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## THE INTERSECTION OF LEGAL EDUCATION AND FAMILY MEDIATION: A CASE STUDY ON CLINICAL APPROACHES

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### Abstract

Methods of Research, The author of this research work used a mix methods technique, including both primary and secondary data. The author is the senior chief counselor at the Family Dispute Resolution Clinic, or FDRC. Based on the cases that have been resolved, the parties that have been counseled, and the techniques employed, the observation method of study has been employed. In order to examine the present status of civil cases in a variety of issues, particularly family disputes, the researcher has examined secondary data. This study aims to highlight mediation's position as one of the most successful methods for resolving family conflicts. Over the past 20 years, the judicial system has seen a fundamental shift in the nature of family conflicts, particularly those involving children. As a result of this paradigm shift, a thorough, progressive, and multidisciplinary family dispute resolution procedure has taken the place of the conventional adjudication model. As a result of the excessive number of pending cases, the Indian legal system is in dire straits. One of the most adaptable and quick forms of alternative dispute resolution is mediation, which is a non-judicial process. This study demonstrates that a marriage disagreement can provide exceptional outcomes if it is addressed well and at the correct time. With an approx. 88% success rate at the pre-FIR stage, FDRC is a prime example in India. This essay discusses the idea of mediation, the several stages of the mediation procedure used at FDRC, and the unique characteristics of this clinic. In the final analysis, The author has emphasized the rise of mediation as a route demonstrating an alternate dispute resolution method in the Conclusion. One such program that is exemplifying the synergy between academic (private body) and executive (public) is the Family Dispute Resolution Clinic. Students, academics, researchers, and the general public may be very interested in the methodology, strategy, and process used in FDRC.

**Key Words:** FDRC, GOI, conflict, mediation, Family dispute, Pre-FIR

## INTRODUCTION

Mediation is one of the concepts which is very deeply rooted in our Indian culture of dispute resolution. The roots of mediation can be traced way back to the ancient Indian legal systems, for example, the concept of “Shantidoot” before any war or battle was very much prevalent in ancient India. If we talk about recent past then, the system known as the “Gram Panchayats” and “Nyaya Panchayats” is popular and widely practiced in ancient rural India. Mediation is a dynamically structured voluntary dispute resolution process where a neutral third party helps the disputing parties in resolving the conflict between them by using specialized communication and negotiation techniques. These techniques are in turn designed in a manner that facilitates the process of mediation and dispute resolution to reach an amicable solution. Natures of family disputes, especially those involving children, have undergone a paradigm shift in the legal system over the last two decades. The traditional model of adjudication has been replaced by a comprehensive, progressive and multi-disciplinary family dispute resolution process as a result of this paradigm change. Nowadays belief in marriage as a life-long bond for several lives has been changed, even its significance within society has changed drastically. The apparent fault lines in patriarchal dominant social hierarchies have now started appearing even in suburban and rural landscapes too and divorce, separation, are no more a taboo. Family dispute is different from other form of dispute because of the intimate relationship, love, affection, trust and bond parties share for years. The development of “alternative” dispute resolution methods has been a continuing improvement process to craft ever-more effective and efficient ways to handle conflict. In this ongoing process, past innovations sometimes became institutionalized as a new status quo, only to be challenged by even newer tech. Parties are increasingly prefer mediation, arbitration, Negotiation, conciliation, and private judging. Importance of mediation has been highlighted by Hon’ble Supreme Court of India time to time and measures like court refereed mediation have become mandatory in family disputes. Lawyers play an important role in the adversarial system and that’s why bar council of India has taken an appreciable initiative by inducing Mediation as a mandatory subject for the law students, so that they can be imparted training to develop skills as a mediator and can utilize mediation techniques proactively.

Undoubtedly, Innovation in family law dispute resolution approach can tangibly improve justice dispense system in India. This article establishes this claim by drawing on empirical data about Indian family disputes and resolution approach.

