



CHILD PROTECTION MEDIATION: THE POTENTIAL ROLE OF ADR IN CHILD WELFARE REFORM

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ABSTRACT

Child protection mediation has the potential to play a significant role in child welfare reform by offering a more collaborative and less adversarial approach to resolving disputes between families and child welfare agencies¹. This paper explores the use of Alternative Dispute Resolution (ADR) in child protection cases, examining the benefits and challenges of mediation as a means of improving outcomes for children and families involved in the child welfare system. The paper reviews the current state of the child welfare system, highlighting the challenges faced by families, children, and child welfare agencies². It then discusses the principles and processes of mediation, including the role of the mediator, the importance of communication and collaboration, and the potential benefits of mediation for all parties involved. The current state of child protection mediation in India is still developing, with limited implementation and awareness in many parts of the country. However, there are several initiatives being undertaken by the government and non-governmental organizations to promote and strengthen child protection mediation in India. One such initiative is the Juvenile Justice (Care and Protection of Children) Act, 2015, which provides for the establishment of child-friendly mechanisms for the resolution of disputes involving children, including mediation. The Act also mandates the creation of child welfare committees, which are responsible for the care, protection, and rehabilitation of children in need of care and protection. In comparison to other countries, the implementation of child protection mediation in India is still in its early stages³. However, in recent years, there has been a growing interest in child protection mediation in India, and some initiatives have been taken to promote its practice. For example, the National Legal Services Authority (NALSA) has introduced a scheme for mediation in family disputes, including those related to child protection.

¹ <https://ccnsudbury.on.ca/programs/alternative-dispute-resolution/>

² <https://www.childwelfare.gov/topics/systemwide/courts/specialissues/alternative/>

³ <https://www.arbitras.org/blog/2021/3/12/alternative-dispute-resolution-in-child-welfare>

The paper also examines the use of child protection mediation in practice, drawing on case studies and examples of successful mediation programs in the United States and other countries. It explores the challenges and limitations of mediation in child protection cases, including issues of power imbalance, cultural sensitivity, and the need for adequate training and support for mediators. It also discusses the key components of effective child protection mediation programs, such as the use of trained and impartial mediators, the involvement of legal counsel, and the provision of ongoing support and services for families.

Finally, the paper considers the potential role of child protection mediation in broader child welfare reform efforts, including the need for systemic change, increased collaboration between agencies, and greater focus on prevention and early intervention.

Overall, the paper argues that child protection mediation has the potential to play a critical role in child welfare reform, offering a more humane and effective approach to addressing the needs of children and families involved in the child welfare system. It also promotes system-wide reform, and reduces the costs associated with the court proceedings. It concludes by calling for further research and investment in child protection mediation as a means of improving outcomes for children and families.

DEFINITION OF CHILD PROTECTION MEDIATION (CPM)

Child Protection Mediation (CPM) is a process in which a neutral third party, trained in both mediation and child welfare issues, facilitates communication and negotiation between parties involved in a child protection case, such as parents, child welfare workers, attorneys, and other stakeholders. The goal of CPM is to create a safe and supportive environment for all parties to discuss concerns, clarify misunderstandings, and work towards a mutually agreeable solution that prioritizes the best interests of the child. CPM can be used at various stages of a child welfare case, including before or during court proceedings, and may address issues such as placement, visitation, and services for the child and family⁴.

PRINCIPLES OF CHILD PROTECTION MEDIATION

Child Protection Mediation is an alternative dispute resolution (ADR) process that involves a neutral third-party mediator to facilitate communication and negotiation between parties in child welfare cases⁵.

The key principles of Child Protection Mediation include:

⁴ <https://www.mimmediation.com/child-protection>

⁵ <https://fmc.ca/types-of-mediation/child-protection/>

❖ *Empowerment of families:*

The first principle of Child Protection Mediation is to empower families to participate in the decision-making process. This principle recognizes that families have the right to make decisions about their children's welfare and that they should be given the opportunity to participate in the decision-making process.

❖ *Collaboration:*

Collaboration is a key principle of Child Protection Mediation. The mediator works to create an environment where all parties can communicate effectively and work together to develop solutions that meet the needs of the child.

❖ *Confidentiality:*

Confidentiality is another important principle of Child Protection Mediation. The mediator ensures that all discussions that take place during the mediation process are kept confidential. This provides a safe space for parties to speak openly and honestly without fear of retribution.

❖ *Focus on the child's best interests:*

The child's best interests are always the primary consideration in Child Protection Mediation. The mediator works to ensure that all decisions made during the mediation process are in the best interests of the child⁶.

❖ *Respect for cultural diversity:*

Child Protection Mediation recognizes and respects cultural diversity. The mediator works to ensure that cultural differences are taken into account when making decisions about a child's welfare.

❖ *Voluntary participation:*

Participation in Child Protection Mediation is voluntary. The parties involved in the mediation process must agree to participate voluntarily, and they are free to withdraw from the process at any time.

❖ *Flexibility:*

The Child Protection Mediation process is flexible and can be tailored to meet the specific needs of each case. The mediator works to ensure that the process is responsive to the unique circumstances of each case.

