

“A CRITICAL ANALYSIS OF THE BENEFITS OF
MEDIATION ON CHILDREN IN A DIVORCE PROCESS”

by

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Abstract

The following dissertation made a critical analysis of the benefits of mediation on children in a divorce process, considering all the harms that a litigious divorce can cause. Following a mixed methodology, data from numerous and different authors and research related to the topic were analysed and collected. Topics related to the benefits of mediation, the harms of litigious divorce, the use of a psychologist as a mediator, among others. All the negative elements that a litigious divorce can cause for children were explored so that the benefits of using mediation could be clearly demonstrated so that the conclusion was reached that mediation is beneficial to avoid the trauma that a litigious divorce can cause. After analysing all the dates and literature, it was concluded that mediation could reduce or avoid the numerous harms that litigious divorce can cause, being based on the fact that litigious divorce is a stressful process for everyone and stress was considered a primary factor for It is the cause of the harm that divorce causes to children. Mediation is, therefore, the most beneficial conflict resolution method for children when their parents decide to divorce.

1. Introduction

When we start talking about marriages and about building a life with someone, having children, earning assets, we don't start this important step of our lives thinking about getting divorced, however, divorces happen, and feelings can be turned into hurt and such hurt can create conflicts.

When we talk about divorces, it comes to mind that there will be conflicts, arguments and stress. Litigious divorces can be extremely difficult and the hurts that the end of a relationship can bring make it even more difficult to resolve these conflicts that often become a battle of who will win, who will be left with more, and who will be guarding their children.

This dissertation aims to analyse the conflict resolution methods for divorce. Showing the harm that a litigious divorce can cause. When we talk about litigation and not just divorce cases, we can already imagine that it will be a long and time-consuming process. Many cases in ordinary courts can take up to months to be analysed, and for a decision in complex cases, it can take many years before the Judge makes a final decision on the case without counting on the possibility of appeals that a decision may have.

The most important thing besides showing how the litigious divorce can harm the couple is that this work has as main objective to show the benefits that mediation can bring to the divorce process when chosen as a method of conflict resolution but not only for the couple but for your children that they may have.

This work has as main objective to show that mediation can be beneficial in many ways for the children of parents who are divorcing. According to Emily Andrews (2008), mediation itself is a less stressful process, and thanks to that, the process tends to be more peaceful. Stress can cause numerous health problems, and the best way to avoid such problems is to deal with the process in a less stressful and peaceful way where children and their parents will benefit.

Something incredible that mediation brings to the divorce process that has children involved is that the process will be focused on finding the best solutions for children, focusing on their needs and their future.

As the author of this dissertation, I can say that this work has the idea of doing an analysis of the benefits of mediation on children in a divorce process, seeking to answer and identify the benefits to children during their parents' divorce proceedings (understanding the impacts of the divorce on children and the challenges to lessen the effects caused using mediation process).

Another important point that this work aims to highlight is the fact that not only in my personal opinion as the author of this dissertation but also of other authors such as Mienkowska-Norkiene (2012) and Ilene Diamond (2019) the use of a psychologist as a mediator can bring numerous benefits to divorce mediation whether or not children are involved. According to these authors, mediation, when mediated by a psychologist, tends to be easier to understand, since the psychologist has the possibility to understand better and also know better how to deal with sensitive cases. Divorces are sensitive in themselves, but

when it comes to divorces involving children, it raises sensitivity to the extreme, making it easier to resolve with the help of a psychologist as a mediator.

In order to identify the benefits that divorce mediation can bring to children, it was necessary to analyse how the litigious divorce can be traumatic and damage the mental and physical health of children and adolescents. According to Amy Morin (2019), divorce can be extremely confusing for children and adolescents as they would have to go through a process of adoption, a new home, a new routine and in some cases, the children even tend to think that a parent does not love them more.

One of the most alarming points cited as harmful to divorce for children was related to psychological illnesses, such as anxiety and depression. The litigious divorce, according to Brian D'Onofrio and Robert Emery. (2019) and other authors cited in this dissertation can lead children and adolescents to develop anxiety and depression that can last a lifetime. According to them, children and adolescents also tend to have an early start in sexual life and problems with alcoholic beverages.