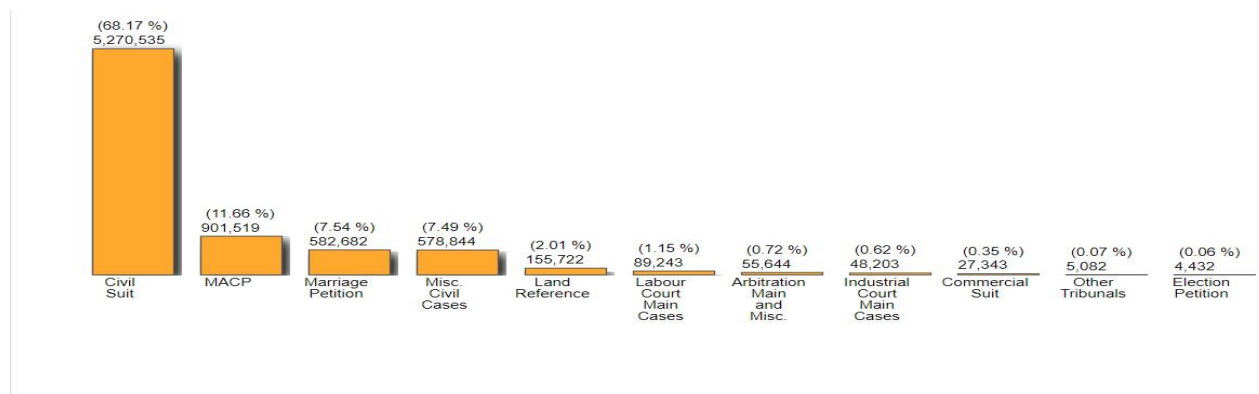
Why mediation is a strategic imperative?

Pending Cases in India (including District Courts, High Courts and Supreme Court)

Total Civil Cases	<b>1,04,00,682</b>
Total Cases	<b>3,90,32,650</b>
Civil Cases More Than 1 Year Old	<b>82,12,082(78.96%)<sup>1</sup></b>

Table1- Source: National data grid, 2021

According to national judicial data grid as of today there is a pendency of more than one cr. civil cases are pending during pandemic this figure has increase with worsening situation itis unlikely that there would be any respect in near future. This is a burgeoning problem which government is it to find any solution. neither the number of quotes is going to increase fortnight nor can there be some innovative mechanism which can resolve these pending cases.



Source: National data grid, 2021

As per the National Data Grid out of 1,04,00,682 total pending civil cases approximately 9 lac. Cases are of motor accident, approximately six lac. Cases are pending of marital disputes, more than five lac. suits are of miscellaneous civil cases and so on. figure shows that pendency has increase drastically during COVID-19. This is really shocking that there are more than 5.5 Lac cases which are pending from last 10 to 20 years 1.1 lac cases spending from 20 to 30 year and more than 37,000 cases pending from last 30 years. On 19th of March 2021 Hon'ble Supreme Court of India speak through CJI and constituted 3 judge benches for hearing a plea filed by youth Bar Association seeking directions and guideline to provide for mandatory pre litigation mediation across the country. Supreme Court of India ask center for considering framing of legislature to regulate mediation. Importance and scope of mediation has been highlighted by Supreme Court of India many times through different judgments.

In the landmark judgment of M.R Krishna Murthy case<sup>4</sup>, Supreme Court of India keeping in mind huge pendency of Motor vehicle accident cases, issued recommendation to the center to evaluate scope of establishment of Motor Accident Mediation Authority (MAMA). In its 129<sup>th</sup> report of Law Commission of India recommended that there should be compulsory mediation before a case has been refer to court. In the case of Afcon Infratecture limited, SC held that all matters related to trade, commerce, and consumer and based on contractual obligation must be mediate first.<sup>5</sup> In 2019 Consumer protection Act, has taken an step forward by adding a dedicated chapter, referring mediation and procedure in consumer related matters. In the Global platform International mediation agreement has given the force of law under UN convention on mediation, In which India is also a signatory member.<sup>6</sup>

It is true that all matters cannot be mediated, but scope of mediation is not limited to commercial disputes, motor vehicle accidental cases, tortoise liability or family dispute. We know that COVID-19 has shaken the entire world with respect to trade, commerce, contractual obligations, business, banking, trading, insurance etc. In such cases scope of mediation is really wide, if cases routed through compulsory mediation process with legal enforceability, then supreme court's burden can be reduced up to a good extent. This will not give only win-win situation to both the parties but also will help judiciary to dispose of pending cases timely and will also establish peace and mutual understanding in society at large.

