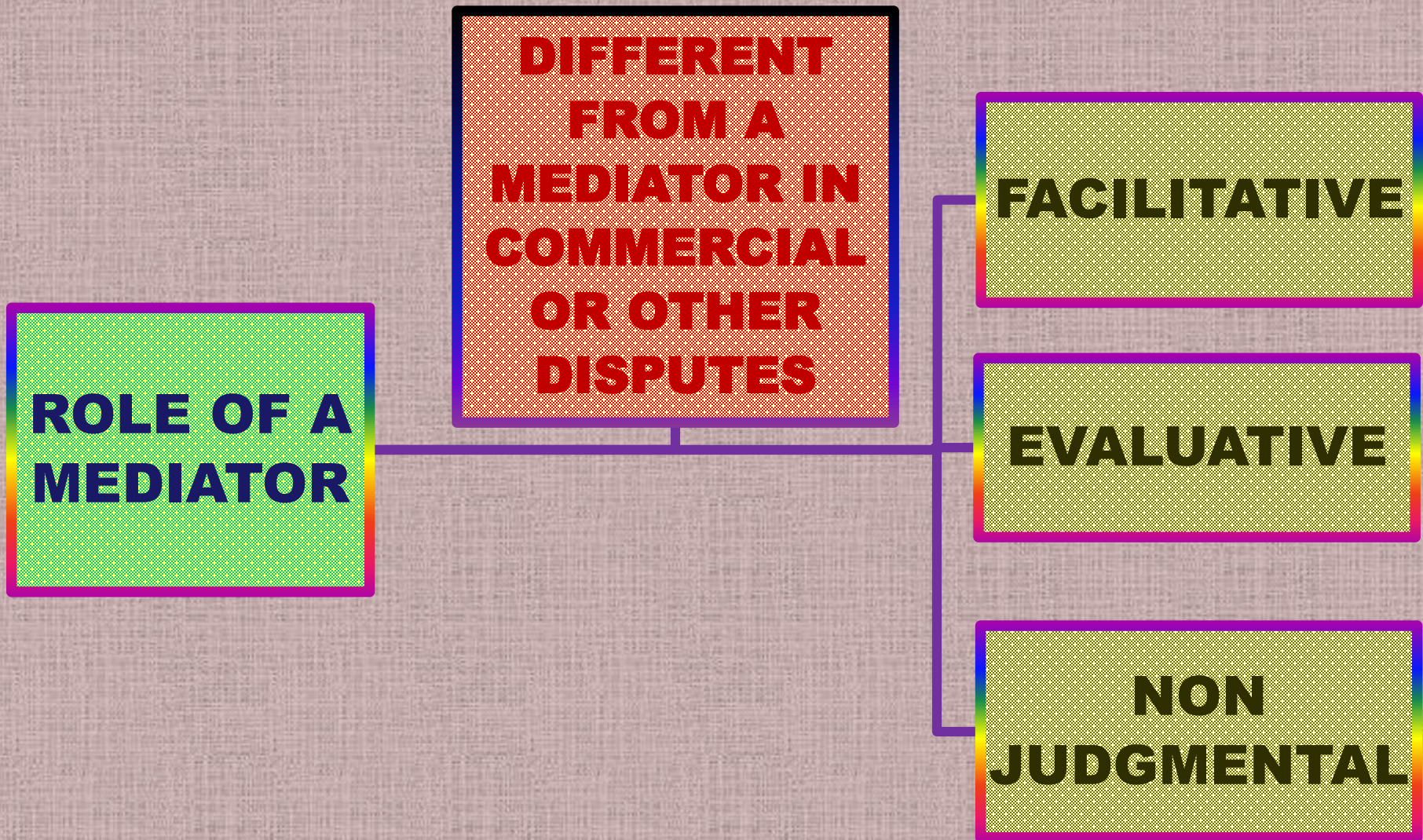
**JUDICIAL PROCESS ADJUDICATES IN  
FAVOUR OF ONE PARTY**

**MEDIATION SETTLEMENT ARRIVED AT  
WITH CONSENT OF PARTIES**

**JUDICIAL PROCESS FOCUSES ON PAST  
BASED ON LEGAL RIGHTS AND  
OBLIGATIONS**

**MEDIATION FACILITATES MUTUALLY  
ACCEPTABLE AGREEMENT SATISFYING  
EVERYONE'S INTERESTS.**

**MEDIATION CHANGES DISPUTES FROM  
“WIN-LOSE” TO “WIN-WIN”.**



