

Mediation: Clearing the minefield of matrimonial disputes

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Divorce is a potential minefield in terms of the impact it can have on the parties, their children and their extended families. Getting divorced is one of the most painful events in one's life, and if not handled carefully and sensitively, it could lead to severe distress. For children, the divorce of their parents can be devastating, particularly if the intensity and duration of parental conflict is high.

The legal system should aim to minimise the possibly traumatic fallout of a divorce.

When parties approach the courts in matrimonial matters, their emotional scars are often deepened by the adversarial process; parties are unable to voice their emotional grievances and there is not much scope for empathy.

Lawyers need to highlight the other side's faults, leading to a rupture in communication between parties and a hardening of positions. Section 498A of the IPC (dealing with matrimonial cruelty) can be a very effective remedy for abused wives but at times it is also an easy weapon to 'teach the husband a lesson.' An uninformed wife may be ready to do anything to settle scores with her husband and in-laws.

In addition, the children's interests are often ignored when the parents are engaged in bitter courtroom battles. Resolving the contentious issue of custody could take several years in courts and until then the court often grants visitation in court premises. Can a parent and child really bond in court premises? Can they spend quality time sharing experiences and creating joyful memories in such an atmosphere?

A divorce can lead to numerous reciprocal cases being filed by the parties. Sometimes a matrimonial dispute can result in as many as 10-15 cases being filed, with up to 5-6 such cases reaching the Supreme Court. The average life of a case in India is 15 years. Thus

parties and their families could end up enduring high levels of stress and hostility for considerable periods.

Healing the scars

As a couple face the rupture of their most intimate relationship, the appropriate dispute resolution mechanism would re-open their channels of communication, explore their misunderstandings, investigate if there is any life left in the marriage and examine if the divorce petition is merely a ploy to teach the other spouse a lesson.

Where vows have been taken ‘until death do us part’ and sacred knots have been tied, and unforeseen circumstances occurred leading to divorce, the couple faces a number of complex decisions. How can lifestyles be sustained and how are assets divided? How best can the children be cared for? An adversarial setting could be counter-productive for exploring such issues.

Mediation can help explore the core interests and concerns of the parties and find creative options that maximise the welfare of both the parties and their children. For example, in a mediation, it became apparent that the wife was willing to grant custody of the children to the father, but was concerned about his traditional and strict approach to parenting. During mediation a solution emerged – joint visits to a family counsellor once a month became one of the terms of the divorce settlement.

Sometimes matrimonial mediation can be a transformational experience for the parties. Geeta (Name changed) came striding into mediation, demanding a divorce. Her husband Vikram (Name changed) was opposed to the divorce. Considerable skill and patience were required and several mediation sessions conducted. Finally terms for the divorce were agreed. When the case came up in court for pronouncement of the decree, Geeta requested another referral to mediation. At a private session, she told the mediator that she wanted a reunion.

She explained that she and her husband had both been working; her income had been used for home expenses and Vikram’s income was saved. With these savings he bought a property in his name. Geeta felt betrayed– she lost trust in her husband and felt financially insecure. One of the terms of the settlement was that Vikram would transfer property to her. On realising that her husband was willing to

share the property, Geeta's fears calmed and she realised that she actually wanted to stay with Vikram. But by that time Vikram was left wondering what Geeta's real intentions were.

Together with the mediator, Geeta and Vikram explored their feelings and their intentions for the reunion. Vikram said in a joint session, "I feel my love for her and her love for me. She has made many sacrifices for the family." Geeta said, "He is a good man, good to many people, a good father to my children and now I want to discover his goodness. I want a spiritual solution to this problem. I am not afraid anymore. I want to give this a try."

Courts in matrimonial cases are dealing with emotionally charged situations. It is therefore imperative that an opportunity be given for the parties to tell their stories and explain their perspectives.

An Irish judge recently referred to litigation as a last resort, 'nuclear option.' This is especially true in matrimonial matters where "mutually assured destruction" is a real possibility unless the situation is handled sensitively.

Every attempt must be made to refer matrimonial cases to mediation at any stage, if possible at a pre-litigation stage. Sometimes more than one reference to mediation may be required. Only a collaborative effort by judges, lawyers, parties and mediators can diffuse the precarious minefield of matrimonial disputes.