## **Steps toward Mediation**

### **Private Mediation**

Private mediation is being conducted by qualified personnel who are working in this area at a fixed fee basis. Any person whether a general public or court or companies can appoint the private mediators to reach to amicable solution to their dispute through the process of mediation. This method is generally adopted where court referred mediation is generally not granted and the parties agree to go for the private mediation process so that the matter can be resolved amicably. As mentioned, a fix amount of fee is involved in the process for the mediators so that they are also motivated while doing the mediation of the disputed parties. However, the private companies adopt this method since they don't want to fall into the judicial process which can last for many long years so in order to save their time and energy; they refer for the Private mediation process.

### **Court referred Mediation**

The court referred mediation is generally a part of the judicial process. Whenever a case is pending the court generally before the settlement of issues ensures that the case is sent for ADR i.e., mediation, arbitration and conciliation. Once such process is initiated and it is found that in such a matter no ADR is possible then such matters are generally referred back for the framing of issues. And if the court finds that ADR is possible then

the matter is resolved as per the procedure. In the cases of matrimonial disputes particularly divorce cases mediation is frequently used. Section 89 of the Code of Civil Procedure, 1908 makes it a provision that such matter can be referred for an ADR so that the burdening of the court can be reduced and the people are not stuck up in the judicial process. This is done to ensure the ends of justice and also to ensure that the trust of the disputed parties is maintained within the judiciary. Order X of Code of Civil Procedure, 1908 also lays down a similar provision where in a proper procedure has been established under such order for dispensing of justice.

## **Hybrid Mediation**

Hybrid mediation is a combination of both, courts referred mediation and private mediation process. Hybrid mediation can be adopted in places where court referred mediation and private mediation both can be referred. Generally, it is used in the complicated matters where the interventions of the court as well as private mediators are required to solve the dispute and reach to the solution. In many cases firstly private mediation is adopted where they see that the process is not worth adopting then court referred mediation is also used while making this complete process as hybrid mediation. This can be used vice versa wherein the first the matter is referred for court mediation and later private mediation process is also adopted.

## **Family Dispute Resolution clinic (FDRC) Initiative**

Family dispute resolution clinic (herein after referred as 'FDRC') is a unique initiative started by Gautam Buddha Police in collaboration with Sharda University, Greater Noida. To address the growing number of domestic disputes. Memorandum of Understanding (MOU) was signed between both the parties for a period of 6 months on 9 of July 2019.<sup>7</sup> A status reports has been submitted by working team after 6 months. Based on the report findings

## **FDRC Overall Status Report**

(10 July 2020 to 10 Jan 2021 case statics as per the office records)



