

ROLE OF MEDIATION CENTRES IN DOMESTIC VIOLENCE CASES

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Abstract--*Domestic Violence against women is rather common then we think. Every third women, since the age of 15, has faced violence of various forms in the country. Ninety five per cent of all domestic assaults in heterosexual relationships involve men attacking women. Men are socialized in this culture to expect to be in control, especially in their relationships to women. Men batter to maintain their control and their power leading often to domestic violence against the female partner. Relationship where domestic violence is present faces many challenges and something is needed to look into the problems and try to resolve them. One of the methods is mediation which is voluntary, party-centred negotiation process and a pre-litigation alternative. Mediation can help in resolving some issues but may not be of help in others. Hence the present paper focuses on the role of mediation centres in dealing with domestic violence cases.*

Keywords--*Domestic violence, mediation, mediation centre.*

I. INTRODUCTION

Domestic violence is a global issue and also common in Indian families. Mediation as a pre-litigation alternative is growing in popularity and usage. Now in many states mediation is mandatory so that couples mediate for family issues such as custody and visitation prior to court intervention. Nowadays domestic violence is quite common factor for cases coming for mediation. It is estimated that spousal abuse is present in at least half of custody and visitation disputes referred to family court mediation programs [1].

The phrase "culture of battering" describes the phenomenon of domestic violence in a way that shifts the focus from isolated episodes of abuse and captures dynamics of a relationship where there is a pattern of domination and control [2]. Domestic violence and abuse is generally categorised into three types: physical abuse, sexual abuse and psychological abuse, which include intentional harm to property and pets. Some form of psychological abuse often accompanies physical abuse and sexual abuse. The function of the abuse is to maintain control over another. Physical and sexual violence is easier to identify than psychological abuse.

The force which controls the relationship in domestic violence cases is the victim's fear of the abuser. It is the factor which controls the actions and freedom of the victim, choices she makes and response she exhibits to system professionals. So it is of utmost importance that while mediation, this is taken into account because unless we understand victim's fear, we cannot provide any intervention safely or effectively around any issue in the relationship. So mediating any situation between parties where abuse is there is mediating violence because any negotiation between parties is a subject of abuser's terrorism.

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The violence in abusive relationship is not disclosed most of the time for many reasons, that's why mediator must be aware of the fact that every other case referred to them as being domestic violence cases. Domestic violence is not always obvious or easily recognized, so family mediators need to know how to identify and process these couples. In cases of domestic violence, there is strong tendency of victim to keep the abuse secret, to deny and minimize what has happened or accept the behaviour as a "normal" way of functioning in the relationship. So victim usually erase the history of abuse or leave out significant episodes of abuse. Mediators need to be alert to the common occurrence of minimizing domestic violence and reframing the intentions of the abuser. Battered women may also assign innocent intentions to the abusive partner, convincing themselves and others that it was only an accident or he did not intend to cause pain. Women often tend to deny their suffering while the abusers deny their culpability [3].

The strategy of separating or terminating the relationship is not always sensible or preferred due to economic, health and social factors as well as children's needs. It is simply not a viable option for many battered women. Many believe mediation is a viable and reasonable tool for resolving disputes in domestic violence cases related to custody, visitation and property settlement but doubtful in relation to violence. Research has indicated that the frequency and severity of abusive attacks increases just prior to or during the time that they have made the decision to leave or to separate [4]. Others believe it as "one tool among many" to encourage cooperation instead of litigation, community building and empowerment of victim, so it is a kind of "restorative justice" instead of "retribution justice".

II. AREAS WHERE MEDIATION CAN HELP

Mediation can be of help in relations where abuse was not present earlier and there is only one episode and victim takes action immediately by informing about it. In that case if prompt action is taken and immediate counselling and mediation is done, it may change the mind of the first time abuser and he may know that this kind of act is not right morally and legally also and he has to take accountability of this kind of act and will have to face the consequences, so he can change his attitude and this kind of act may not happen again.

But cases where abuse is present from a long time and where frequent incidences have happened, mediation cannot stop the violence. So when there is only option of separation or divorce, mediation can help in dealing with issues related to the procedure like child custody, visitation and property dealings before taking help of legal system. It will save criminal legal system a great amount of money and in saving overburdened system where case load are backed up for weeks and months. It also saves litigation cost to both the parties and saves the stage of blame game in court. Mediation can also prevent formal charges or justice system interventions that are entirely appropriate in many cases serious enough to warrant criminal charges. It will avert the mental and psychological torture victim has to go through while waiting for the separation or divorce or justice.

III. SITUATIONS WHERE MEDIATION MAY NOT BE HELPFUL

Discussion and compromise is mainstay of mediation process and if we use mediation by thinking that abuse is related to misunderstanding or lack of communication and discussion and compromise can resolve the issue,

most domestic violence cases would have been resolved long ago because victim of abuse try discussion and compromise constantly.

Mediation to work, both parties should have equal power and must share common vision of resolution. So it is clearly absent in domestic violence cases as abuser has more power and control over the relationship. So to engage abuser and victim in process that implies equal responsibility is damaging actually as victim can be held responsible by the abuser. Mediation, however, not only fails to provide safety for victims, but can help to perpetuate their victimization.