❖ *Mediator neutrality:*

The mediator must remain neutral and impartial throughout the Child Protection Mediation process. The mediator does not take sides or make decisions for the parties involved in the mediation process⁷.

⁶ <https://core.ac.uk/download/pdf/159587414.pdf>

⁷ <https://www.sciencedirect.com/science/article/pii/S0190740998000292>

❖ *Efficiency:*

Child Protection Mediation is designed to be an efficient and cost-effective alternative to traditional court proceedings. The process is generally less time-consuming and less expensive than going to court.

Overall, the key principles of Child Protection Mediation aim to create a safe and supportive environment where families can work together to develop solutions that meet the needs of the child. By empowering families and promoting collaboration, Child Protection Mediation can be an effective tool in child welfare reform.

PROCESS OF MEDIATION IN CPM

Child protection mediation is a process that aims to resolve conflicts between families, child protection agencies, and other stakeholders in a child's life in a manner that ensures the best interests of the child are met⁸.

The process of mediation involves the participation of a mediator, who is an impartial third party that helps the parties involved in the dispute to reach a mutually agreeable solution.

The mediation process typically involves the following stages:

❖ *Preparation:*

The first stage of mediation is the preparation stage. During this stage, the mediator will meet with the parties involved in the dispute to discuss the process and its objectives. The mediator will explain the rules of mediation, including confidentiality, neutrality, and voluntary participation. They will also discuss the issues that need to be resolved and the expectations of each party.

❖ *Opening Statement:*

The mediator will begin the mediation process by making an opening statement that outlines the rules and expectations of the mediation process. The mediator will also explain their role as an impartial third party and the importance of confidentiality.

❖ *Information Gathering:*

During this stage, the parties involved will be encouraged to share their perspectives and concerns. The mediator will ask questions to gather information and clarify any misunderstandings. They will also ensure that everyone has the opportunity to speak and that no one is interrupted or talked over⁹.

⁸ <https://mediate.com/mediation-in-child-protection-cases/>

⁹ <https://www.mediatebc.com/for-families/child-protection>

❖ *Identifying the Issues:*

The mediator will identify the issues that need to be resolved and will encourage the parties involved to prioritize them. The mediator will then work with the parties to clarify each issue and understand the underlying concerns.

❖ *Generating Options:*

The parties involved will work together to generate potential solutions to the issues identified in the previous stage. The mediator will encourage the parties to brainstorm creative solutions and will help them to evaluate each option.

❖ *Negotiation and Agreement:*

Once the parties have generated options, they will begin to negotiate a mutually agreeable solution. The mediator will facilitate the negotiation process, helping the parties to identify common ground and explore potential compromises. Once a solution has been agreed upon, the parties will sign an agreement that outlines the terms of the agreement.

❖ *Closure:*

The mediator will conclude the mediation process by summarizing the agreements made by the parties. They will also discuss any follow-up actions that need to be taken and will ensure that everyone understands their responsibilities.

❖ *Follow-up:*

The final step is the follow-up phase. The mediator may follow up with the parties to ensure that the agreement is being implemented and to address any issues that arise after the mediation process¹⁰.

Illustration:

For example, imagine a case in which a child welfare agency believes that a child is being neglected by their parents. The agency has removed the child from the home and is seeking to have the child placed in foster care. The parents believe that they are capable of caring for the child and want the child returned to their care.

The pre-mediation process would involve the mediator reaching out to both parties and gathering information about the case. The intake process would involve the mediator meeting separately with the parents and the child welfare agency to gather more information about their perspectives and concerns.

¹⁰ https://link.springer.com/chapter/10.1007/978-3-319-73019-6_11

During the opening session, the mediator would explain the mediation process and set the tone for respectful communication. During the information gathering phase, the mediator would collect information about the child's history, the concerns of the agency, and the parents' perspective.

During the negotiation phase, the mediator would help the parties identify and prioritize their interests and goals. The mediator would help the parties negotiate an agreement that addresses the needs of the child while addressing the concerns of both parties.

Finally, the mediator would help draft a written agreement outlining the terms of the agreement. The parties may agree to a follow-up session to ensure that the agreement is being upheld.

CHALLENGES AND LIMITATIONS OF MEDIATION IN CHILD PROTECTION CASES

Mediation has emerged as an effective tool for resolving disputes in child protection cases. However, it is not without its challenges and limitations.

These are some of the various challenges and limitations of mediation in child protection cases.

❖ *Power Imbalances:*

Power imbalances are one of the major challenges of mediation in child protection cases. In many cases, there is a significant power differential between the parties involved. For example, the parents may be intimidated by the child protection agency, which has more resources and legal authority. In such cases, mediation may not be an effective means of resolving disputes as the parties may not have equal bargaining power¹¹.

❖ *Emotional Issues:*

Child protection cases often involve emotional issues, such as abuse or neglect. These issues can be difficult to address in a mediation setting as they may trigger strong emotional responses from the parties involved. Mediators may not have the training or expertise to handle such situations effectively.

❖ *Complex Legal Issues:*

Child protection cases are often complex legal matters that require a thorough understanding of the law and legal procedures. Mediators may not have the legal expertise to address these issues effectively. In some cases, the parties may need to seek legal advice or representation, which can undermine the effectiveness of the mediation process.