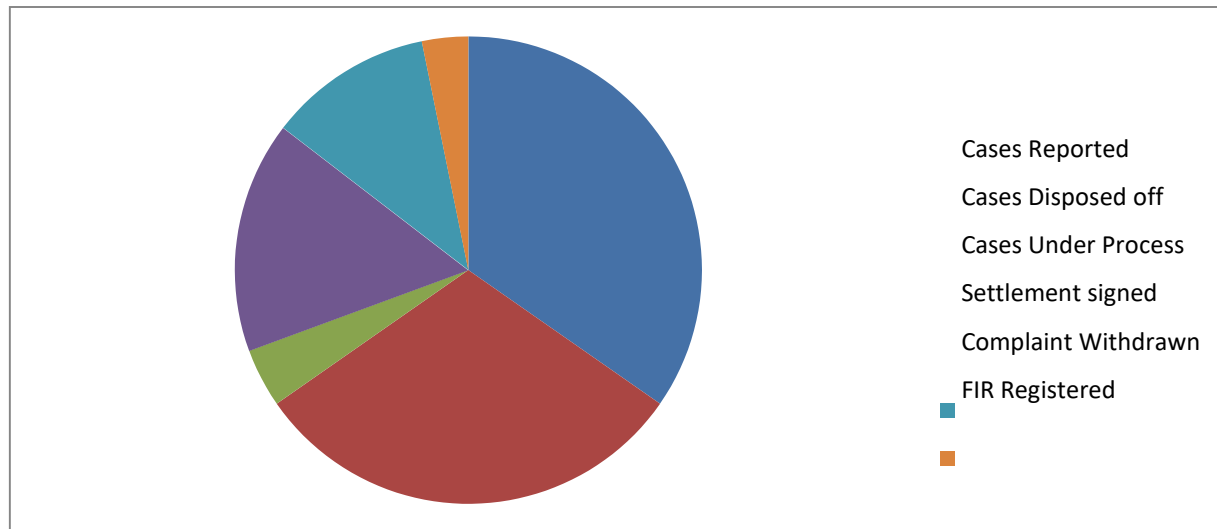


Figure 1: FDRS case status report

Case Status: July 2020 till January 2021

Cases Reported	Cases Disposed off	Cases Under Process	Settlement signed	Complaint Withdrawn	FIR Registered
119	105	14	55	39	11

Table 2: FDRS case status report

This research has been conducted based on cases dealt by FDRS in the tenure of six month (from 10 July 2020 to 10 Jan2021) as per the records. In the above-mentioned period, 350 counseling sessions were conducted by the team of experts includes legal experts, psychologist, and clinical psychiatrist to address 119 cases. As per the standard procedure in each case maximum 3 (three) counseling sessions were given but in exceptional conditions it could be more than that also, as per the requirement. In this short span of timetotal 105 cases were concluded, and 14 cases were still in the process of Counseling. FDRS addresses disputes related to families and most of them are martial dispute, apart from martial dispute FDRS also addresses disputes filed by daughter, mother, senior citizen where counseling and mediation is required. As per the Law mediation can be provided at stage of dispute. FDRS provide mediation at a very initial stage where are yet to enter a legal fight and that’s why scope of resolution is also wide. FDRS provides Pre-FIR mediation with the voluntary consent of parties. According to the records out of 105 disposed cases, there were only 11 cases where parties entered

into a legal battle and rest have successfully resolve and families were saved from breaking down. FDRC has set an example with magnificent success ratio of 88% and probe the researcher to deeply analysis the strategies used, resources synergies and approach adopted in the success of this venture. which reflects Innovation in dispute resolution approach can tangibly improve resolution rate and can improve access to justice in family matters. On 10 of January, 2021 this MOU has been extended for a period of one more year<sup>8</sup>.

