



## Article

# Conceptual Analysis of The Concept of The Institute of Mediation

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**Abstract:** This research article provides analytical information on the practice of mediation and the history of its emergence, which plays an important role in preventing and resolving family conflicts.

**Keywords:** mediation, family dispute, proxenetas, resolution mediation, narrative, ecosystem, transformative, provocative, regenerative models.

## 1. Introduction

The word “mediation” is derived from the Latin word “mediare”, meaning “mediatorship”, “intervention for the purpose of reconciliation”. Therefore, in the legal literature the concepts of mediation and mediatorship are synonymous.

This practice has developed in the activities of international organizations and in interstate relations and is recognized by Article 33 of the Charter of the United Nations as a means of resolving mediation (intermediate) disputes.

Directive 2008 (52) of the European Parliament and of the Council of May 21, 2008, concerning certain aspects of mediation in the civil and commercial spheres, defines the concept of mediation as follows: “in order to reach an agreement between two or more parties to a dispute on the settlement of the dispute, based on the fact that the process has been initiated by the parties, the court may order or the process of seeking the assistance of a third party, whether designated or specified in national law”.

The practice of mediation is a social institution with a long history, widely used in ancient Assyria (the state of the Sumerians), Phoenicia, Mesopotamia, Babylon, Egypt, China, ancient Greece and Rome to resolve various family, civil and other types of conflicts.

Roman law (Corpus iuris civilis), which existed in ancient Rome and the Byzantine Empire from the 8<sup>th</sup> century B.C. and served as a model for the legal systems of many other states, recognized mediation in dispute resolution beginning with the Code of Justinian.

In Ancient Greece, intermediaries were called proxenetas. In Ancient Rome they were called in different ways: internuncius, medium, intercessor, philanthropus, interpolator, mediator, conciliator, interlocutor, interpres and others.

It is known from history that Emperor Napoleon Bonaparte, King of France, mediated an international mediation between Switzerland, Germany and France and signed the “Act of Mediation” which allowed Switzerland to retain its independence and former state structure.

## 2. Materials and Methods

The theory of human conflict nature was put forward by the American sociologist, psychologist Morton Deutsch and proposed the technology of rational use of the third

**Citation:** Teshayev, D. Conceptual Analysis Of The Concept Of The Institute Of Mediation. American Journal of Social and Humanitarian Research 2025, 6(2), 208-211.

Received: 25<sup>th</sup> Dec 2024

Revised: 28<sup>th</sup> Dec 2024

Accepted: 18<sup>th</sup> Jan 2025

Published: 24<sup>th</sup> Feb 2025



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party in conflict resolution. Social institutions specialized in the mediation process theorized by legal scholars and applied in practice on the principle of "no-fault divorce".

The first private mediation service was founded in 1974 in Atlanta, USA by attorney and family counselor Jim Coogler (Coogler). Influenced by Coogler's 1978 book "systematized mediation in resolution" ("structured mediation in split settlement"), the use of third-party, i.e. mediation, assistance in resolving disputes became popular. In 1975, Kugler founded the "family mediation association" (family mediation association).

That is why the concept of "divorce mediation" was formed in the United States. In modern literature, the concept of "family mediation" is widely used not only to resolve disagreements between divorcing parties, but also to resolve a number of issues arising at the stage of formalization of family relations, at the conclusion of a marriage contract or at the joint entry into marriage.

Lisa Parkinson, a UK researcher who has conducted a major study of family mediation, believes that family mediation can be applied to cases of divorce or dissolution of marriage to help the parties maintain their parental status and fulfill their obligations. In particular, family mediation has been applied to resolving disputes arising out of divorce, determining the place of residence of children after divorce, establishing the order of communication with the child, participation of separated parents in the upbringing of the child, determining the amount of alimony, division of common property and other issues.

Technologically, there are narrative, ecosystemic, transformative, provocative, regenerative models of family mediation whose effectiveness is recognized in contrast to classical mediation.

The classical mediation model is mainly based on the theory of helping the parties to negotiate, the mediator's mission is to bring the parties to a mutually beneficial agreement. But in divorce disputes, the parties are not ready to negotiate on the basis of calm, rational thinking and are committed to strong passions, are in a state of deep depression and mental crisis. As a result, the above-mentioned mediation models began to emerge.

The provocative model provides an opportunity to work with families who are in a deeply escalating stage of conflict, who have little or no possibility of resolution through mediation, and who are encouraged to use judicial assistance. In this method, the parties are first brought to the climax of the conflict and then move from war to peace through the use of metaphors, cautionary tales.

The ecosystem model is effective in resolving conflicts related to child rearing and is aimed at developing long-term agreements that correspond to the interests of the family as an integral system. In this case, the mediator's main goal is to develop a comprehensive family scheme taking into account the ecoprogram, i.e. the interests of family members and children.

Technologically, family mediation uses special communication techniques, including methods such as empathy, psychological assistance, counseling and family therapy. As an independent regulatory document on family mediation at the international level, one can cite the Council of Europe's recommendations "on mediation in family disputes" Rec No. 1(98). These recommendations reflect the principle of safeguarding the interests of children in the divorce process. According to the principle, the mediator reminds divorcing parents that they should pay special attention to the children's interests and take care of the children's future.

