

ROLE OF WOMEN MEDIATORS IN EFFECTIVE MEDIATION

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Abstract

The women, peace and security agenda through the adoption of United Nations Security Council Resolution 1325¹, has identified the need and necessity of women mediators and their required role in bringing peace and harmony through their effective conflict resolving abilities. Though 13 years have passed since the Resolution of 1325, there endures to be a scarcity of women being recognized to the post of senior peacemaking positions viz., the Mediators in effective dispute resolution mechanism of Mediation. Since their participation in dispute resolution remains scanty, their presence and participation in all levels of Mediation also remains poorly represented and understood. In any given circumstances, the general understanding is that women are more aware than men of the problems of legitimating themselves in their mediator role. It is probably another common suspicion or impedimental thought process that women being female gender shall be on the disadvantage side to establish trustworthiness with the parties to the process of Court or private mediation. Women mediators were doubted to maintain the decorum of being ‘Neutral’ to the parties in the process of Mediation. All said, women have weathered the negativity, and as mediators, they have steered the right techniques of mediation in successfully making the process to be an acclaimed process of transformation among parties to enter into mutually successful win-win situational agreement of their legal disputes. In the present day Mediation, the role of women as mediators has taken front seat due to their very own assertion in the mediation process of making them acceptable by parties by their sheer persuasive skills and ability to succeed during testing times of impasse. This paper makes an effort to bring out such and several salient features of the need and effectivity of the role played by women as mediators.

Keywords: Mediation, Alternative Dispute Resolution, Mediator, Judiciary, Women.

INTRODUCTION

We know that the process of mediation in resolving civil litigations is getting to become the most acclaimed and accepted methods these days. Both nationally and internationally, the process of mediation is made necessary and sometimes mandatory as we do it in India in resolving matrimonial disputes. This process of mediation which is an offshoot of Alternative Dispute Resolution (ADR) mechanism², is gaining popularity and acceptance by the litigant lot for its involving process and for its win-win situational prospective and retrospective solutions.

This article is not anymore about the process of mediation but a more concerning aspect of a particular person involved in it. As the title of the article reflects, Women is the central theme of this article in finding her necessity and effectivity in the said process of mediation as a Mediator. When we get into the understanding of the process of mediation, the navigation of the whole process of mediation revolves around the mind, methods and magnanimity of the Mediator. Thus, mediation without mediator never constitutes to become the approved form of mediation, similarly, mediation without an able mediator never constitutes to become a successful mediation.

Who is the most eligible mediator? Shouldn't this be the most difficult question to be attempted to answer! Rather, do we ever find a person to be designated as the most eligible mediator? It would be pertinent to state here that 'eminence' of the Mediator shall be more appropriate qualification than his or her eligibility of being a mediator. Eligibility comes with age whereas eminence comes with experience. To quote the most known proverbs that experience alone can be the knowledge of all sciences, same shall be read in parlance to the nomination of an eminent and effective mediator who shall result in becoming the most eligible mediator.

This shall now lead us to asking as to who is an Experienced Mediator? Would there be any particular person quoted to be 'experienced' either by his or her class, caste, creed or sex, or would it require any special skillset to be celebrated as an experienced mediator? This is the point of distinction that the author of this article is concerned about as to the proportionate presence and availability of men over women mediators across the globe and in India particularly. In the following few paragraphs we shall traverse to see the present factual picture of the disparity in having more number of men over women mediators in the process of mediation in particular and the whole of dispute resolution mechanism in general. There shall also be an attempt made to scan through into the historical perspectives to diagnose the dearth of women folk in the overall process of dispute resolutions.

HISTORICAL PERSPECTIVE

The women in this man's world are mere machine existence since times immemorial. They are a pride possession of men with means being to be getting married and end being to die as a household chattel. Education was a taboo upon all sections of women though the then world preached that woman in every mother is the 'First Teacher'. The social reforms of mankind and renaissance of human mind led to the realizations and need to reform the existence of womanhood from mere man's need to her rightful empowerment in all aspects.