¹¹ https://www.researchgate.net/publication/334722890_Challenges_and_dilemmas_working_with_high-conflict_families_in_child_protection_casework

❖ *Confidentiality:*

Confidentiality is a critical aspect of mediation. However, in child protection cases, there may be legal requirements for reporting suspected child abuse or neglect. This can create a tension between the need for confidentiality and the need to protect the child's safety.

❖ *Limited Participation:*

In some cases, one or more parties may be unwilling or unable to participate in the mediation process. For example, the child may be too young or traumatized to participate effectively. In such cases, mediation may not be an appropriate means of resolving disputes.

❖ *Limited Resources:*

Mediation can be a time-consuming and resource-intensive process. In child protection cases, there may be limited resources available to support the mediation process, such as funding or trained mediators. This can limit the effectiveness of mediation as a means of resolving disputes.

❖ *Cultural Differences:*

Cultural differences can also pose a challenge in mediation in child protection cases. The parties may have different cultural backgrounds, values, and beliefs that can impact the mediation process¹². Mediators may need to be sensitive to these differences and find ways to bridge cultural divides to achieve successful mediation outcomes.

However, there are several challenges and limitations that must be taken into account. Mediators must be aware of these challenges and work to address them to ensure that the process is fair, equitable, and effective for all parties involved. By understanding these challenges and limitations, stakeholders can work to ensure that mediation is used effectively and appropriately in child protection cases.

KEY COMPONENTS OF EFFECTIVE CHILD PROTECTION MEDIATION PROGRAMS

Child protection mediation programs are designed to help families and care-givers resolve disputes that may arise in relation to the safety and well-being of the children. These programs are often seen as an alternative to traditional court proceedings, and they can be effective in promoting collaborative decision-making and ensuring that the best interests of the child are prioritized.

¹²

https://www.researchgate.net/publication/229737139_A_guide_to_effective_child_protection_mediation_Lessons_from_25_years_of_practice

To ensure the effectiveness of child protection mediation programs, it is important to consider the key components that contribute to their success.

These key components mainly include:

❖ *Trained and experienced mediators:*

The success of any mediation program depends on the quality of the mediators who facilitate the process. Effective child protection mediators should have specific training and experience in child welfare issues, family dynamics, and conflict resolution. They should also be able to effectively manage power imbalances and be sensitive to the needs of all parties involved.

❖ *Voluntary participation:*

Participation in child protection mediation programs should be voluntary for all parties involved, including parents, caregivers, and children (where appropriate). This ensures that all parties are committed to the process and are invested in finding a resolution that meets the needs of the child.

❖ *Confidentiality:*

Confidentiality is essential to the success of child protection mediation programs. Participants should be assured that their discussions will be kept confidential, except in cases where there are concerns about the safety of the child.

❖ *Impartiality:*

Child protection mediators should remain impartial throughout the process. They should not take sides or advocate for any particular outcome, but rather facilitate discussion and help participants find a mutually acceptable solution.

❖ *Focus on the best interests of the child:*

The primary focus of child protection mediation programs should be the best interests of the child. Mediators should work to ensure that the child's safety and well-being are prioritized and that decisions are made with the child's best interests in mind.

❖ *Support services:*

Child protection mediation programs should provide access to support services for all parties involved, including counselling, legal support, and other resources that can help them make informed decisions and navigate the process¹³.

❖ *Follow-up and evaluation:*

Effective child protection mediation programs should include a follow-up process to ensure that agreements reached during mediation are being upheld and that any issues that arise can be addressed. They should also be regularly evaluated to ensure that they are meeting the needs of participants and achieving their intended outcomes.

By incorporating these key components, child protection mediation programs can promote collaborative decision-making, ensure the safety and well-being of children, and help families and care-givers resolve disputes in a constructive and respectful manner.

CASE STUDIES ON SUCCESSFUL MEDIATION PROGRAMS IN U.S., U.K., AND OTHER COUNTRIES

CPM is an alternative approach to traditional court proceedings that seeks to achieve a mutually agreeable outcome in a less adversarial setting. CPM is based on the principles of family-centered practice, where the family is viewed as the primary unit of service and the child's welfare is paramount.

In practice, CPM involves a neutral third-party mediator who facilitates discussions between the parties involved. The mediator assists in identifying the concerns and needs of each party and supports the development of a mutually acceptable plan that prioritizes the safety and well-being of the child. CPM can address a range of issues, including child abuse or neglect allegations, foster care placement, visitation, and reunification.

SUCCESSFUL MEDIATION PROGRAMS IN U.S.

Research has shown that CPM can be effective in resolving disputes and improving outcomes for children and families. Successful CPM programs have been implemented in the United States and other countries.

Successful child protection mediation programs in the United States are those that have demonstrated positive outcomes in terms of improving communication, reducing conflict, and reaching timely and effective decisions that promote child safety and well-being¹⁴.

In the United States, there are several successful CPM programs that have been implemented in various states. One example is the CPM program in Michigan, which has been in place since 1987. The Michigan CPM program is voluntary and is available to parents, guardians, child welfare agencies, and other stakeholders involved in child protection cases. The program has been successful in resolving disputes and reducing the number of cases that go to court.