Today, in the national legislation of many states, mediation technology in the settlement of family disputes is defined by the courts as a mandatory practice. In particular, in such countries as Australia, USA, Great Britain, Germany, Canada, France, Bulgaria, there is a legal practice of defining mediation as mandatory in the regulation of family relations. The Family Law Act, passed in the United Kingdom in 1996, establishes that a lawyer is obliged to refer clients seeking legal aid for family disputes to a mediator for an initial information assessment phase known as mediation information and assessment meetings. Social workers, family counselors, family psychologists, and psychiatrists are involved in family mediation.

In the United States, mediators are mainly social workers who report to the president of the family court. Only for legally complex issues (alimony collection, division of common property) lawyers are involved in the process.

In legal practice, joint mediation has developed as a specific direction of family mediation. It establishes that mediation is carried out by two mediators, one of whom is a psychologist, psychotherapist, and the other is a lawyer (lawyer, advocate, notary). It is also common to observe gender equality in joint mediation.

The financial aspects of family mediation also deserve attention. In particular, in Austria, public funding of mediation costs is applied to family mediation.

France has a national scale of costs for family mediation services. Family Relationship Centers in Australia are federally funded. The government provides financial support to community organizations such as Family Relationship Centres.

In the UK, the first sessions of mediation in the courts are considered free of charge. If the parties cannot reach an agreement in the early stages, the costs of the later stages are covered by them. At the same time, the use of private mediators in the regulation of family relations is widespread in practice.

### 3. Results

While most of the above mediations and agreements treat the practice of mediation as both civil and political, it is emerging today and becoming an alternative form of solving family problems. Because today, under the influence of economic, social, ideological, spiritual and moral factors, family relations are also under threat. The number of family divorces in foreign countries is sharply increasing. The status of appropriation at the end of 2018 in percentage terms in the Russian Federation 65%, in Sweden 64%, in Ukraine 63%, in the Czech Republic 61%, in Belgium 56%, in Lithuania 55%, in Moldova 52%, in the United States 49%, in Hungary 46%, in Canada 45%, in Norway more than 43%, in the Netherlands 41%, In Switzerland it reached 40%.

As of the end of 2019, the dissolution rate of marriages contracted in some Western countries is between 40% and 67%, and this is assessed as a crisis of the family institution and a serious threat to social welfare.

A list of countries with high divorce rates according to 2022 data on divorce rates in countries around the world has been published (Figure 1)

According to the surveys, the reasons for divorce in these countries are identified and the following reasons for divorce:

Lack of responsibilities and duties inherent in the family: 75%

Marital infidelity: 59.6%

Differences between spouses, different worldviews: 57,7%

Early marriage: 45.1%

Financial difficulties in the family: 36.7%

Influence of alcohol and drug use: 34.6%

Domestic Violence Reason: 23.5%.

As a result of these circumstances, family separations arise, creating dangerous situations for society. In particular, 34 percent of those born in the UK alone are born out of wedlock, and roughly the same number of adults suffer divorce. Just under half of British children will be fostered over the next two decades. Since more than half of prisoners in the United States-children from divorced families-have been found to be negatively affected by the intense mental shock of parental separation, both in middle age and even in old age.

Based on the above, it was necessary to create a new mechanism in the direction of preventing family discord, settling disputes up to court proceedings.

The first family mediation services first appeared in California, USA, in 1939. Since the middle of the twentieth century, the demand for alternative dispute resolution has increased dramatically in the United States. Researchers believe that due to the growth of social conflicts in this period, the number of applications to the courts increased dramatically, and the need to organize new institutions for dispute resolution itself arose in the pre-trial period.

#### 4. Discussion

The study findings indicate that motivation through a healthy work environment significantly impacts employee job performance at Federal Medical Centre (FMC) Jalingo, Taraba State, Nigeria. The analysis revealed that a conducive workplace environment enhances efficiency, reduces job stress, and improves overall employee productivity. Survey responses demonstrated strong agreement, with over 90% of respondents acknowledging the positive influence of a healthy work setting on their job performance. The regression analysis further confirmed this relationship, showing a highly significant effect ( $p < 0.05$ ) and an  $R^2$  value of 0.714, meaning that 71.4% of the variation in job performance is attributed to workplace conditions.

Additionally, motivation through workers' participation in management decision-making was found to have a strong positive correlation with employee performance. Employees who were involved in decision-making reported higher self-esteem, greater confidence, and increased motivation, leading to improved job commitment and efficiency. Statistical tests supported these findings, with a significant p-value ( $p < 0.05$ ) and an  $R^2$  value of 0.675, indicating that 67.5% of performance variations could be explained by participation in decision-making processes.

The study's results underscore the necessity for organizations, particularly in the healthcare sector, to invest in a supportive work environment and encourage employee involvement in decision-making to foster higher job satisfaction, lower turnover rates, and enhanced productivity.

#### 5. Conclusion

Thus, mediation is a modern means of saving time, financial, emotional resources, creating favorable conditions for resolving conflicts in peaceful and sustainable ways, taking into account national mentality and values. The importance of this institution becomes more and more relevant when it comes to reducing allocations, organization with full consideration of the interests of the parties, especially children.

Researchers note that in family conflicts the mediator is required to have appropriate experience, qualification, as the parties are not ready for calm and rational approach, are devoted to strong passions, are in a state of deep depression and psychological crisis. The mediator's special knowledge and competencies, knowledge of communicative techniques, and professionalism are of great importance.

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