In mediation parties agree on some kind of behaviour that both will honour and practice in the future. But every domestic violence advocate and victim knows that an abuser will promise and follow the agreement to retain the control and power, and will follow it till everything goes according to his will. But as soon as things stop going according to the abuser will, he will use mediation as one more tool against the victim and she will suffer again.

The goals of mediation, which include reaching agreement, reconciling the parties, recognizing mutual responsibility for the problem, and keeping cases from the court system, are at the core incompatible with the goal of stopping abuse. Mediation allows abusers to continue to blame the victim for the abuse, and contributes to the victim blaming herself, rather than empowering her to access her rights and options for safety and justice.

IV. WHAT CAN BE DONE TO IMPROVE MEDIATION IN DOMESTIC VIOLENCE CASES

Relationships between abusers and victims are full of power imbalances. In general, men have economic power, physical power, and societal power. These facts further erode the ability for victims to negotiate on equal footing with their abusers. The safety of the victim must be the first priority in every intervention from any part of the system. This means addressing the concern in all immediate interactions as well as understanding the long term impact on her safety as a result of anything we do now. Just as the foremost rule of any professional intervention should always be first do no harm, mediation programs should consider the safety of the parties to be of primary concern. There are features that should be introduced in family mediation programs to address the parties' safety, the mediator's safety and measure that are related to facilities and atmosphere. Chance and Gerencser (1996) [5] list several measures to modify the facilities, such as:

- Spacious conference rooms that allow for easy and unencumbered escape
- Conference tables that provide a barrier to immediate contact
- Clearly marked exits
- Separate and safe waiting areas
- Metal detection devices

Additional techniques recommended by Salem and Milne (1995) [6] include mediation methods where the parties are not in face to face contact. Shuttle mediation is when the mediator moves back and forth while the parties are in separate rooms, or attending sessions at different times. Telephone mediation is suggested when travel and safety issues are a concern. Chance and Gerencser (1996) [7] recommend limited contact during the mediation process when domestic violence has been an issue. Interview parties separately as person who has been terrorised by abuser

will not disclose full information or if she provides information that may be incomplete not telling the actual severity. It can increase victim's danger.

Also mediators dealing with domestic violence cases should seek guidance from domestic violence professionals in handling cases where abuse is a factor and ensuing safety of victims. It is clear that domestic violence is common in disputes involving divorce, child custody and visitation issues. Given the prevalence and challenges of these cases, mediation programs should be prepared to deal effectively with them. There are three general approaches to this preparation:

- 1) education and training of family mediators
- 2) screening of all divorce and post-divorce cases to determine which cases are appropriate for mediation
- 3) employing specialized techniques and procedures before, during and after the mediation sessions. In this section, the specialized techniques and procedures are outlined. Discussion of the first two interventions - screening of cases and training of mediators - follows in subsequent sections.

Another thing which is clear is that the only safe and effective approach to domestic violence is to hold the abuser totally accountable by every part of system, so abuser must know that he will be the sole person held accountable for his deeds. He must get the consistent message that society and law will simply not tolerate his abuse and it is non-negotiable.

Another area where mediation can improve is there should be some monitoring of the mediators for their integrity and consistency with which they handle the cases. Mediation is done in private, so abuser is not worried about his accountability for the act. So domestic violence must be prosecuted more publically and abuser should know his accountability to whatever he agrees.

V. CONCLUSION

Markwick K (2015) [8], in his article name "Appropriate dispute resolution in cases of family violence and the collaborative practice model" argued that a collaborative practice model approach can improve responses to cases involving family violence. It discusses the features of this model as applied to family law disputes, the inadequacies of the current litigation approach, the limitations of mediation, and how a collaborative practice model can address these issues.

Cleak H. (2018) [9], in his article named "Screening for partner violence among family mediation clients: differentiating types of abuse" discussed that though mediation for couples in dispute over separation and parenting is not mandatory in cases of family violence, screening instruments are still at an early phase of development. This article examines the reliability and validity of some new and established scales for measuring intimate partner violence, as part of a larger study of clients attending family mediation centres in Victoria. The associations between types of abuse and other relationship indicators such as acrimony and parenting alliance are also examined, as well as the prevalence of different types of abuse among the client group. Most clients disclosed a history of at least one type of violence by their partner: 95% reported psychological aggression, 72% controlling and jealous behaviour, 50% financial control, and 35% physical assault. The implications for practice and research are also discussed.

While mediation appears to be a safe, humanitarian, non-adversarial, inexpensive way to intervene in many situations, the best way to protect the rights of victims who are in unequal and dangerous relationships to their

abusers is to engage in adversarial proceedings which can punish or deter criminal conduct. Until recently these proceedings were largely unavailable to battered women; increasingly states and local jurisdictions are recognizing the importance of coordinated community responses to domestic violence. Abusers are then held accountable across the spectrum of system interventions, while the safety of victims is protected.

It is clear that domestic violence is common in disputes involving divorce, child custody and visitation issues. Given the prevalence and challenges of these cases, mediation programs should be prepared to deal effectively with them.

Mediation can only work if a change in attitudes or perceptions can solve the issue, if the issue is truly a disagreement or conflict, if power is equal between the parties, if no punishment or legal consequence is needed, and if both parties are capable of carrying out the agreement. So mediation can play important role in some of the issues of abusive relation but cannot solve all the problems. But it is a worthwhile tool to try in cases of domestic violence.

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