One example of a successful child protection mediation program in the United States is the Child Protection Mediation Program (CPMP) in California. This program was established in 1990 as a

¹⁴ <https://www.aboutrsi.org/library/utah-child-welfare-mediation-best-practices>

pilot program in four counties and has since expanded to over 30 counties in California. The CPMP uses trained mediators to facilitate communication and collaboration between parents, child welfare agencies, and other stakeholders in child protection cases. The program has been successful in reducing the time it takes to resolve cases, improving the quality of decisions made, and increasing the satisfaction of all parties involved in the process.

Another successful child protection mediation program in the United States is the Mediation and Assessment Program for Parents and Children (MAPC) in Massachusetts. This program was established in 1989 as a collaboration between the Massachusetts Department of Children and Families (DCF) and the Massachusetts Office of Public Collaboration (MOPC). The MAPC provides mediation and assessment services to families involved in child protection cases to help them reach agreement on issues related to child safety and well-being. The program has been successful in reducing the length of time it takes to resolve cases, improving the quality of decisions made, and increasing the likelihood of reunification between parents and children.

One example of a successful CPM program in the United States is the Dependency Mediation Program (DMP) in California. DMP was established in 1990 and has since expanded to over 40 counties in the state. DMP provides mediation services to families involved in child welfare cases, and its goal is to promote safe and permanent homes for children. Research has shown that DMP is effective in reducing the time children spend in foster care and increasing the likelihood of reunification or adoption.

The Nebraska Child Protection Mediation Program is another example of a successful program. Established in 1991, the program provides mediation services to families involved in child protection cases in Nebraska. The program has been successful in reducing the time it takes to resolve cases, improving the quality of decisions made, and increasing the satisfaction of all parties involved in the process¹⁵.

Another successful CPM program in the United States is the one in Utah. The Utah program was established in 1997 and has been effective in reducing the time and cost of resolving child protection cases. The program is voluntary and involves a neutral mediator who facilitates communication and negotiation between the parties involved. The Utah program has received positive feedback from participants and has been successful in achieving positive outcomes for children and families.

Child protection mediation programs have been implemented across the United States to address conflicts between families and child welfare agencies. These programs offer a way for families to voice their concerns and for child welfare agencies to better understand the needs and wishes of the families they work with. Mediation can also help to resolve disputes more quickly and effectively than court proceedings, while also reducing the trauma and stress experienced by children and families¹⁶.

¹⁵

https://www.researchgate.net/publication/230073567_An_Evaluation_of_Child_Protection_Mediation_in_Five_California_Courts

¹⁶ <https://mediate.co.uk/family-businesses-trusts-inheritance-and-probate/>

Some of the successful child protection mediation programs in the United States also includes:

❖ *The Child Protection Mediation Program in Minnesota:*

This program was established in 1995 and has been successful in reducing the number of court proceedings involving child protection cases. The program operates in 32 counties in Minnesota and provides mediation services to families involved in child protection proceedings. The program has been successful in reducing the time and costs associated with court proceedings, while also improving the communication and relationships between families and child welfare agencies.

❖ *The Family Group Decision Making Program in California:*

The Family Group Decision Making (FGDM) program was established in California in the late 1990s and has been successful in involving families in the decision-making process for child protection cases. The program provides a forum for families to come together and develop plans for their children's care and safety. The program has been successful in improving the quality of decisions made in child protection cases and in reducing the number of children placed in foster care.

❖ *The Mediation Services Program in Massachusetts:*

The Mediation Services Program in Massachusetts was established in 1996 and provides mediation services to families involved in child protection proceedings. The program has been successful in reducing the time and costs associated with court proceedings, while also improving the relationships between families and child welfare agencies. The program has also been successful in reducing the number of children placed in foster care and increasing the number of children who are reunified with their families.

❖ *The Child Protection Mediation Program in Iowa:*

The Child Protection Mediation Program in Iowa was established in 1998 and provides mediation services to families involved in child protection proceedings. The program has been successful in reducing the time and costs associated with court proceedings, while also improving the relationships between families and child welfare agencies. The program has also been successful in reducing the number of children placed in foster care and increasing the number of children who are reunified with their families.

One of the key features of successful child protection mediation programs is the use of trained mediators who are skilled in working with families involved in child protection cases. These mediators have specialized training in the unique dynamics of child protection cases and are able to facilitate communication and collaboration between parties to reach timely and effective decisions that promote child safety and well-being. In addition, successful programs often involve the active participation of child welfare agencies, judges, and other stakeholders in the process to ensure that all parties are working together towards a common goal¹⁷.

¹⁷ <https://www.theguardian.com/law/2023/mar/23/mediation-enforced-separating-families-england-wales>

These programs use trained mediators, involves the active participation of child welfare agencies and other stakeholders, and are tailored to the unique needs of families involved in child protection cases.

SUCCESSFUL MEDIATION PROGRAMS IN U.K.

In the United Kingdom (UK), there are several successful child protection mediation programs that have been implemented in different parts of the country. Some of these programs are explained and highlighted with their key features and benefits.