**ATTRIBUTES OF A  
MEDIATOR**

**COMMUNICATION**

**IMPARTIALITY/NEUTRALITY**

**PATIENCE**

**OPTION GENERATION/CREATIVITY**

**SENSITIVITY**

**PLEASANT DISPOSITION/HUMOUR**



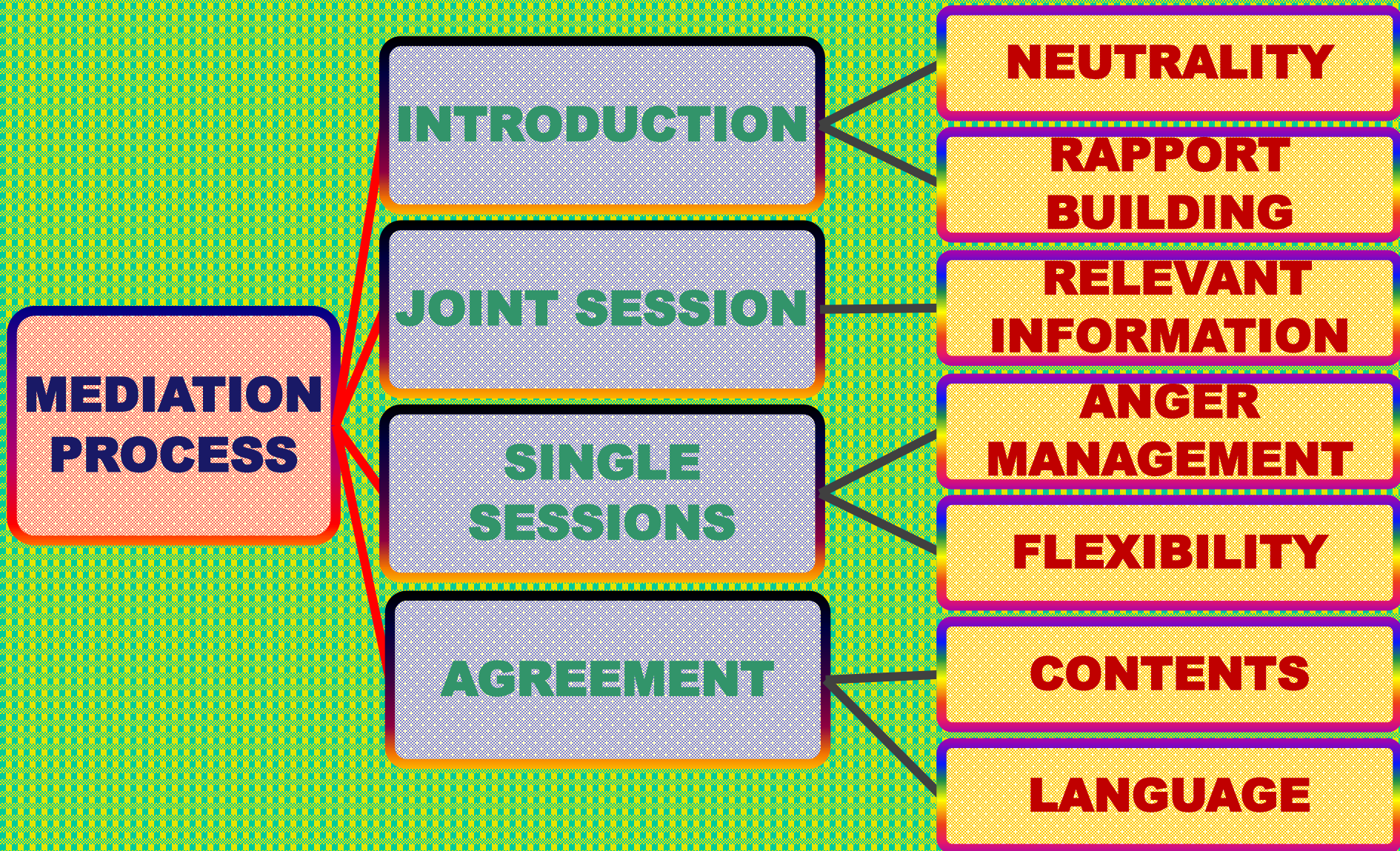
# **STAGE OF REFERRAL**

**AS PER AFCONS, COURT TO CONSIDER ABOUT SUITABILITY OF CASE FOR REFERRAL BY ASCERTAINING SUMMARY AND NATURE OF DISPUTE**

