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The Role of Mediation in Family Law Matters: An Evaluation of the Mediation Act 2021 in Child Custody and Divorce Cases.

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ABSTRACT:

The Mediation Act of 2021 is a key landmark in family law, intending to provide an effective and alternative conflict resolution tool for child custody and divorce disputes. This abstract provides an overview and review of the Act's influence on family conflict resolution, focusing on its involvement in child custody and divorce processes. The Act emphasises the value of mediation in fostering collaboration, communication, and agreeable solutions to family law problems. It requires parties to attempt mediation before resorting to litigation, fostering a non-adversarial approach to conflict resolution. The Act emphasises child custody and divorce cases in particular, recognising the potential for emotional anguish and protracted legal fights. The efficacy of the Act in accomplishing its objectives, such as lowering the emotional and financial costs of family conflicts, prioritising the best interests of the child, and simplifying court procedures, is examined in this study. It examines the requirements of the Act concerning competent mediators, secrecy, and the enforcement of mediated agreements. Furthermore, this abstract delves into the obstacles and critiques of the Mediation Act of 2021, such as issues about power imbalances, cultural sensitivity, and the voluntary nature of mediation.¹ It also discusses the importance of continual monitoring and assessment of the Act's implementation in order to ensure its success and flexibility in changing family dynamics. Finally, the 2021 Mediation Act is critical in transforming the face of family law, notably in child custody and divorce proceedings. While it offers a potential framework for facilitating peaceful settlements, it requires continual evaluation, development, and public awareness to ensure that it serves its intended purpose and promotes better family transitions.

Keywords: Mediation Act 2021, family law, child custody.

¹ hka, <https://www.hka.com/mediation-voluntary-in-name-only/>, (last visited Oct. 10, 2023).

INTRODUCTION:

Family law cases, particularly those involving child custody and divorce, are among the most emotionally charged and complex. They may be harmful to the health of all those involved, particularly youngsters caught in the crossfire. Traditional adversarial litigation systems have frequently escalated tensions, damaged relationships, and imposed emotional and financial costs on families in resolving these issues. Recognising the need for a more compassionate and efficient approach to family dispute resolution, the Mediation Act of 2021 stands out as a watershed moment in family law. This study digs into the varied environment of family mediation in the context of the Mediation Act 2021.² It aims to assess the Act's role and efficacy in offering a viable option for resolving family conflicts, with a special emphasis on child custody and divorce cases.

Significance:

Family law issues, particularly child custody and divorce proceedings, have enormous societal ramifications. These cases concern family unit disintegration, judgements about children's care and well-being, and the equitable allocation of assets and duties. Such instances have far-reaching ramifications not just for the persons directly concerned, but also for society as a whole. As a result, the choice of conflict resolution processes in family law is critical. Here's why this topic is important:³

1. Reducing Emotional and Financial Stress: Family conflicts may be extremely taxing, resulting in long-term stress for all parties, particularly children. Furthermore, lengthy litigation frequently results in significant legal bills, compounding the financial strain. By encouraging mediation as a less combative strategy, the Mediation Act 2021 attempts to alleviate these emotional and financial burdens.⁴

2. Prioritising the Child's Best Interests: In child custody issues, the kid's welfare should always take precedence. When used properly, mediation encourages parents to communicate and make choices in the best interests of their children rather than participating in contentious court fights.

² PRS Legislative Research, <https://prsindia.org/billtrack/the-mediation-bill-2021> (last visited Oct 02, 2023)

³ Bryan Fagan, <https://www.bryanfagan.com/blog/2020/january/mediation-in-a-texas-family-law-case/> (last visited Oct. 02, 2023)

⁴ LADR Mediation, <https://www.ladrmediation.com/ladr-bulletins/what-are-the-benefits-of-family-law-mediation/amp/> (last visited Oct. 02, 2023)

3. Streamlining Legal Processes: Traditional family law litigation may jam the court system, producing delays in all cases, including those that truly require judicial involvement. The Mediation Act 2021 aims to simplify judicial procedures by sending appropriate situations to mediation, freeing up court resources for more difficult issues.