❖ *The Family Mediation Trust*

The Family Mediation Trust is a UK-based charity that provides mediation services to families in crisis, particularly those involved in child protection cases. The Trust has a team of trained and experienced mediators who work with families to reach a resolution that is in the best interest of the child. The mediation process is voluntary and confidential, and the mediator is impartial and does not take sides. The Trust also provides ongoing support and advice to families after the mediation process has ended.

❖ *The Children and Families Mediation Service*

The Children and Families Mediation Service is a program run by the National Family Mediation (NFM) organization, which operates in various parts of the UK. The program aims to help families reach agreement on issues related to child custody, access, and parenting plans. The mediator helps the parties to identify and explore their needs, interests, and concerns, and then facilitates negotiation and problem-solving. The mediator also provides information on legal and other relevant issues to help parties make informed decisions.

❖ *The Child Protection Mediation Service*

The Child Protection Mediation Service is a program run by the Ministry of Justice in England and Wales. The program aims to help families involved in child protection cases to reach a resolution that is in the best interests of the child. The program is voluntary, and the mediator is independent and impartial. The mediator helps the parties to identify and explore their concerns, interests, and needs and then facilitates negotiation and problem-solving. The program has been successful in reducing the number of court hearings and achieving quicker resolution of cases¹⁸.

In the United Kingdom, the Children Act of 1989 mandates that disputes involving children be resolved through mediation before going to court. This has resulted in a well-established CPM program that has been successful in reducing court appearances and improving outcomes for children.

¹⁸ <https://search.proquest.com/openview/e65cb06384db07ac729a6efb78f65461/1?pq-origsite=gscholar&cbl=28149>

Another example is the CPM program in the United Kingdom, which was introduced in 1990. The program is voluntary and involves a neutral mediator who works with all parties to find a solution that is in the best interest of the child. The program has been successful in reducing the number of cases that go to court and has been effective in achieving positive outcomes for children and families.

SUCCESSFUL MEDIATION PROGRAMS IN OTHER COUNTRIES

Internationally, many countries have implemented CPM programs, with varying degrees of success. In Australia, for example, the Family Law Act of 1975 mandates that disputes involving children be resolved through mediation before going to court. This has resulted in a well-established CPM program that has been successful in reducing court appearances and improving outcomes for children.

In Canada, the Child Protection Mediation Program has been in operation since the early 1990s. The program has been found to be successful in reducing the number of court hearings, decreasing the time it takes to resolve cases, and increasing the satisfaction of both parents and child welfare professionals.

One case study of successful CPM is the implementation of the Mediation, Advocacy, and Referral Services (MARS) program in South Africa. MARS was established in 1998 to address the high rates of child abuse and neglect in the country. The program provided training to mediators and social workers, and established partnerships with community-based organizations. The program's success led to its adoption by the South African government, and it has since been implemented in other African countries.

Internationally, CPM has also been used successfully in various countries. In Australia, for example, the New South Wales Department of Community Services implemented a CPM program in 2001. The program was successful in reducing the time and cost of resolving child protection cases, and participants reported high levels of satisfaction with the process. The program was also effective in achieving positive outcomes for children and families.

Another example of a successful CPM program is the Family Group Decision-Making (FGDM) approach, which has been implemented in various countries, including Australia, New Zealand, and the United Kingdom. FGDM involves bringing together family members, extended family, and other support networks to develop a plan for the care and protection of the child. Research has shown that FGDM can improve outcomes for children and families, including increasing family engagement and reducing the need for out-of-home placement¹⁹.

Successful CPM programs share some common characteristics. They typically use a collaborative, problem-solving approach to mediation that is focused on the needs of the child. They also involve a well-trained and experienced mediator who is skilled in working with families in crisis. In addition, successful programs typically involve a strong commitment from the child

¹⁹ <https://viamediationcentre.org/readnews/MTQ3Mg==/Mediation-And-Juvenile-Delinquency>

welfare system to support the use of mediation as a tool for resolving disputes. Further research is needed to identify the key factors that contribute to successful CPM programs and to improve their implementation and effectiveness.

KEY FEATURES OF CPM PROGRAMS

In general, successful child protection mediation programs have several key features in common. These include:

❖ *Early intervention:*

Successful mediation programs intervene early in the child protection process, before disputes escalate and become more difficult to resolve.

❖ *Neutral mediators:*

Mediators in successful programs are neutral and independent, with no vested interest in the outcome of the mediation.

❖ *Family involvement:*

Successful programs involve families in the decision-making process and respect their cultural and individual differences.

❖ *Collaboration:*

Successful programs involve collaboration between child welfare agencies, mediators, and families, with a focus on finding solutions that meet the needs of all parties involved.

❖ *Evaluation:*

Successful programs conduct regular evaluations to assess the effectiveness of the program and make improvements as necessary.

These programs offer a way for families to be involved in the decision-making process and for child welfare agencies to better understand the needs and wishes of the families they work with²⁰.

BENEFITS OF CPM PROGRAMS

- Mediation provides a less adversarial process than the court system, which can be traumatic for children and families.
- Mediation can help families to reach an agreement that is tailored to their individual needs and circumstances.
- Mediation can be a cost-effective alternative to court proceedings, saving time and money for all parties involved.

²⁰ <https://journalsofindia.com/childline-india-foundation/>

- Mediation can reduce the burden on the court system, freeing up resources to deal with other cases.
- Mediation can help to improve communication and reduce conflict between parties, which can be beneficial for the long-term well-being of the child.