In the course of this work, I will demonstrate, as mentioned above, the benefits for children and adolescents when their parents choose mediation as a method of conflict resolution, in this case as a method of mediation to find the best solution for their children. Since divorce mediation, when involving children and adolescents will focus mainly on the needs and future of the children.

One of the most important factors related to all the problems that a litigious divorce can cause has been identified as the cause of such physical and mental problems as stress. According to

authors cited in this work, such as Jennifer Paterson (2018) and Alice Walton (2011), stress can cause innumerable harm to the health of these children and adolescents. Obviously, stress also causes problems for parents, but this work aims to focus on the children involved in the process. According to Alice Walton and Jennifer Paterson, stress can trigger problems of anxiety, depression, and in extreme cases, suicide or attempted suicide.

It is important to talk about stress due to the fact that the litigious divorce itself is a long and stressful process and that is why talking about stress was considered in this work due to the fact that, according to many authors, mediation is a less stressful and less time-consuming process. (Stuart Watson, 2019). That in itself would already be considered a benefit for children and adolescents since exposure to a long stressful process will not occur when mediation is considered an option for resolving conflicts.

So based on the above, the purpose of this dissertation will be to make a critical analysis of the benefits of mediation on children in a divorce process considering all the harms that a litigious divorce can cause.

2. Aims, Objectives and Background

Over the years research indicates an increase in the divorce rate around the world. In some countries these rates may be higher due to numerous factors.

We can say that nowadays the divorce procedure is easily accessible and has been used freely by couples around the world who want to end the relationship. A breakup is not easy, and some can be extremely complicated and can affect not only the divorcing couple but also everyone who is directly linked to the couple.

A divorce can be extremely easy to resolve when parties are open to hear and be heard when seeking a solution that is beneficial to both. In these divorce cases, couples have always found the best way out and may be able to maintain a good relationship afterwards.

When divorce becomes complicated the couple will have numerous problems to solve and finding the best solution is not always easy. Often divorce does not only involve the division of property acquired by the couple, it involves lives that depend on the couple, lives that are directly connected and suffer the impact of this difficult time.

When we talk about marriage we know that they are formed by a couple and usually this couple can have as a result of this marriage children, children who are directly linked to the

couple and will share the happy moments but also the sad moments. During the process of unfriendly divorce these relationship fruits can suffer and carry numerous sequels.

I chose to talk about this topic for personal reasons. Being the son of divorced parents who went through a long and difficult divorce process that left me traumatic to witness fights and discussions between my parents. Nowadays, remembering the situations in which I was submitted and having more information on the subject, I can say that all that was missing between my parents was to talk to each other, and that if this conversation had been intermediated by someone they could have found a better solution.

For these reasons I believe that mediation could have been a good choice for my parents. I believe that mediation in a divorce proceeding involving children can help and prevent future trauma and for this reason, this study aims make a critical analysis of whether mediation can bring benefits to the child during the divorce proceedings, avoiding the trauma that a litigation process would cause.

It will also aim to identify the impacts on children's lives when their parents opt for a contentious divorce. This demonstrates that a divorce process through mediation can prevent and help maintain a good relationship between the parents of children, which will not only be good for parents but also for their children. Divorce, however difficult it may be, does not have to become a war field and affect everyone around you.

3. Literature Review

When we talk about the famous alternative methods of dispute resolution, we usually come up with the idea of easier and faster methods of finding a solution to the conflict.

We know that there are three main methods of conflict resolution within the ADR, and they are mediation, negotiation and arbitration. This work aims to focus on how mediation can be beneficial when chosen to deal with divorce cases involving children.

Over the years, divorce cases have increased significantly around the world, with high rates in European countries. According to The Dutch national mediation service Gecertificeerde Mediators, it says that nearly 72.3% of European marriages that ended in divorce lasted less than 20 years and that 40.7% lasted less than ten years. (Gecertificeerde Mediators, 2015)

Divorces can be complicated, as the circumstances that led the couple to divorce can be difficult to deal with. With the couple having the decision to divorce usually the cause since divorce is conflicts that must be resolved, and not resolved with a focus on saving the marriage, but so that both can find the best solution for themselves. With marriage comes responsibilities, assets acquired, and often children. Assets and responsibilities can be divided, but when we talk about another human being, we should not consider him as an

object. And in this case, parents must find the best possible solution so that their children are not affected in a way that could cause them trauma.