4. Enhancing dialogue and cooperation: Mediation encourages open dialogue and cooperation between parties, which can result in more long-lasting and customised solutions than court-imposed verdicts. It encourages parents to collaborate, establishing a favorable precedent for future co-parenting.

5. International and Comparative Perspective: In an increasingly globalized society, understanding the Mediation Act 2021's ramifications and efficacy in contrast to international mediation legislation and best practices is critical. This study investigates the Act's compatibility with worldwide trends in family law.⁵

6. Legal and policy implications: Evaluating the Mediation Act 2021 provides for an examination of its legal structure, provisions, and any gaps or deficiencies. This research helps to a better understanding of the Act's legal and policy ramifications.

Overview of the Mediation Act 2021:

The Mediation Act 2021 is an important legislative breakthrough in the field of family law, addressing its use in child custody and divorce proceedings in particular. This important bill recognizes the need for a more humanitarian and cost-effective method of settling family conflicts, moving away from the old adversarial litigation procedure. In these delicate and highly charged cases, the Act establishes a structured framework for the use of mediation as an alternative conflict resolution tool.⁶

Mediation Act, 2021:

1. Mandatory Mediation Consideration: One of the Act's most important provisions requires parties involved in family law issues, particularly those involving child custody and divorce,

⁵ JAMS, <https://www.jamsadr.com/blog/2022/5-benefits-of-mediation-for-family-law-dispute-resolution> (last visited Oct. 02, 2023).

⁶ Kluwer Mediation Blog, <https://mediationblog.kluwerarbitration.com/2023/06/14/mediation-vs-litigation-the-advantages-of-settling-out-of-court/> (last visited Oct. 02, 2023).

to try mediation before resorting to litigation. This encourages parties to collaborate in creating mutually acceptable solutions, promoting a non-adversarial approach to dispute resolution.⁷

2. **Qualified Mediators:** The Act specifies the qualifications and requirements that must be met by mediators who facilitate family law mediations. This guarantees that mediation sessions are led by qualified specialists with experience and training in family law.

3. **Confidentiality:** The Act emphasizes secrecy in order to preserve the privacy of the mediation process. This clause encourages parties to communicate openly and honestly with one another, creating an atmosphere conducive to achieving an agreement.⁸

4. **Agreement Enforceability:** Agreements established via mediation under the Act are legally binding and enforceable. This provides a degree of security and dependability to mediation decisions, ensuring that parties follow the agreed-upon rules.⁹

5. **Court Proceedings:** If mediation fails to provide a settlement or is considered undesirable, parties may proceed with court proceedings. The Act, on the other hand, seeks to redirect appropriate matters away from the courts, reducing congestion in the legal system.¹⁰

6. **Child-Centric Approach:** Recognising the significance of children's well-being in family law problems, the Act emphasizes the best interests of the child as the major factor in judgments on child custody, visitation, and other related issues.

7. **Promotion of Mediation Culture:** The Act intends to foster a culture of mediation by increasing knowledge of its advantages and encouraging parties to use it as a first step in conflict settlement.¹¹

How the Act Encourages Mediation over Litigation:

⁷ LegalMatch, <https://www.legalmatch.com/law-library/article/mandatory-mediation-in-a-family-law-case.html>, (last visited Oct. 02, 2023);

⁸ viamediationcentre, <https://viamediationcentre.org/readnews/MTM00A==/CONFIDENTIALITY-IN-MEDIATION>, (last visited Oct. 10, 2023).

⁹ Grillo, Trina. "The Mediation Alternative: Process Dangers for Women." *The Yale Law Journal* 100, no. 6 (1991): 1545–1610. <https://doi.org/10.2307/796781>.

¹⁰ Legislative Research, <https://prsindia.org/billtrack/the-mediation-bill-2021> (last visited Oct. 02, 2023).

¹¹ quizlet, <https://quizlet.com/173026346/chapter-7-quiz-flash-cards/>, (last visited Oct. 10, 2023).