These programs provide a platform for parties to negotiate a mutually satisfactory resolution that is in the best interests of the child. The success of these programs is attributed to the impartiality of the mediator, the confidentiality of the process, and the focus on the needs of the child.

CHILD PROTECTION MEDIATION (CPM) IN INDIA

Child protection mediation programs are designed to address disputes or conflicts involving children and their families, with the goal of ensuring the child's safety and well-being. In India, there are several successful child protection mediation programs that have been implemented to reduce the burden on the judicial system and provide effective solutions to children and their families.

Here are some of the key initiatives taken by the Indian government for child protection:

❖ *Juvenile Justice (Care and Protection of Children) Act, 2015:*

The Juvenile Justice Act is a comprehensive law that provides for the care, protection, and rehabilitation of children in need of care and protection, and those in conflict with the law. The act lays down the procedures and guidelines for the establishment of child welfare committees, juvenile justice boards, and special courts for children. It also mandates the use of mediation and other alternative dispute resolution mechanisms to resolve disputes involving children, and emphasizes the importance of the best interests of the child in all decisions related to their care and protection²¹.

❖ *National Legal Services Authority (NALSA) Scheme for Legal Services to Disaster Victims and their Rehabilitation, 2016:*

The NALSA scheme is aimed at providing legal aid and support to victims of disasters, including children. The scheme provides for the establishment of legal aid cells in disaster-prone areas, and the use of mediation and other alternative dispute resolution mechanisms to resolve disputes arising from disasters.

❖ *POCSO E-Box:*

The Protection of Children from Sexual Offences (POCSO) E-Box is an online platform that allows children to report instances of sexual abuse and exploitation. The platform also provides for the resolution of disputes through mediation, and ensures the confidentiality of the child's identity and the proceedings.

²¹ <https://www.deccanherald.com/content/658661/sc-wants-friendly-courts-try.html>

❖ *National Commission for Protection of Child Rights (NCPCR):*

The NCPCR is a statutory body established under the Commissions for Protection of Child Rights Act, 2005. The commission is responsible for monitoring the implementation of child protection laws and policies, and for addressing complaints and grievances related to child rights violations. The NCPCR also promotes the use of mediation and other alternative dispute resolution mechanisms to resolve disputes involving children²².

❖ *Integrated Child Protection Scheme (ICPS):*

The ICPS was launched in 2009 as a centrally sponsored scheme to provide comprehensive services for the protection and welfare of children. The scheme provides for the establishment of child welfare committees, juvenile justice boards, and other institutions to provide care and protection to children in need.

❖ *National Policy for Children, 2013:*

The National Policy for Children, 2013, was launched to provide a comprehensive framework for the development and welfare of children in India. The policy focuses on the health, education, and protection of children, as well as their participation in decision-making processes.

❖ *Childline India Foundation:*

Childline India Foundation is a non-governmental organization that operates a toll-free helpline for children in distress. The helpline provides counselling, support, and referrals to children in need of care and protection, including those who are victims of abuse, neglect, and exploitation. Childline also promotes the use of mediation and other alternative dispute resolution mechanisms to resolve disputes involving children.

❖ *Child Friendly Court System:*

In 2018, the Supreme Court of India directed all states to establish child-friendly courts that would provide a safe and welcoming environment for children. The courts are equipped with child-friendly infrastructure, trained judges, and child psychologists to ensure that children are protected and their voices are heard.

❖ *Family Group Conferencing:*

Family group conferencing is a process where families come together to discuss issues related to child protection. The process is facilitated by a trained mediator who helps the family to reach a consensus on how to support the child. This process has been successful in India, particularly in the state of Maharashtra, where it has been used to reduce the number of children in institutional care.

²² <https://www.outlookindia.com/national/setting-up-children-s-court-across-india-news-202985>

❖ *Child Helplines:*

Child helplines are a critical part of child protection in India. The helplines provide a platform for children to report abuse, neglect, and exploitation. The helplines are staffed by trained professionals who provide counselling and support to children and connect them to the appropriate services²³.

❖ *Child Protection Committees:*

Child protection committees are community-based organizations that work to protect children from harm. The committees are composed of local community members who are trained in child protection issues. They work with families, schools, and other community organizations to identify and address issues related to child protection.

❖ *Childline Se Dosthi:*

This is a program launched by Childline India Foundation to promote child protection mediation. The program trains community members, including parents, teachers, and local leaders, on child protection issues and mediation techniques. The program has been successful in raising awareness about child protection and empowering communities to protect their children²⁴.

One such successful program is the Child Protection Mediation (CPM) program, initiated by the Childline India Foundation (CIF) in collaboration with the Department of Women and Child Development. The program aims to provide a platform for parents, children, and other stakeholders to resolve disputes related to child protection through mediation. The CPM program operates in several states across India, including Maharashtra, Gujarat, and Karnataka.

Another successful child protection mediation program in India is the Child-Friendly Court (CFC) program, initiated by the Maharashtra State Legal Services Authority (MSLSA). The program aims to provide a child-friendly environment for children who are involved in legal proceedings related to child protection issues, such as abuse, neglect, or custody disputes.