We have known and read that histories have been created and wars have been fought due to either single woman or a constellation of women, but the same history very sparingly reports to us on the availability of women to be the peace makers or the tools of effecting dispute resolutions. There are only few historical references about the greatness of women in the past who played notable role either as judges or as mediators. The denial of schooling to a girl, education being a taboo, the social stigmas attached to confine her behind the walls of her maternal or paternal household were serious impediments to the socialization of a girl at par with a boy. There was an attrition of equal values from Vedic period to the medieval period

wherein the ideals of equality and congruence transformed into deprivation of women to enjoy their right to study, and were forced to marriage involving domestic cohesive life with mandated incontestable devotion to their husbands. Moreover, the society deteriorated to the pathetic state of parents' choice of unwantedness of a girl child resulting in the gruesome consequences of female infanticide and sati practices. History saw a period where women were compelled to adopt the 'pardah system', which demanded them to wear a veil that covers their whole body in such a way that it affects their basic human rights and freedom in dissimilar terms to that of a man. One bad practice led to instigation of several evil impacts, several evil impacts led to disintegration of the whole human society by making the earth be a hell for women existence without respectability and representation. These and several such advancement in time led to the corrupt mindset of a man to treat woman to be less informed and ignorant of worldly knowledge. As a consequence, with the passage of time, the womanhood saw the decline of their integrity and equality among men and as such it surfaced to be a core man's world.

Similar such scene is prominently seen in the judiciary as well, where the presence of women in the field of law, both as lawyers and judges is always an arguable question upon the discriminatively looking disparity in numbers between men and women in all aspects of legal fraternity. It has now become a challenge to bring back the glory of women if not to the value they generate but to be at least to the similar ranks of the men. Here it is apt to quote the famous Chipko movement (Hindi term for hugging), where the Chipko women demanded increased participation of women in the local decision-making procedures and several section of numbers of women evinced interest in participating in the local politics, judiciary and administrative jobs.³ The successful and tireless efforts of those women folk in the Chipko Movement inspired the Indian government to attempt towards reforming and resurrecting many means and methods to improve women's opportunities. The 73rd amendment Act to the Constitution of India passed in the year 1992 make notable institutional reforms aimed at increasing the women political participation in the country.⁴

Similarly, the judiciary will not be reliable if it functions on engrained selectiveness, snootiness and unprivileged manner making it hard for the people to accept the process of judiciary as the upholder of equality and human rights. The discriminatory manner in which women find less presence in the judiciary is not a good outcome both for the cause of judiciary or for the most evaluative verdicts, which is probably why it is most necessary that the presence of women in all forms and forums of judiciary is essential. Accomplishing equality and equal representation for and of women judges in terms of their representations in every hierarchical level of the judiciary and in peace making councils/commissions/process should be the aim. This shall eventually lead to equal presence of women being judges in adjudicating the disputes, and also leads to the attaining proper representation towards a picture perfect rule of law.

THE CAUSE AND EFFECT

The access for women judges into the mainstream of judgeship to which they had been historically left out has been a constructive period in the course of courts being professed as being more clear, comprehensive and characteristic of the people on whose lives it plays upon. With such magnanimous presence, the women judges boost the legal methods of the courts by transmitting an influential indication that the masses of people are open to avail and access the correct recourse of justice. It has been observed that women judges acting in the capacity of civil or criminal court Judges, arbitrators or mediators contribute far better quality of justice than just being a jewel enhancing the appearances. The women as judges or mediators also contribute meaningfully to the value of decision making and decision delivery, which adds up to enhancing the quality of justice and justice delivery systems. Women judges and mediators throughout the globe have got the necessary identifications and ingenuity to scale up to the highest standards of judicial selections and judicial appointments. But in spite of whatever they scale and serve, the lives and longevity of women at such professional enterprises survive on the brink of a drowning boat with all the devastating social stigmas, cultural conservatism, economical inequalities, biological weaknesses and familial challenges including its complex bondages and exclusive obligations.

This article is on the presence of less women as mediators in the process of mediation. I shall like to reiterate again here that a mediator is not a judge as we know them to be in the core litigation, but mediator is an integral part of the acclaimed process of mediation without whom the mediation cannot be initiated nor concluded. Therefore, I take it at a similar parlance to equate the mediator of a mediation process to the level of a judge as in other core process of litigation. It is reckoned that women mediators in similarity to women judges bring their life skills to their judicial actions and acumen that tend toward a consolidated, comprehensive and empathetic perception. They apply the fine blend of their knowledge of law, logic, love and large-heartedness while acting as mediators, encompassing legal rationale for their judicial action and also farsightedness to the effect of resolution they intend to bring to the litigants.

