

NATIONAL JUDICIAL ACADEMY, BHOPAL

REFRESHER COURSE FOR FAMILY COURTS (P-1229)

22ND SEPTEMBER, 2019

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

PRESENTATION BY

**DR. SUDHIR KUMAR JAIN
PRINCIPAL DISTRICT & SESSIONS JUDGE
NORTH-EAST
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

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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 PARTIES²**

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

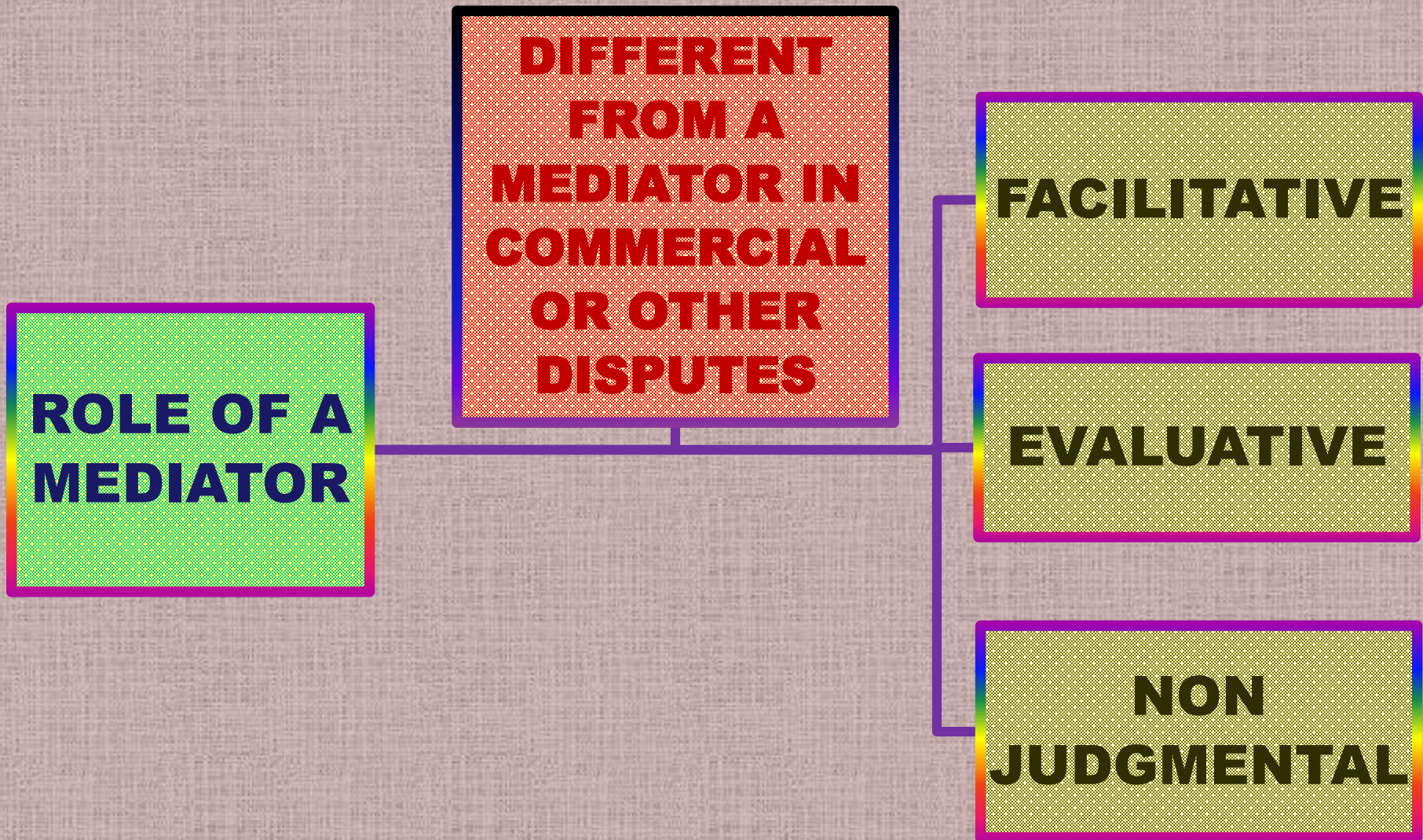
**JUDICIAL PROCESS ADJUDICATES IN
FAVOUR OF ONE PARTY**

**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

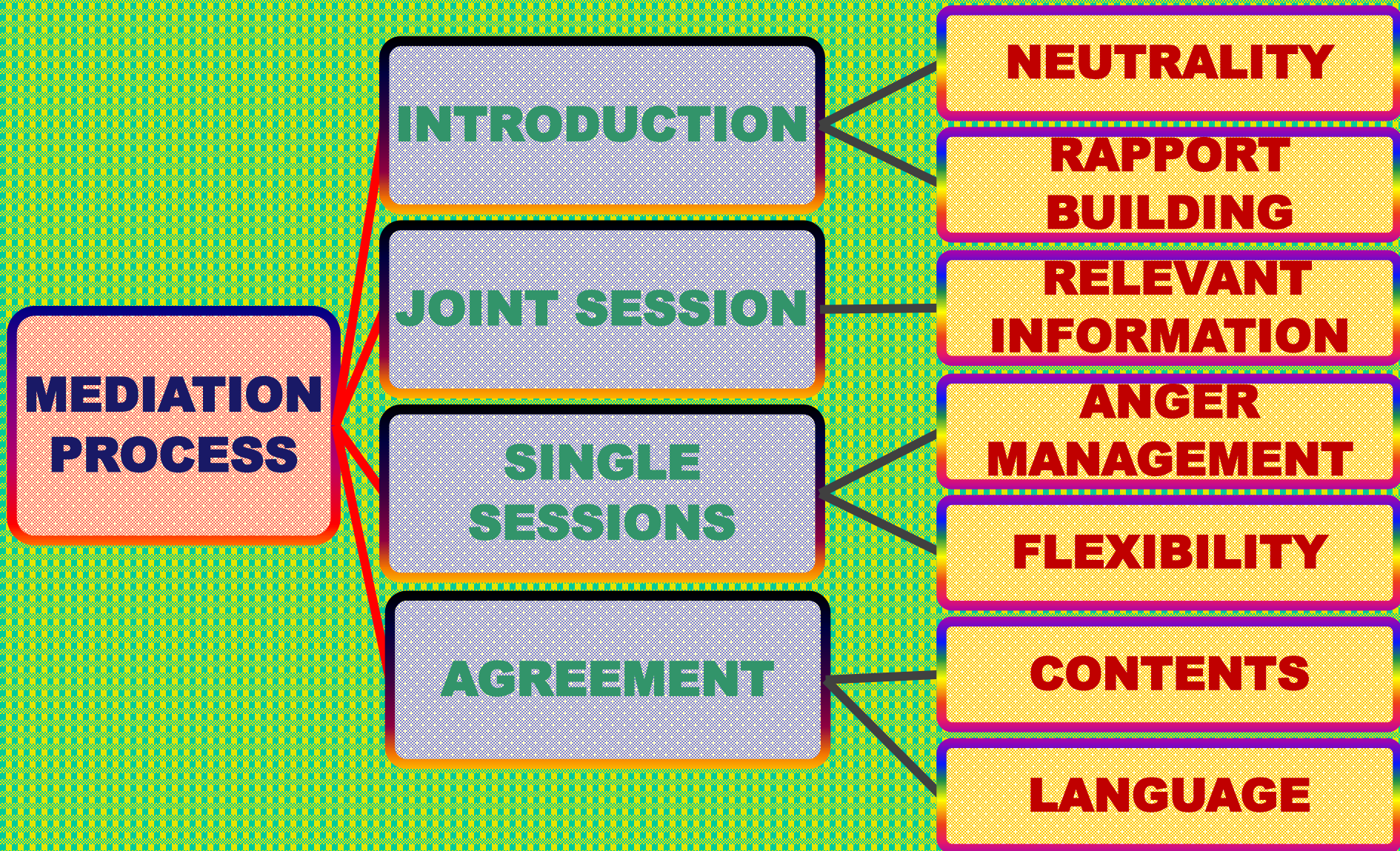
STAGE OF REFERRAL

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



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