Dealing with a couple getting divorced can be complicated and difficult. As I said before, hurts and resentments cannot let children from this marriage be affected, and that is why the role of the mediator is very important.

In the mediation, the mediator does not act as an expert, and he can have multiples roles (Mayer 2004). When we talk about mediation and the mediators, some researches say that mediators should have some skills and be trained to deal with some situations. According to Mienkowska-Norkiene (2012), mediators should have psychological and legal knowledge.

As we know, mediators must be impartial and must play a neutral role in the process without favouring any of the participants and not having a Bias (Senyo M. Adjabeng, 2016).

The mediator should encourage the couple to follow the ground rules; for example asking questions to get clarity and not as attacks, advising the parties to express themselves and not to have hard positions so that both can express themselves better and show their outcomes. (James Melamed, 2018).

Even though it is not necessary for the mediator to have certain skills or to be a lawyer, research in the UK has shown that clients tend to feel more reliable when the mediator has more experience in the field. For example, a mediation involving the construction industry, clients would be more likely to choose a mediator with some knowledge in the field. (Martin Burns, 2018).

The mediator should take his clients to have a brainstorm so that it is easier to find together a solution that can be beneficial for both, when both decide together to think and listen to what the other wants, this leads them to act in harmony, creating a peaceful environment that does not affect mediation and sometimes children who may be involved.

When we talk about divorce lawyers, they tend to refer clients to a therapist for treatment, and in the case of professional mental health collaborative divorces, they are used as a rule.

Taking into account the fact that mental health professionals, such as psychologists, are often used for divorce litigation, why not, divorce mediation is not done by a psychologist?

The use of psychologists in the process brings security and results in smoother, more efficient and less stressful procedures. So it can be said that the use of a psychologist in divorce mediation can bring more comfort to the parties involved. A mediating psychologist adds more value to mediation when dealing with sensitive issues, in this case, we are not necessarily talking only about divorce, but for example, family distances, psychological abuse, sexual violence, parental alienation.

Taking into account the benefits of having a psychologist as a mediator, we can affirm that such a psychologist acting as a mediator in a divorce mediation involving children with custody disputes, can bring numerous benefits not only for the couple but for the children, even if they are not directly involved in mediation. (Ilene Diamond, 2011)

Regarding the use of psychologists as mediators, Ilene Diamond says the following:

The value of a psychologist mediator is not, however, limited to the divorce context. A therapist mediator can be the neutral of choice in other types of family matters, such as estrangement among family members, disputes about elder care decisions, estate planning or inheritance, or dysfunction in family businesses. Less commonly, psychologist mediators have been utilised in sensitive litigation matters such as employment discrimination, sexual harassment, sexual assault or molestation, medical and psychiatric malpractice cases, and a variety of matters involving personal injuries, whether such injuries are physical or psychological. A psychologist mediator brings added value to the table in these delicate matters.¹

As mentioned above, studies and even mediators believe that for certain cases, it is necessary for the mediator to have the knowledge and certain skills in the field of action. When we talk about mediation, divorce and children, Lowenstein (2009) describes mediation as, "one of the interventions in place to put parents in control of the decision making regarding their divorce and future of their children" (p. 234). Taking into account the above statement, we can say that this is important to reduce the impacts of divorce on children.

As we know, the mediator aims to lead the parties to find their common goal so that it is possible to find better decisions and benefits. This reduces conflicts and helps to control feelings related to the new family structure. (Emery, 2004).

¹ Diamond, Ilene. (2011). The value of a psychologist mediator. Retrieved from: <https://www.mediate.com/articles/diamondi1.cfm> [Accessed: 8 Sept 2020].

With a better understanding of the new family structure, the goals, the outcomes, we can say that divorce mediation should reduce the impact of divorce on children. (Mienkowska-Norkiene, 2012)

In some cases, it will be necessary to involve children in mediation; they will be challenged to participate and often give their opinion. In some cases, mediation allows the child to have more contact with the father or mother who no longer lives together. (Emery, 2004). This makes such a child feel more confident in expressing himself and showing how he feels and what he thinks is best for him. The responsibilities are of both parents, but the child must also be heard so that he feels part of it and prevents him from repressing his feelings that may come to be expressed in a bad way with bad behaviour for example. (Lisa Tams, 2016).