The procedures of any forms of adjudication shall get enhanced by the presence of women mediators who bring to the forefront contemplations that would have probably been missed being taken into account in their absence. The women at such coveted posts being nominated shall enhance the scope of the discussions between the parties, prevent unwanted enmity among the participants, subside the animosity leading to unanimity and lastly, their presence leads to considerations of properly deliberated, discussed and decisive decisions. The gender fairness of encouraging the process of mediation to be women centric with the presence of women as mediators shall diminish the possibility of gender inequality and enhances the fairness to the process of settlement, which eventually aids both the sides to attain win-win situation.

The subject matter of being judges or mediators with a gender perspective approach has been a distinct attention in the International Association of Women Judges, a non-governmental association with more than 6,000 members hailing from more than 85 countries around the world.⁵ The minutes of the meet recognised the fact that identifying the biases towards women through focused and systematic studies shall be handy in eliminating the discrimination

towards women in getting them their due recognitions. Judicial unconventionality and equal representation are valued highly because it generates the necessary space for impartial judgments. It is very well known that no person can attain the sky of recognitions on the very first day of appointment or elevation. Similarly, a mediator or a judge sworn in today cannot swipe a magic wand to insulate the biases which is predominant in each dispute placed before the mediator for dispute resolution. As it is said based on human studies, 'human world is plagued by the insentient or implicit prejudices unidentified by anyone', and while there is no medicine or potion to cure the said problem of bias in being women as judges or mediators, it is to be made known here that expanding the life understandings of those who mediate the disputes expands the prospect of checking or regulating the prejudices and errors, which ultimately leads to mediators' experience. Experience should equally be made available to the women folk to be most effective mediators or judges than condemning them to be undeserving without giving them the long rope of experience as in case given to the men. It is now demanding to find the reasons and solutions as to why there is scarcity of women in judiciary in general and as mediators in particular.

THE PERSPECTIVES

The Supreme Court being the custodian of law in our country has taken the big initiative of captivating the power of women to be elevated to the higher capacities of judiciary and judgeships. The recent initiative of the Supreme Court in the year 2022 to constitute an All Women Bench to hear several petitions involving matrimonial disputes and bail matters was a milestone in the aftermath of the historic verdict of the Apex Court in *K.Srinivas Rao v. D.A.Deepa*.⁶ There were only two other such incidents in the past where the hon'ble Apex Court of India had constituted an All Women bench in the years 2013 and 2018 respectively.⁷ Though sadly, till date the Supreme Court has not got a Woman Chief Justice since its commencement. There is no likely chance for next 3 years till 2027 where it is presumed that the present Judge of Supreme Court, Justice Smt. B V Nagarathna is expected to be the first Women Chief Justice of independent India. Currently out of the 27 sitting Judges of the Supreme Court, only 3 are women Judges. This does not just reflect the skewed representation of women in Judiciary but also reflects the discriminated outcome of discouragement to women folk through the annals of history. This disparity is not just limited to the compounds of the Supreme Court, but it is an omnipresent problem at every other level and hierarchy of judiciary length and breadth of our country. The earlier Chief Justice of India, Justice N.V. Ramana had to unfortunately reveal the truth that during his tenure of being the Chief Justice, 4 women out of 33 Supreme Court Judges and 66 women out of 627 High Courts Judges is the highest ever number of women representation in Judiciary.⁸ There are several formal and organizational aspects that has limited the women representation in Judiciary causing potential reasons for inequitable access to justice which are in brief brought out here under. This analytical description is more or less the same applicable to the reasons as to why women are similarly lesser in number in the process of mediation as mediators.

Marriage and Family: The stringent age restrictions to the coveted posts of cadre of appointments of Judges, viz., 7 years of practice as an advocate to be eligible for appointment as District Judge as prescribed under Article 233 of the Constitution, the minimum prescribed age of 35 years as eligibility criteria for entry to be a District Judge through direct recruitment, one has to be above 55 years of age to be appointed as a judge in the Supreme Court, is the biggest impediment to the women who are compelled and obligated to get into the nuptial bindings and accordingly perform to the need of marital and family obligations. This significantly reduces the scope and potential of women holistically participating in the full run for being identified as Judges.