**BE REFERRED AFTER SERVICE OF NOTICE ON OPPOSITE PARTY AND BEFORE FILING OBJECTIONS/WS TO AVERT HOSTILITY**

**PARTIES AT EARLY STAGE READY FOR MEDIATION AS NOT TOO WEDDED TO POSITIONS IN COMPARISON TO LATER STAGES OF LITIGATION**

**CONSENT NOT MANDATORY**





# **COMMUNICATION TECHNIQUES**

**ASKING RIGHT QUESTIONS**

**ACTIVE LISTENING**

**RESTATEMENT/SUMMARIZING**

**APPROPRIATE BODY LANGUAGE**

**EMPATHY WITH NEUTRALITY**

**NEUTRAL RE-FRAMING**

**SETTING AN AGENDA**

**FREQUENT/NORMAL**

**NOT A THREAT TO RESOLUTION**

**COLLABORATIVE SOLUTIONS**

**TYPE AND STAGE OF IMPASSE**

**APPROACH OF PARTIES/MEDIATOR**

**TECHNIQUE : REAL TESTING**

**BELIEVE IN WORKABLE SOLUTION**

**UNDERSTANDING FALSE IMPASSE**

**IMPASSE AVOIDANCE**

**IMPASSE  
MANAGEMENT**

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graph LR; A[IMPASSE MANAGEMENT] --- B[FREQUENT/NORMAL]; A --- C[NOT A THREAT TO RESOLUTION]; A --- D[COLLABORATIVE SOLUTIONS]; A --- E[TYPE AND STAGE OF IMPASSE]; A --- F[APPROACH OF PARTIES/MEDIATOR]; A --- G[TECHNIQUE : REAL TESTING]; A --- H[BELIEVE IN WORKABLE SOLUTION]; A --- I[UNDERSTANDING FALSE IMPASSE]; A --- J[IMPASSE AVOIDANCE];
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# **AGREEMENT DRAFTING : PRECAUTIONS**

**ENSURE PRESENCE OF PARTIES/COUSELS**

**BRIEF FACTS**

**MODE OF DIVORCE**

**FILING OF FIRST AND SECOND MOTION**

**PERMANENT ALIMONY/MAINTENANCE**

**PAYMENT SCHEDULE**

**CUSTODY AND VISITATIONS ISSUES**

**QUASHING OF FIR**

**RETURN OF ISHTRIDHAN**

**DETAILS AND WITHDRAWAL OF CASES**

**CONNECTED CASES**

**INVOLVEMENT OF LAWYERS**

**NO FUTURE LITIGATION**

**VOLUNTARINESS OF SETTLEMENT**

# **MEDIATOR'S STRATEGIES**

**UNDERSTANDING FACTS/CAUSES OF CONFLICT  
ACCURATELY/AGENDA CONTROL**

**PAST TO PRESENT/FUTURE**

**COUNTER NEGATIVE BARGAINING**

**NO PREMATURE SOLUTIONS/DECISION MAKING**

**NO EMOTIONAL ATTACHMENT/JUDGMENT**

**GENERATION/EVALUATION OF OPTIONS**

**THIRD PARTY INVOLVEMENT**

**LEGAL AGREEMENT**



- **UNDERSTANDING OF COMMUNICATION BETWEEN PARTIES**

- **HOW THEY SOLVE PROBLEMS**

- **MEDIATOR EXPERIENCE**

- **THOUGHTS AND FEELINGS OF PARTIES CLEARLY EXPRESSED**



# ADVANTAGES

**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**

MATRIMONIAL CASE	REFERRED CASES	SETTLED	NOT SETTLED	SUCCESS RATE(%)
<b>DIVORCE PETITIONS</b>	<b>3188</b>	<b>1483</b>	<b>1705</b>	<b>46.52</b>
<b>COMPLAINTS U/S 125 Cr.P.C</b>	<b>4093</b>	<b>2362</b>	<b>1731</b>	<b>57.71</b>
<b>BAILS APPLICATIONS U/S 498A/406 IPC)</b>	<b>26603</b>	<b>12751</b>	<b>13852</b>	<b>47.93</b>
<b>RESTITUTION OF CONJUGAL RIGHTS</b>	<b>1044</b>	<b>522</b>	<b>522</b>	<b>50</b>
<b>DOMESTIC VIOLENCE</b>	<b>7865</b>	<b>3884</b>	<b>3974</b>	<b>49.38</b>
<b>CUSTODY MATTERS</b>	<b>518</b>	<b>240</b>	<b>278</b>	<b>46.33</b>



# **JUDICIAL DECISIONS**

# **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**

# 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**

**THANK YOU**