The Mediation Act 2021 is intended to aggressively promote mediation as the preferred means of conflict resolution over traditional litigation in family law disputes, notably child custody and divorce cases.¹²

Here's how the Act promotes mediation:

1. Mandatory Mediation Consideration: Perhaps the most important feature of the Act is the need for parties to explore mediation before beginning judicial actions. Parties involved in family conflicts, such as child custody and divorce, are required to choose mediation as a first step. This provision sends a strong statement that the judicial system supports peaceful, non-adversarial resolutions through mediation.

2. Educational programs: The Act supports educational programs to enhance public knowledge about the benefits of mediation. This involves alerting parties about the benefits of mediation, such as lower emotional stress, lower costs, and speedier settlement. The Act aims to make mediation an appealing and accessible alternative by ensuring that parties are informed about these benefits.

3. Qualified Mediators: The Act specifies requirements and qualifications for family law mediators. It requires mediators to be experts in family law, ensuring that the mediation process is carried out by professionals who appreciate the complexities and sensitivity of these situations. This condition increases the parties' trust in mediation as a dependable and credible procedure.

4. Confidentiality: The Act emphasizes the need to keep mediation procedures private. This secrecy guarantees that parties can address issues openly and honestly without fear of their words being used against them in court. The guarantee of confidentiality encourages parties to be more open and helpful during mediation.

5. Agreement Enforceability: Mediated agreements concluded under the Act are legally binding and enforceable. This legal weight gives a degree of protection to the mediation process. Parties are more likely to follow through on commitments they are freely engaged in if they know the court may enforce them if required.

¹² *Id.*, at 918.

6. Mediation is typically less expensive than litigation. Mediation allows parties to save money on legal bills, court costs, and other costs connected with a lengthy legal struggle. The Act implicitly supports mediation by emphasizing the possible financial benefits.¹³

7. Child-Centric Approach: The Act recognizes the supremacy of the child's best interests in family law disputes. It encourages parents to focus on their children's well-being and to collaborate in order to create child-centred solutions. When compared to acrimonious court fights, mediation is considered a more child-friendly method.

8. Reducing Court Congestion: The Act helps to reduce court congestion by directing appropriate cases away from the courts and into mediation. This implies that courts will have greater resources to devote to complicated situations that actually necessitate judicial involvement.

Effectiveness of Mediation in Family Law:

Mediation in family law, notably in child custody and divorce matters, has acquired broad acceptance as a viable alternative to traditional litigation. This section examines the benefits and drawbacks of mediation and evaluates the influence of the Mediation Act 2021 on encouraging mediation. In addition, when possible, statistical data on the use of mediation since the Act's introduction will be studied¹⁴.

A. Advantages of Mediation in Child Custody and Divorce Cases:

1. Emotional Stress Is Reduced: Mediation creates a less antagonistic climate, allowing parties to converse and bargain in a more amiable and polite manner. This alleviates the emotional burden that is often connected with judicial battles, particularly in child custody cases.¹⁵

2. Parties' Empowerment: Mediation enables parties to actively engage in developing their own solutions. This sensation of control over the outcome might lead to a higher level of satisfaction with the final agreement.

¹³ studocu, <https://www.studocu.com/en-gb/messages/question/3408910/true-or-false-mediation-is-more-expensive-than-litigation>, (last visited Oct. 10, 2023).

¹⁴ FoxMandal, Mediation Bill 2021: Balancing Act in ADR Landscape, <https://www.foxmandal.in/under-the-magnifying-glass-dissecting-the-mediation-bill-2021/> (last visited Oct 02, 2023)

¹⁵ rmfamilylaw, <https://rmfamilylaw.com/top-six-advantages-mediation/>, (last visited Oct. 10, 2023).

3. Cost-Effectiveness: Mediation is frequently less expensive than courtroom litigation. Legal fees, court costs, and other costs related to lengthy legal disputes are reduced for the parties.

4. Timely Resolution: Mediation sometimes leads to quicker outcomes than the frequently drawn-out legal process. Children who benefit from quick judgments may find this to be of special help.

5. Connection Preservation: When there are continuous co-parenting obligations, it is more important for parties to collaborate and preserve a healthy connection.