Children are increasingly being involved during their parents' divorce process, whether in mediation or litigation. This is due to the fact that the child's well-being must be guaranteed, and understanding it is necessary in most cases. Listening to them is necessary because when their parents are divorcing, they are the closest people involved who are most interested in the situation, and everything that can benefit them must be taken into account. (Ewing J, Hunter R, Barlow A, et al. 2015)

As we know, children are increasingly being involved in the divorce process, be it litigious or through mediation. However, before we understand the benefits that mediation can bring to these children, we need to understand the harms that a troubled divorce can cause to them.

Research indicates that children in the first two years may have difficulties in dealing with divorce, which can cause them anxiety, anger, disbelief, distress and often dealing with this sensitive issue should have the help of a trained professional, taking into account that a small percentage of these children may never fully recover. (Amy Morin, 2019)

According to Amy Morin (2019), in her article, she references the main consequences that divorce can cause in children during divorce, whether they are young children or teenagers. For example, in young children their parents' divorce can be confusing and difficult to adapt to the new routine where parents live in different homes, another important fact is that they may think that parents can stop loving them just as they stopped to love each other.

In some cases, children during and after divorce proceedings often tend to assume that it is their fault for the divorce. They come to believe that they may have done something wrong or behaved inappropriately, and because of this, their parents are getting divorced. When we talk about teenagers, it may be more complicated, as for the divorce and the changes that come with divorce can make them angry and tend to blame one parent for the divorce or for not having fought for marriage. (Amy Morin, 2019)

One of the main consequences of divorce is the fact that the child will have to adapt to the new routine and with their parents living in separate houses, but often, after divorce, young children and teenagers tend to have less contact with the father, often feeling less close after the divorce. (Jane Anderson, 2014)

The divorce of your parents itself for the children is not what most frustrates them, but the changes that come with divorce, such as the change of school, staying away from friends, moving house and in some cases even adapt to a new standard of living, since at the beginning of this new phase living with only one parent, usually the mother, financial difficulties may arise. (Amy Morin, 2019)

One of the main negative consequences that divorce can cause in children is mental health problems, regardless of age or sex. An example is that children can develop a disorder of adaptation to the new routine, but studies show that the rate of depression and anxiety is higher in children of divorced parents, but it is also important to mention the behavioural problems since these children of divorced parents can develop difficulties to express themselves, to externalise what they feel, which can cause conduct problems, delinquent acts or impulsive behaviour. Adolescents after their parents' divorce tend to become more rebellious and begin to engage risk behaviours, such as the use of alcohol, drugs and even the early initiation of sexual life. (Brian D'Onofrio, Robert Emery. 2019)

After we understand what a troubled divorce can cause to the children of parents who are divorcing, we can say that parents who tend to fight, argue, shout and act in a non-peaceful way with intense conflicts, can trigger the disorders mentioned above. (Jane Anderson. 2014) That is why the mediation divorce process can be a good solution to deal with such conflicts and consequently reduce the damage caused to children and even make them non-existent in some cases.

One of the most frequent causes of conflict is the lack of communication, and the opposite of that lack is the device that can resolve the conflict. Understanding what leads a person to be in conflict is essential for finding a solution to it. For example, managing what is and finding a solution to a conflict must be done by both parties, whether in divorce or in the workplace and that is what the mediator should encourage, should guide the parties to speak openly about the conflict, what it has caused and what they want with the solution; Identifying this makes the tension lessen and the parties are more open to negotiating. (James Melamed, 2018).

After understanding the harms that litigious divorce can cause children, we need to talk about the benefits that mediation during divorce can bring to children and also to parents themselves. As we know not only a litigious divorce process but like any other, that is done in the ordinary court, it usually takes longer to resolve, which can take from 9 months to two years, while the mediation divorce process can take from 2 to 4 months to complete, which in addition to saving time, reduces the stress caused by a lengthy process. (Stuart Watson, 2019). What was mentioned by Stuart Watson when applied to mediation divorce proceedings involving children, can be extremely beneficial for them, since the time of exposure to a divorce process and its negative points will be shorter, and consequently the adaptation afterwards will be easier.