The CFC program operates in several districts across Maharashtra, with specially trained judges, lawyers, and support staff working together to provide a child-centered approach to legal proceedings. The program provides a range of services, including counselling, legal aid, and referral services to children and their families.

The program also provides child-friendly facilities, such as separate waiting rooms, play areas, and counselling rooms, to ensure that children feel safe and comfortable throughout the legal proceedings. In addition, the program also encourages children to participate in the legal proceedings, providing them with opportunities to express their views and opinions on matters that affect them.

²³ <https://www.unicef.org/india/what-we-do/child-protection>

²⁴ <https://lawtimesjournal.in/child-custody-through-mediation/>

One of the successful child protection mediation programs in India is the Delhi High Court Mediation and Conciliation Centre. This program was launched in 2006 and aims to provide a child-friendly environment for resolving disputes related to child custody, visitation, and maintenance. The program has been successful in resolving disputes through mediation, and it has reduced the number of cases going to court.

The current scenario of CPM programs in India is characterized by a growing recognition of the importance of mediation in child protection cases, but also by a number of challenges and limitations. On the one hand, there is a growing demand for CPM services from families and caregivers, as well as from child protection agencies and courts. This is driven by the need to resolve cases more quickly and effectively, and to reduce the trauma and stress experienced by children and families involved in legal proceedings.

On the other hand, there are several challenges to the successful implementation of CPM programs in India. One of the main challenges is the lack of awareness and understanding of mediation among the general public and even among some professionals working in the child protection system. This can lead to resistance to the use of mediation, as well as to misunderstandings about the goals and processes of mediation.

Another challenge is the lack of trained and experienced mediators in many parts of the country. Mediation is a specialized skill that requires training, experience, and a deep understanding of the complexities of child protection cases. However, there is a shortage of trained mediators in many areas of India, which can lead to inconsistent quality of mediation services and can also limit the availability of mediation services in some areas.

In addition, there are challenges related to the cultural and social context in which mediation takes place. India has a diverse cultural landscape, and different communities have different attitudes and practices related to conflict resolution. This can make it difficult to develop a one-size-fits-all approach to mediation that is effective across different communities and contexts²⁵.

Despite these challenges, there are several successful CPM programs in India that have demonstrated the potential of mediation in resolving child protection cases. One such program is the Child Protection Mediation Project (CPMP), which was implemented by the United Nations Children's Fund (UNICEF) in partnership with the Indian government in several states. The CPMP aimed to develop a model for CPM that is child-centered, culturally appropriate, and effective in resolving disputes. The project involved training of mediators, development of guidelines and protocols, and awareness-raising activities. The project demonstrated positive outcomes in terms of reducing the time taken to resolve cases, improving the quality of decision-making, and reducing trauma for children and families.

CPM is currently being implemented in several states in India, including Maharashtra, Tamil Nadu, and Karnataka. The program involves a trained mediator who works with both the child and the parties involved in the dispute to find a mutually acceptable solution. The mediator also works closely with other stakeholders, such as the police and social workers, to ensure that the child's rights and interests are protected.

²⁵ <https://manitobaadvocate.ca/wp-content/uploads/MILWARD-FULL-web-1.pdf>

Child protection mediation is an essential tool in ensuring the welfare of children in India. The initiatives discussed above have been successful in promoting child protection mediation and reducing the burden on the court system. The successful CPM programs in India have shown that mediation can be an effective alternative to the traditional legal approach, but there is a need for further investment in training, capacity building, and awareness-raising to ensure that CPM is widely adopted and effectively implemented across India. These programs have helped to reduce the backlog of child protection cases in the court system and provide a more efficient and child-friendly way of resolving disputes. However, there is still a long way to go, and more efforts are needed to ensure that every child in India is protected from abuse, neglect, and exploitation²⁶.

CHILD CUSTODY THROUGH MEDIATION

Child custody through mediation is a process in which parents who are going through a divorce or separation work together with the help of a neutral third party, known as a mediator, to develop a parenting plan that addresses the custody and visitation arrangements for their children. Mediation aims to encourage effective communication, cooperation, and mutual decision-making between parents while keeping the best interests of the children as the primary focus.

It offers parents an opportunity to actively participate in the decision-making process regarding their children's lives while minimizing conflict and promoting cooperation. It provides a more amicable and child-centered approach to resolving custody disputes, fostering better long-term relationships between parents and creating a supportive environment for the children involved.

The use of mediation encourages amicable post-divorce relationships and equitable child support payments. It helps parents concentrate their attention on their child and on making sure they are doing well. From a psychological perspective, mediation makes the divorce process and its effects on the children less intrusive and may even be therapeutic. A matrimonial court must decide whether to refer a child custody dispute to mediation based on the child's vulnerability, his or her capacity to participate in the mediation, the nature and type of the allegations made against a party, and the dynamics of the family.

In a landmark decision in *K. Srinivas Rao v. D. A. Deepa*²⁷, the Apex Court mandated that all courts handling marriage issues settle them through mediation first. The Supreme Court mandated that parties be sent to mediation centres by Family Courts and Criminal Courts so that their issues can be settled amicably. The Supreme Court of India instructed family courts to use all reasonable means to mediate matrimonial disputes, particularly those involving maintenance, child custody, and other issues, and to refer parties to mediation centres with their consent in light of section 9 of the Family Court Act, 1984.