‘Leaking Pipeline’ Pattern: This is most commonly witnessed phenomena in India wherein the **women gradually disappear with age from the mainstream practice of advocacy or judgeship as they move to the higher levels from the lower levels.** This pattern is evinced across the vistas of majority of professional pursuits including the likes of judiciary where we have a statistical data that there would be about 35% women representation in lower Judiciary to that of 11% only before the Supreme Court.⁹

The women are constantly waning away by heeding to the obstructions of family responsibilities, long working hours, conflict of interest, and blockades to progress, inadequate support so on and so forth. This ‘compelled resignation’ masks the other important attribute to lesser presence of women as judges and mediators.

Shady Recruitment: There are relatively more women in the lower hierarchies of Judges where the process of selection is official and mostly by way of qualifying in the eligibility examinations. The recruitments which happen through such clear and cogent process are more reliable and opportune to all sections of candidates who are most eligible irrespective of their sex being male or female. But on the contrary, the appointments to higher ranks of judiciary viz., High Courts and Supreme Courts happen through closed-door collegium system which is highly opaque.

The appointments through collegium of judges happen by the choice and discretion of collegium where there is likely possibility of favouritism and discrimination in the choices of judges.

Uncomfortable Environment: The environment is hostile and sexist outlook makes it difficult for female litigators to grow as professionals. According to a data taken from interviewing the Women Judges, they acknowledged the gender bias that exists in the appointment procedure of Judges to the Supreme Court and the High Courts.¹⁰

Deficiency of conveniences: The lack of helpful necessities and conveniences from lavatories to maternity benefits lead to a high abrasion rate amongst women folk to continue in the profession and continue to help themselves to be available to be eligible to be nominated as judges or mediator.

The data reveals that out of over 6,000 courts across the length and breadth of India, approximately 22% of Courts do not have separate toilets dedicated for women.¹¹ Owing to

these trying circumstances of not having basic infrastructure in most of the court complexes, many women prefer to join salaried jobs in corporate sector.

Absence of reservations or preferential appointment: While there is reservations and special allocations for women to be nominated as judges of lower courts, there are no such reservations for appointments to the Higher Judiciary.

Gender Bias: It is obviously a known obscurity that women are always discriminated as weaker. Such bias towards men over women is universal and ancient. Today we are witnessing a world where Men dominate the helm of affairs where ever it be. So is the picture in the fraternity of law as well. Women are considered to be inappropriate and ineligible to any statuses therein including the likes of Judges or Advocates.

Partiality in Verdicts: It is believed by many sections of people seeking justice that the verdicts of the Courts in any litigation has a gender perspective to it. Many a times, the verdicts passed by a Woman Judge to that of a Man Judge vary. The judgments passed by the women judges tend to be prejudiced towards upholding the “behavioural integrities” of Indian women over the real need of unbiased judgments.

Lack of Legal Intellectuality: Women being less prevalent in the field of Advocacy overall as stated above, is itself one argument of prominent section of the people that women overall are legally incompetent to conduct the proceedings and they do not possess legal acumen as against the strength and skills of their Male counterpart.

Faith Shortfall: The women in the professional front are treated to be less efficient and as such there is lack of trust among others on her performances. The men enjoy the most reliance factor over the women. A client being, an advocate or a Judge being a Lady is most of the times treated to be an easy cake walk of their adversaries.

Now this and many more are the factors that make the matters worse for women representations in any respective vocation be that as it may in the Judiciary as a Judge or as Mediator. Mediator is such a sensitive role as the process demands.

The key roles of a mediator are to facilitate voluntary resolution of disputes by the parties, effectively communicating the interpretation of one party to the other, assisting the parties in the dispute to identify the core issues, reduction of confusion/misrepresentations, exploring the various possibilities of resolution, to evolve possibilities to resolve the disputes and to clarify the parties on their priorities.

These qualities are considered to be an unavailable tact and talent among the women mediators for the reasons best known to few critics.

Well, I see that it is just the mindset which requires a change among the men in particular and larger sections of the society in general to accept the fact that a judge or a mediator should possess the passion to disposes the duty casted on them more than the sex they belong too.