Regarding the control of the process, we must emphasise that owning it can be of great benefit to the home and the children if you have them and in relation to that, Stuart Watson says the following:

Divorce Mediators guide and educate people through their parental, financial, and legal options so they can make their own informed decisions about what is best for themselves and their family, instead of attorneys and judges taking control and making those decisions for them. Instead of blame and fault finding, mediators help ex-spouses communicate clearly and effectively, consider and discuss options, and take responsibility for their choices.²

A litigious divorce can cause a lot of stress and one of the benefits of divorce through mediation, not only for the couple but also for the children born of the marriage, divorce mediation is beneficial with the use of collaborative Problem-solving, this approach

² Watson, Stuart. (2019). 10 Benefits of Divorce Mediation. Retrieved from: <https://www.divorcemag.com/blog/10-benefits-of-divorce-mediation> [Accessed: 08 Sept 2020].

decreases the tension and makes parents work together to find the solution to the problem and to find a positive co-parenting relationship; in addition, Stuart Watson says the following in relation to child protection during divorce:

The most significant divorce factor impacting children's psychological and emotional health is the amount of conflict between the parents. The adversarial, litigated approach escalates conflict and stress and can leave lasting scars...thereby putting children's well-being at risk. This is particularly the case when children are involved in a high conflict custody battle. In contrast, divorce mediation is a professionally guided problem-solving oriented towards meeting the needs of the whole family.³

Regarding the child protection benefit that divorce mediation brings, the most significant point is related to the traumas that a custody dispute can cause for children and mediation can prevent such a dispute and that the child is imposed on various legal procedures and even to the point of being exposed and having to speak personally in court. The mediator can also, when necessary, impartially and in a neutral manner can lead the parties to focus on the child's needs.

With an environment where parents are together, collaborating to find the best solutions not only for them, but also for their children, in a peaceful way, we must highlight another benefit that mediation brings to children due to the peaceful environment that it creates, and such benefit is related if the child is directly involved in mediation, where he would participate and would have a voice, expressing his feelings and desires, after all, we are talking about a human being and not about an object that you will share. With trained and

³ Watson, Stuart. (2019). 10 Benefits of Divorce Mediation. Retrieved from: <https://www.divorcemag.com/blog/10-benefits-of-divorce-mediation> [Accessed: 10 Sept 2020].

capable mediators to deal with such situations, and as mentioned at the beginning of this text, preferably a psychologist, giving a voice to the child can be extremely beneficial because he will feel part of the process, part of the family.

A litigious divorce as we know is extremely stressful, and in some cases, children must attend court and speak, which can further intensify the stress of existence and the doubts they may have. In mediation, in a peaceful environment, they will have a voice, and according to Siún Kearney (2014), a family session can be beneficial for everyone, taking into account that parents and children will have the opportunity to discuss plans and interests in relation to their lives during and after divorce.

The involvement of children in mediation has benefits such as, for example, better outcomes, a better acceptance of difficult decisions and makes it easier to understand and improves the relationship between parents and children when making decisions. (Sanchez, E.A and. Kibler-Sanchez. (2004)

The fact of including children in the mediation has shown benefits such as, for example, the encouragement of honesty, lessens the feeling of guilt and the desire to blame a parent for divorce and most importantly, changes the perspective of the process, changing something which revolved around the needs of parents and is now related to the needs of children. (Emery, 2002).

Some people worry about giving voice to children because they worry about the fact that they are making decisions that should be taken by parents, where only the wishes of these children should be followed, but that is not the purpose or what happens in practice, what happens is that during this process they feel included and demonstrate their needs in a process that must be focused on what is best for them after divorce, but it is necessary to point out that the

inclusion of the child in the divorce mediation process does not mean he will be there directly, but indirectly, where his parents will be guided by the mediator to bring their children's interest to the mediation. (Siún Kearney, 2014).

In any process, familiar or not, processes can be stressful if they take time. Mediation brings benefits according to the facts presented above, such as the right that the needs and voices of children are respected where the mediator will guide parents to focus on the best solutions to the conflict, focusing on their children and not on themselves. The mediation will also decrease the stress caused by the divorce that would affect the children, which could trigger cases of anxiety and depression, as studies show that the number of people with depression who have separated parents is greater and with a peaceful environment, parents will hear, and they will find the best solutions geared to their children's needs and not themselves and, together, they will be able to include their children in the process without negatively affecting them, which can cause traumas that have perpetuated, many times, throughout the lives of these children.