In *Perry Kansagra v. Smriti Madan Kansagra*²⁸, the court referred the case to mediation based on the parties' indicated wish to try to resolve their marriage and custody dispute once

²⁶ <https://lawshelf.com/shortvideoscontentview/alternative-dispute-resolution-mediation/>

²⁷ *K. Srinivas Rao v. D. A. Deepa*, AIR 2013 SC 2176

²⁸ *Perry Kansagra v. Smriti Madan Kansagra*, SLP(C)No.9267 of 2018

more. It was believed that the child was content enough with her mother's company and had regular visits from his father and grandparents.

Therefore, in this profession, society needs mediators who can adequately deal with these issues. When parents decide to separate or divorce, it can have devastating effects on children. Parents are often so consumed with arguing that they are unaware of the impact their actions are having on their children. Conflict-filled situations have been found to have a particularly detrimental effect on children. The purpose of mediation is to reduce the dispute by helping the parties to come to an agreement rather than discussing it in court.

For this reason, lawyers and judges are increasingly urging parties to participate in mediation for the benefit of the child. The 257th Law Commission Report suggests that Section 19f should be added to the Guardians Act 1890 and the Guardians Act to cover mediation in custody situations. According to the report, mediation helps parents and children achieve better outcomes while reducing the overburdening of Indian courts. The report suggests that parties involved in child custody disputes should first consider mediation before initiating or being required to do so by a court²⁹.

FURTHER MORE SUGGESTIONS, RECOMMENDATIONS AND IMPLEMENTATIONS TO BE DONE

❖ *Collaboration with child welfare agencies:*

Child protection mediators should collaborate with child welfare agencies to develop an effective and efficient CPM program that is consistent with state and federal regulations.

❖ *Training for mediators:*

Child protection mediators should receive specialized training to handle disputes involving child welfare. The training should cover topics such as child development, family dynamics, trauma-informed care, and cultural competency.

❖ *Screening and selection of cases:*

Child protection mediators should screen cases carefully to determine which cases are appropriate for mediation. They should also select cases that have the potential for successful mediation outcomes.

❖ *Child-centered approach:*

Child protection mediators should adopt a child-centered approach that considers the best interests of the child. The mediator should ensure that the child's voice is heard and that their needs are addressed.

²⁹ <https://www.sooeveningnews.com/story/news/2019/04/14/mediation-results-in-improved-more/5441174007/>

❖ *Confidentiality:*

Child protection mediators should ensure that confidentiality is maintained throughout the mediation process. This can be achieved by signing a confidentiality agreement, which prohibits the mediator from disclosing any information discussed during the mediation session.

❖ *Evaluation of the program:*

Child protection mediators should evaluate the effectiveness of the CPM program regularly. The evaluation should include feedback from families, child welfare agencies, and other stakeholders.

❖ *Public awareness and education:*

There is a need to increase public awareness and education on the benefits of CPM. Child welfare agencies, family court judges, and other stakeholders should be informed about the potential benefits of CPM.

❖ *Funding:*

Child protection mediators should have adequate funding to ensure that the program is sustainable. This may involve seeking funding from government agencies, private organizations, and philanthropic foundations.

❖ *Collaboration with community-based organizations:*

Child protection mediators should collaborate with community-based organizations to provide support services to families involved in mediation. These organizations can provide resources such as counselling, parenting classes, and support groups.

❖ *Policy and legislative changes:*

Policymakers and legislators should consider incorporating CPM into child welfare reform policies. This can include providing funding for all of these aspects.

❖ *Streamlined Process:*

The CPM process should be streamlined to ensure that cases are resolved quickly and effectively. This can be achieved through the use of technology, such as online platforms, and other methods that can expedite the process.

❖ *Support Services:*

Child Protection Mediation should be supported by other services, such as counselling and therapy, to ensure that the child's emotional and psychological needs are met.

❖ *Accountability:*

The accountability of all parties involved in CPM should be emphasized. This includes holding parents and caregivers responsible for their actions, and ensuring that social workers and other professionals are accountable for their decisions.

❖ *Regular Review:*

CPM cases should be regularly reviewed to ensure that the child's welfare is being adequately protected. This can help to identify any areas that need improvement and ensure that the child's needs are being met.

❖ *Continuous Improvement:*

Child Protection Mediation should be an ongoing process of improvement. This involves monitoring outcomes and making changes as necessary to ensure that the best possible outcomes are achieved for the children involved.

Another recommendation would be to expand access to CPM for families involved in child welfare cases. This could involve increasing funding for CPM programs or implementing policies that require CPM as a first step in the dispute resolution process.

Finally, it is important to continue to evaluate the effectiveness of CPM in child welfare cases. This could involve conducting research studies to determine the impact of CPM on outcomes such as family reunification, child safety, and parental satisfaction.

Overall, CPM has the potential to be an effective tool for resolving disputes in child welfare cases. By promoting collaboration, reducing adversarialism, and providing a less expensive and time-consuming alternative to court proceedings, CPM can help improve outcomes for children and families involved in the child welfare system.