Process of Mediation at FDRC

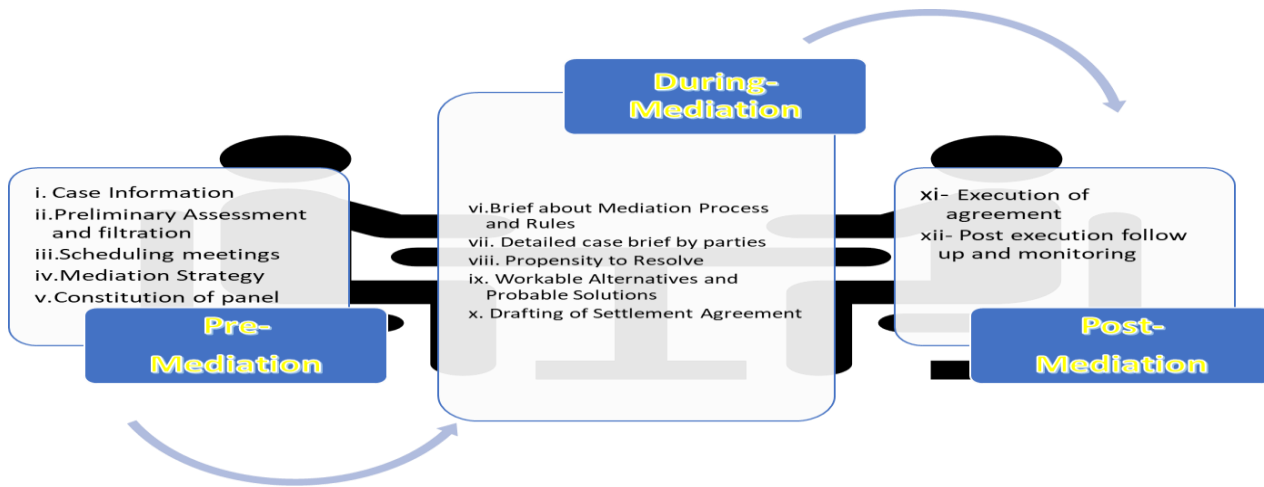


Chart 1: FDRC Stages and steps

Process adopted by the family dispute resolution clinic team during mediation sessions can we broadly classify in three categories one Pre-mediation stage, second Mediation stage and third Post mediation stage. Each stage has been further classified in different steps for the better clarity of the process. the steps are as follows:

**Pre-Mediation Stage:** This is a stage before starting formal process of mediation this is basically our preparatory stage where issues identified disputes classified and solution is strategizing.

**Case Information:** In the pre-mediation stage, case information is the first step towards mediation. In this process team take initial information of the case and filters out the workable disputes in order to understand the nature of the disputes. In general mediation is provided in civil disputes only but some time in petty offences and matrimonial offences disputes also refer for mediation.

**Preliminary Assessment:** In the process of Preliminary assessment team identify the kind of conflict, intensity of dispute, legal provisions applicable and feasibility of mediation process. In FDRC this process is done by the Deputy commissioner of Police, women and safety, Greater Noida. Other than that, cases also being referred from different parts of U.P. Apart from those cases also referred from National Commission for women.

**Scheduling Meetings:** Once the dispute is estimated then the mediator generally schedules the meetings so

that the parties can actually give their time preference on which they are available, and a peaceful mediation process can be adopted in order to reach to a solution. If scheduling of meeting is not properly adopted, then it might end into Unsystematic method of mediation process. In FDRC this process is done by Women Police team. Calling disputant on the same platform is one of the biggest challenges.

**Mediation Strategy:** A proper mediation strategy is to be framed after doing the estimation and scheduling of meetings a proper robust mediation strategy is decided by the panel so that the disputed parties can actually get the benefit of the whole mediation process. Strategy should be such which turn out to be a positive in approach and the dispute should not arise in future again.

**Constitution of Panel:** The constitution of the panel is also a very important element in the pre-mediation process. The panel should consist of an expert who are having a considerable amount of experience in their field and who can actually give good solutions to the parties so that the parties are always in the win-win situation. The panel should never decide one-sidedly in the favor of one party rather it should decide in the interest of both the parties since the parties are already stressed out and need immediate action on such disputed issues.

**Mediation Stage:** In this stage formal mediation process starts between the parties after scheduling meeting. This stage ends when parties reach to a conclusion whether, they want to resolve the matter amicably or start the judicial proceeding against each other.

**Brief about mediation process:** It is very important that every mediation process should have proper setting up of rules so that the parties can actually put their issues one by one before the mediator and this can only happen with the help of proper framing of rules and also following them at the same time while the mediation is going on. It is the duty of the mediator to ensure that the parties adhere to the rules that have been set up so that the parties do not face any discomfort during the mediation process.

**Unfolding the reasons of dispute:** During the mediation process it is the job as well as duty of the mediator to identify the disclosed and undisclosed reasons of disputes and pen down all such issues which are there between the parties. One by one the disclosed and the undisclosed reasons should be discussed with the parties and the party should be motivated that they should discuss the issues openly without any hesitation so that the mediation process gives positive results in their case.

**Understand Both the Parties willingness:** It is very important that both the parties are willing to solve their dispute and they are not adamant on their point. The husband and the wife both should keep all their past experiences aside while the mediation is going on and ensure that they should look for the future and decide accordingly in the presence of the mediator. It is very important that the parties should have a consented opinion



and the willingness should also be visible while they are discussing their issues with the mediator.

**Workable alternatives and probable solution:** It is the duty of the mediator to explore all the probable solutions so that the parties are at the win-win situation and all the solutions which are recommended by the mediator should be practicable and workable so that no party faces any hindrances while adopting those solutions. It should be in the interest of the parties and both the parties should be placed equally while providing the solution to the disputed parties.