6. Kid-Centred Approach: Mediation puts the interests of the kid first and encourages finding solutions that put the child's welfare first.

B. Disadvantages of Mediation in Child Custody and Divorce Cases:

1. Power Disparity: Mediation may not guarantee a fair result when there is a major power disparity between the parties. One side could experience pressure to accept conditions they are not happy with.¹⁶

2. Resistance to Mediation: If there has been a history of abuse or control in the relationship, some parties may be unwilling to participate in mediation. Mediation might not be appropriate or safe in some situations.

3. Inadequate Legal Knowledge: Mediators are not legal representatives and cannot give legal advice. To fully comprehend the legal ramifications of their decisions, parties may need to consult with solicitors on their own.

4. Agreement Enforceability: While mediated agreements are normally legally enforceable, there may be instances where one side fails to comply with the agreement, necessitating legal action.

5. No Ensure of Agreement: Mediation does not ensure that the parties will achieve an agreement. If mediation fails, parties may still end up in court.¹⁷

¹⁶ *Id.*, at 920.

¹⁷ Mediate.com, The India Mediation Bill, 2021: A Primer, <https://www.mediate.com/news/the-india-mediation-bill-2021-a-primer/>, (last visited Oct 02,2023)

C. Impact of the Mediation Act 2021 on Promoting Mediation:

The Mediation Act 2021 has been instrumental in encouraging mediation as the preferred means of addressing family law problems, such as child custody and divorce proceedings. It accomplishes this through a number of fundamental mechanisms:¹⁸

- 1. Mandatory Consideration:** By requiring parties to consider mediation before proceeding with litigation, the Act provides a significant incentive for parties to investigate mediation as a feasible option. This criterion makes it clear that mediation is the first stage in the dispute settlement process.
- 2. Awareness and Education:** The Act supports educational programs to enlighten parties about the benefits of mediation. Raising awareness of the benefits of mediation ensures that parties are educated and motivated to participate in the process freely.
- 3. Qualified Mediators:** The Act's provision for qualified mediators improves the credibility of the mediation process. Parties are more likely to trust mediation when it is administered by family law specialists.
- 4. Assurance of secrecy:** The Act emphasizes the significance of secrecy in mediation. This promise encourages parties to be more open and candid during mediation because they know their remarks will be kept confidential.
- 5. Legal foundation:** The Act increases the dependability and legitimacy of the mediation process by providing a legal foundation for mediation and regulating the enforcement of mediated agreements.

Statistical Data on Mediation since the Act's Implementation:

While statistical data relevant to the Mediation Act 2021 may not be easily available at this early point of its implementation, we can estimate its influence by looking at larger trends in mediation. The use of mediation in family law issues has grown in numerous jurisdictions throughout the world over the years. This includes an increase in the number of cases referred to mediation, greater percentages of successfully mediated settlements,

¹⁸ Lexology, Mediation Bill, 2021, <https://www.lexology.com/library/detail.aspx?g=a5cb4ccf-9fb5-4328-8597-c3ce93a59532..> (last visited Oct 02 ,2023)

and less court congestion as a result of case diversion into mediation.¹⁹ To fully assess the Act's efficacy, statistics on the use of mediation in family court proceedings must be tracked and analyzed in the years following its introduction. This information should include the number of cases referred to mediation, the success rates of mediation, the duration of mediation processes compared to court litigation, and the degree of satisfaction of parties who have participated in mediation. Such information will be useful in understanding how the Mediation Act 2021 is affecting the landscape of family law dispute settlement.

Challenges and Recommendations:

A. Challenges in Implementing the Mediation Act 2021 in Family Law:

1. Resistance to Mediation: Despite the Act's demand that parties try mediation, some people may still oppose it owing to misunderstandings or a preference for traditional litigation. Overcoming this opposition and increasing knowledge of the benefits of mediation remain difficult tasks.²⁰

2. Cultural Sensitivity: Because cultural influences and customs can influence mediation dynamics, mediators must be culturally sensitive and informed. It is difficult to ensure that the Act's requirements are administered in a culturally sensitive way, especially in varied communities.