4. Research Methodology and Methods

One of the most important points of a research is to determine which topic will be addressed by the researcher. This is essential to determine the methods that will be used in the research and the way that the data will be collected. According to Saunders et al. (2019, p.42) ‘one of the key criteria of your research success will be whether you have developed a set of clear conclusions from the data you have collected. The extent to which you can do that will be determined largely by the clarity with which you have posed your research question.’

As a researcher, I chose a research question that I believe is important for the field of Alternative Dispute Resolution. This question aims to identify what a litigious divorce can cause to children and how mediation can reduce such damages, having as main research question the following: To identify the negative aspects of a litigious divorce for children during the parents' divorce proceedings and understand how mediation can lessen the effects caused by the divorce process.

As mentioned in the previous chapter, according to The Dutch national mediation service Gecertificeerde Mediators, divorce cases in Europe have increased significantly in recent

years, and when we talk about divorce, we must point out that with marriage usually, children come and when the couple decides whether divorce we must take into consideration what will be the future of this child from this marriage that has come to an end.

When a marriage comes to an end, for whatever reason, and the couple decides to enter into litigation, we know that there are problems to be solved in this relationship. Often the lack of communication and the hurt or anger that the end of the relationship caused can make it difficult to find the best solution for the couple. When a marriage that comes to an end with hurt and resentment there will always be a dispute over ego often.

That is why in most cases, mediation should be considered as a choice to resolve existing conflicts and find the best way out for the couple, but when you have children, they must be prioritised. The traumas that a difficult divorce can cause can last a lifetime. Mediation plays a very important role in the lives of these children, fruits of this marriage that came to an end because they can be prioritised. In this case, the mediator, who should preferably have experience in the field or be a psychologist, should act with a focus on the life and future of that child, guiding parents to prioritise it so that the best solutions are chosen with that child as the focus.

As we know, there are several researches and articles saying how mediation is beneficial to resolve conflicts in all areas, be it commercial or even more sensitive cases such as family disputes. However, many of these articles are not focused on those children who should be prioritised, and that is why I believe in the importance of my research. Where I seek to show that the best way is to give priority to resolving conflicts with a focus on the needs and future of these children.

This work has the quantitative method of collecting data. Where I collected articles and authors to base myself and be able to base my answer on the question that this work aims to answer, as we know and according to Saunders et al. (2019, p. 130) The method by which the data will be collected is very important, and researchers must pay attention to this stage of the process so much that, according to Saunders, the moment of data collection is at the centre as one of the most important points of the research, followed by the next steps that researchers should take.

4.1 Research Philosophy

The research philosophy will be based on beliefs and assumptions. When we talk about assumptions, we must emphasise that it is categorised as epistemological, ontology and axiological. Saunders et al. (2019, p.130).

This work and I as a researcher decided that the best path of research philosophy to follow will be that of epistemological assumption with a focus on positivism. This philosophy was adopted in this research because it will analyse the benefits that mediation can bring to the divorce process involving children taking into account that usually researchers focus on the process as a whole, showing the benefits of mediation and therefore in this case throughout this research I will demonstrate based on the negative points of a litigious divorce for children, how mediation can be the best choice and avoid trauma.

As I mentioned above, positivism will be the philosophy that will be adopted in this study, where the hypothesis that mediation can be used to prevent trauma to children during the

divorce process will be neutrally tested through the data collection. Where we can use this method to confirm the hypothesis, refute or be inconclusive, where future researchers will be necessary.

4.2 Research Design and Methods

The next and no less important step to be discussed about the methodology to be adopted for data collection, according to Saunders et al. (2019) concerns the methods, being they qualitative mono-method, quantitative mono-method, quantitative multi-method, mixed methods simple and mixed methods complex.

For those who understand the subject, it is known that qualitative data is generally more related to written information, such as articles, and when we talk about the quantitative method, we are talking about numbers. However, in making the distinction between the two, we must pay attention to the fact that qualitative data can be studied quantitatively, and quantitative data can be analysed qualitatively.

I could say that in this work, the method used would be the qualitative data, but in the course of the work, it may be that the quantitative method is also applied. For this reason, the method that will be applied in this work will be Mixed Methods. As we know the collection of quantitative and qualitative data does not need to follow an order, and they can be used at the same time, and for this reason, we can say that one method can support the other.