The right approach to go forward

The basic requirements of an effective mediator or popularly referred as Conflict Mediator is that he or she should be knowledgeable in the subject matter of the dispute and have attained mastery by:

- Widespread training
- Expertise in intellectual abilities
- Good at being alert in listening
- Emotional disassociation from the subject and parties of the process
- Capability to manage parties of varied interests
- Capability to unify clusters
- Capability to achieve confidence of the participants
- Being neutral to all in the process who so ever be the party

There are also several aspects of cultural challenges while conducting mediation viz., identifying and respecting the variances between parties and to hold them together all through the process. No matter who the mediator one chooses, the mediator irrespective of being a man or woman, should be available to render quality service of mediation to one and all who opts the process. Cultural kindness includes the all-embracing attitude of justice and equality where one and all in the process is treated impartially throughout the mediation process.

Everyone involved in the process of mediation has the right to their opinion. An experienced mediator, be it a man or woman should be exclusively trained not to be biased towards any process or parties. Please avoid making judgments on the sex of the Mediator but judge them on their performance in maintaining the decorum of the process while they handle the clients at personal level. It is also a usual behaviour among any human, be it a man or a woman to turn blind eye to several sensitivities. Don't hold woman alone at the helm of affairs to be sensitized with bias as at times, such bias will be hard to separate from the person and his personality. Being double standard in appointment or choosing of a mediator should be curbed as there is no blanket proof or established evidence of the fact that woman mediators alone shall spoil the true spirit of mediation. At times, we believe the process can go haywire on who so ever be the gender of mediator, to err is human as we know and such blame on the process is not justified in levelling only against the women mediators.

The present CJI, Justice Chandrachud, recently said that Feminist line should be imbibed while dealing with the process of law¹². On a similar line, India should make judiciary more open to everybody by implementing the Gender Bias Task Forces techniques in the US, which advocates upon the manner in which gender affects the court systems.¹³

To further make it more participative, women should be their own best buddies than curbing each other's upliftment. The Geneva Forum on Women in the Judiciary (2013) had recommended a mentorship scheme where senior women judges and lawyers should help and

guide their younger fraternity members to scale above their heights selflessly.¹⁴ Regular, informal meetings of women judges, women mediators and advocates should be conducted periodically to discuss, deliberate and organize their needs and necessities. The rule makers being acquainted with pressures of women, should amend the rules so that more women continue court practices. That apart, conducive atmospheres, adequate opportunities and unbiased outlook should be provided for women to flourish.

The significance afforded to the involvement of women in the process of mediation depends on the openness to gendered analysis. This leads to the interrogation of whether women mediators would bring a different practice and principle of gender sensitivity in mediation process. It is accredited that women are more active mediators at the grass root level. For instance, one study found that female mediators are more effective at mediating the dispute.¹⁵ The 2012 United Nations Guidance for Effective Mediation recognizes that women are powerful allies in peacemaking at community levels and should therefore be more strongly linked to the high-level mediation process.”¹⁶ In a further instance in Kenya, several disputes arouse suddenly due to war like situation and mediation was one option of settling such war disputes. Interestingly, as per the statistics therein, the mediation of cases by women mediators were more successful over that of the male mediators.¹⁷

CONCLUSION

It identifies that mediation is a multifaceted process whose outcome is determined by many different factors. It also recognizes the character, influence and effect of the mediator who engages on the basis of the consent of the conflicting parties. The mediation strategies that include women mediators and prioritize towards gender inclusive provisions help to achieve the normative goals.

The process of mediation has evolved towards women’s participation. This creates specific problems for women mediators, whose sense of professionalism is bound with impartiality rather than activism.

From the passage of time, it is recommended that; women should be visibly present on the basis of equality and they can bring gendered perceptions to mediation. The inspiration of the impartial female mediator can challenge gendered conflict thoughts and help in increasing the process of inclusivity.

Women mediators signify a greater degree of gender equality in the process of mediation. Further, there are instances where women mediators have been the reason to improve the durability of peace. Margaret Vogt, a Nigerian Political Scientist, explains that, “*We do not say that men should be at the peace table because they bring something special, but if you choose the right women to come to the table, as well as if you choose the right men, then they will bring to the table issues that are fundamental.*”

That precisely mean to be understood that it is the dedication and deliberation with interest and experience that matter to carve success in every mediation more than which gender the mediator belongs to.

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