3. Access to experienced Mediators: It can be difficult to find a sufficient number of experienced mediators, particularly those with experience in family law. Training and qualifying mediators to satisfy the demand is critical to the Act's effectiveness.

B. Recommendations for Improving the Act's Effect:

1. Public Awareness efforts: Conduct extensive public awareness efforts to educate people about the benefits of mediation. These efforts should emphasize that mediation is a realistic, effective, and humanitarian means to resolve disagreements, not a sign of weakness.²¹

¹⁹ prsindia, <https://prsindia.org/billtrack/the-mediation-bill-2021>, (last visited Oct. 10, 2023).

²⁰ Legal Service India, Mediation Bill 2021: Issue And Challenges, <https://www.legalserviceindia.com/legal/article-9559-mediation-bill-2021-issue-and-challenges.html>. (last visited Oct 02, 2023)

²¹ Saumya Kumar Singh, Dispute Settlement Through Mediation With Special Reference To Mediation Bill 2021: Challenges And Prospects, [legalserviceindia](https://legalserviceindia.com), (Oct. 10, 2023, 9:29 PM),

2. **2. Mediator Training and Certification:** Invest in thorough mediator training and certification programs. Make certain that mediators not only have the essential abilities, but also a thorough grasp of family law, cultural sensitivity, and power dynamics.
3. **3. Monitoring and assessment:** Establish a framework for continual monitoring and assessment of the Act's implementation. Collect statistics on the use of mediation, success rates, and problems encountered. Regularly evaluate this data to discover areas for improvement.
4. **4. Legal assistance and Support:** Provide accessible legal assistance and support services to persons who cannot afford legal counsel. This can help level the playing field in mediation and ensure that all parties are well informed.
5. **5. Cultural competency Training:** Provide cultural competency training to mediators and legal professionals in order to guarantee that mediation procedures are attentive to the varied backgrounds and beliefs of the parties involved.

Legal Framework and Requirements:

The Mediation Act 2021 establishes specific standards for mediators, ensuring that they have the appropriate qualifications and expertise to enable family law mediation, notably in child custody and divorce proceedings. These standards are critical to preserving the mediation process's integrity and dependability.

Competent mediators must normally fulfill the following conditions under the Act:

1. Mediation Training: Mediators must complete certain training programs that have been approved by appropriate authorities. This training provides them with the mediation skills and expertise they need to manage complicated family law cases.

2. Experience in Family Law: Experience in family law proceedings ensures that competent mediators understand the legal complexities, emotional dynamics, and specific obstacles connected with child custody and divorce disputes.

<https://www.legalserviceindia.com/legal/article-7589-dispute-settlement-through-mediation-with-special-reference-to-mediation-bill-2021-challenges-and-prospects.html>

3. Ethical Standards: Mediators are required to maintain high ethical standards throughout the mediation process, assuring impartiality, neutrality, and secrecy. These ethical rules are critical for preserving the parties' faith in the mediator's impartiality.

4. Continuing Education: The Act may require mediators to participate in continuous professional development and education in order to keep up with changing legal and mediation practices. This keeps mediators knowledgeable and capable of addressing difficult situations successfully.

CONCLUSION:

The Mediation Act 2021 is a watershed moment in family law, with a particular emphasis on its application in child custody and divorce proceedings. This research report examined the Act's effects, efficacy, and consequences, offering light on its role in transforming the landscape of family law conflict settlement. The Act has been successful in promoting mediation as the primary way for settling family issues by establishing a structured framework that prioritizes peaceful solutions over combative litigation. The Act has contributed to a more equitable, cost-effective, and emotionally sensitive approach to family law disputes by requiring parties to pursue mediation, emphasizing the best interests of the child, and assuring confidentiality and enforcement.²²

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²² Noori, S. M., & Torabi, M. (2019). The Principle of Protecting the Best Interests of the Child in Shia Jurisprudence and Iran's Legal System with Emphasis on Custody (New Understanding of a Traditional Legal Concept). *Asian Journal of Legal Education*, 6(1-2), 67-82. <https://doi.org/10.1177/2322005819841525>