**Show them the mirror:** The mediator while the mediation is going on should ensure that the parties show the mirror and realize their mistakes while they were living their married life. It is very important to show them the mirror so that in future they do not adopt the same practice again and they introspect and rectify those mistakes and live a peaceful life together.

**Tactical execution of unsettled terms:** In many cases where the issues are not settled or it is not possible to settle those issues at that particular point of time so the mediator has to somehow tactfully not raise that issue. If such issue is raised then the parties may again fall into the disputed issue and the mediation between the parties may fail.

**Drafting of Settlement agreement:** Once the issues are settled and the parties are willing to live together peacefully on the agreed terms and conditions then the mediator should proceed with the settlement agreement and a draft should be made between the parties so that whatever the terms and conditions are there, they are there in the written form duly signed so that in future no such denial or refusal is made by any such party.

**Post- Mediation Stage:** This is the final stage of the mediation process which is basically concerned with monitoring and follow-up. This stage is very important to rule out the chances of future disputes and take precautionary measures:

**Execution of agreement:** Once the agreement between the disputed party is made then the execution of the agreement is to be done so that the decided terms and conditions can be adopted hence leading to a peaceful and a smoother life together.

**Post execution follow up and monitoring:** Once the agreement is executed it is very important that a proper follow-up and monitoring of the case is followed. A proper follow-up and monitoring play a very important role in order to check whether the parties are adhering to the agreement and their disputes & issues which were raised by them are settled now.

It is a kind of a double check on the part of the mediator once they both agree mutually to live together for the rest of their life. In cases where a proper follow-up and monitoring is not followed or adopted then the problem may arise again in future leading to many other disputes between the parties.

## Distinct Features of FDRC

The **phenomenal** success achieved by FDRC makes it imperative to analyze and identify the specific steps measures and factors which are instrumental in the success of this venture.

**Preventive stage- Make or break:** In any dispute initial stage the dispute is very crucial. In this stage by a suitable approach either the family can be saved or by a wrong step it may be broken forever. Generally, in society or in families elderly people used to play the role of mediator and whenever any dispute arises, they will be approached by disputant but nowadays this social scenario has been changed because of the changing relationship equations. To be a mediator this is important then person should be neutral and impartial in the eye of both the parties. Mediation is possible only when both the parties have belief and trust in the mediator. In every dispute the very first mediators are parents but due to over possessiveness of single child or over pampering don't let them be neutral in parties are not able to rely on them that is the reason they rush to police station immediately and demand strict actions to be taken. If necessary, action is taken during this stage when a conflict is converting into a dispute can really help in resolution and this is where FDRC makes a significant difference.

**Personalized strategy for each case:** one of the most important distinct features in FDRC is personalized approach towards each case and preparing unique strategy based on case requirement. In every case there is a Case filtration process which identify dispute of mediation and analyze the basic reason and subordinate causes of the dispute. It helps in adopting suitable approach in every case. It is believed that every case is different, and the nature of dispute is also different so there cannot be any uniform procedure or a uniform remedy for all type of disputes. In FDRC first of all nature of conflict are analyzed by the mediator whether the dispute which arose is a social conflict, ego conflict, financial conflict or interpersonal conflict.

**Positive Environment:** It is a proven fact that positivity attract positivity and negativity attracts negativity only. In a situation when disputant already going through legal fights and allegation & counter-allegation and in a negative mindset, further places like police stations, courtrooms, jails create more negative impact on once mind. In the negative frame of mind and furthermore negative environment one cannot take a positive decision or cannot change their perspectives towards the issue. For example, when we are happy when we want to pray, we go to temple a place where we release all our problems due to faith and thereafter, we feel positive towards life. Another example is when a patient who has got admitted into hospital says that after hospitalization his health has deteriorated and he cannot recover and badly wish to go home, which further leads to panic situation. This is due to lack of motivation and hence take longer time in recovery. According to them after seeing so many deaths and negativity around them they lost their hope for life. So positive environment plays a key role

in the process of mediation.

**Diverse knowledge and skill set:** Panel of experts with diverse skill sets is one of the most distinct features of FDRC. Family dispute resolution clinic constitute a enrich panel of three members in each case. In each panel there is one legal expert, psychologist and clinical psychologist. They analyze every case in different parameters. we cannot judge a book by its cover similarly a dispute cannot be judged how it looks apparently, especially when it's matrimonial matter or a family dispute. Such disputes are more complex in nature because of the close proximity of both the disputants. We cannot deny the fact that here both the parties are not a stranger but are very well known to each other. Sometimes a dispute is much deeper than it's looks like, some dispute develops over a period of time as a result of continuous disappointments, conflicts, lies and frustration. In FDRC panelist analyze the dispute legally, psychologically and if needed then mental condition of parties are also examined.

**Free Legal Aid:** In this clinic free legal aid is also provided to the parties by legal experts. Legal experts also help parties to write settlement agreement and conditions incidental thereto. Unlike other mediation centers such as High Court mediation center in FDIC lawyers are not allowed. It is true that lawyers are well aware about the procedural part in complexities of law but in mediation that is not needed as such. whether it is judges as a mediator or lawyers, after practicing law for so long they developed a certain way of thinking and are not able to think out of the box or from a common person's perspective. One of the mediators at FDRC said that in every matrimonial case there is a scope of mediation till the decree of divorce is granted and executed.

**Post Mediation follow-up:** Another distinct feature of FDRC is post mediation follow up steps taken by the police personals and mediators. Mediators during the counseling sessions shortlist the number of cases in which follow up is needed specially the cases related to domestic violence, alcoholism, small family conflict, dowry demands etc. Panel identify those cases and follow up with the help of Police personnel time to time. It helps not only to resolve the present case but also possibility of occurrence of any such future instances or dispute. At the same time this help gives confidence and personal mentoring to the disputants. This is one of the unique best practices followed by FRDC team.

**Supplementary Resources:** Government of India has provided many welfare schemes for the weaker section of society specially females. Family dispute resolution clinic not only resolves the disputes but after finding out the real reason of dispute they try to empower parties by providing them supplementary resources which can make them independent, empowered and confident by providing them assistance in these welfare schemes and equipped them to refer to necessary resources. It helps parties to live their life in a better manner and avoid future chances of raising disputes.

## Conclusion and Suggestions

COVID-19 has become a challenge not only for the health system but also for judicial system. During pandemics number of family disputes has increase multifold. Pendency of old cases, registration of new cases and closing down of courts due to pandemics have strike overburden judiciary badly. Whenever any dispute arises in a family it not only destroys the family but also affect, executive bodies, judicial system and society at large. Family dispute resolution clinic have revolutionized the entire dispute resolution system. It's setting a wonderful example before the system that tactful handling of a dispute in an initial stage and can save families from disintegration process. FDRC has synergized the public-private partnership and able to set an example how Police execution and academic leanings can accelerate the change of resolution. FDRC is a unique initiative in India, although this collaboration has already been recognized in many developed countries i.e Columbia Law School, Mediation Centre, Harvard Law School, Financial dispute resolution Centre and Alternative dispute resolution clinic, Family mediation service U.K to name few.

Mediation has emerged as paths showing alternative dispute resolution approach by various wings of the Justice dispense system. Family dispute resolution Clinic is one such initiative taken by UP police and Glocal University. The elements of this paradigm shift in family conflict resolution are discussed in this research paper, as well as the opportunities and challenges it poses for families, children, and the legal system.

This research study has been conducted based on FDRC data with 88% success rate. The aim of this text is to suggest dispute resolution mechanism as a worthy option to address conflicts in domestic relationships. Conclusion and suggestion can be useful for other mediation centre, executive and legislative bodies in the field. Innovation in dispute resolution approach can tangibly improve resolution rate and can improve access to justice in family matters.

Functioning of marriage institution has been changed drastically so as the nature of matrimonial disputes, now there is a need to change the approach towards dispute resolution This research paper not only highlighted the need of mediation mechanism but also elaborated steps to be followed during the process. Dynamic approach and unique mythology is one of the key factors pin the success of this venture. This is the high time to adopt alternative methods for dispute resolution, by adopting similar approach society can be saved from family disintegration and painful separations.

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