The qualitative method will be used in the manner in which data collection will prove or not that mediation can prevent traumas from being caused to children of parents who are

divorcing. If not, at least avoid reducing the psychological damage that a litigious divorce could cause them.

The collection of data will be based on articles and authors talking about the topic, including some authors like (Diamond, Ilene. (2011) where she says that the presence of a psychologist as a mediator should be considered for divorce cases involving children. Since the psychologist used in mediations with sensitive topics such as family should be an option to be considered since he would somehow know how to deal with sensitive topics better.

Considering the facts and according to the methodology that will be applied, the research strategy of this study will be carried out collecting the largest number of articles and references that can confirm the theory that mediation can avoid or reduce the negative effects that a litigious divorce would cause in these children, and for that reason, it is necessary to collect the largest number of data regarding what harmful a litigious divorce can be for the children of the divorced couple.

Considering the case in question, this work will also aim to analyse how mediation can ease pressure on children. Since children can often come under pressure during a divorce process. As discussed in the previous chapter since work, one of the negative points of the litigious divorce and the constant fights of the parents, can make the children somehow feel guilty for the divorce, they feel responsible for the end of their parents' marriage and for this another point to be discussed is that mediation can make children not feel guilty, that is, mediation takes the blame issue away from children.

5. Discussion

As mentioned in the literature review above, litigation is complicated, usually so that one party wins one must lose, and then the question arises, at what cost? What would you give up on your child's happiness to win?

Divorces are complicated, the end of a relationship can leave marks and hurts that the newly separated couple must face and overcome, but the issue that this paper discusses is related to the children that are the fruits of that relationship. Should children pay the price for an unsuccessful relationship? Should they suffer? And anyone who with an ounce of conscience will answer that children should be spared, and that is why we must focus on a process where such children are not harmed and do not carry trauma and baggage that does not belong to them.

When a couple decides to divorce and opt for mediation, we can consider that at least they are available to try to reach an agreement, even if the agreement is not possible they will try,

and that is why it is very important to discuss the role of the mediator during this divorce process. The choice of mediator can be crucial for the child to be spared. The mediator, when prepared and with relevant experience to deal with sensitive cases, should guide the couple to focus on what is best for their children and not for themselves.

According to Mienkowska-Norkiene (2012), mediators should have psychological and legal knowledge. Regarding the fact that the psychologist benefits the mediation divorce process, in relation to this process, Ilene Diamond (2019) said the following:

Consider the emotional needs of a personal injury plaintiff at the mediation table. At the most basic level, there is the need to be heard. Meeting this need effectively may require more than the active listening skills which are the stock in trade of every competent mediator. There is a need for accurate empathy, validation and a respectful, appropriately paced process for coming to terms with the loss. While attorneys are familiar with the types of loss recognised in law - e.g., financial, reputational, market share - a psychologist mediator may more easily recognise that the plaintiff may have lost certain hopes and dreams, aspects of their relationships, and meaningful parts of their identity. Beginning to come to terms with loss is an essential precondition for settling litigation or, indeed, to reaching a compromise in any dispute. Psychologists are experts in helping people find meaning and dignity in their experience so that they can come to terms with the loss.⁴

As mediators know and were mentioned by James Melamed, (2018) they should encourage the parties to follow the rules of the process and guide them impartially so that they reach

⁴ Diamond, Ilene. (2011). The value of a psychologist mediator. Retrieved from: <https://www.mediate.com/articles/diamondi1.cfm> [Accessed: 15 Sept 2020].

consensus; taking this into account we can say that a psychologist specialised in cases involving children would deal better with the situation and with possible discussions that the couple might come up with during the mediation.

Psychologists have the ability to better understand the human mind, taking this fact into account, we could say that in a way, for a psychologist it would be easier to identify the problem and solve it, that way by finding the problem that generates the conflict and eliminates it will be easier to focus on children and their needs, which should be the focus of every divorce where the future of these children is being decided. About the value of a psychologist Mediator, Ilene Diamond also states the following:

Unlike attorneys, psychologists are trained to interview people and get them to open up about their lives. We are also trained to "formulate," i.e., to hypothesise, to visualise the person's life, their family, and their interior psychological landscape, including how experiences are affecting them emotionally, and what personal, perhaps even idiosyncratic, meanings are attached to those experiences. By bringing these abilities into the mediation process, we expand the possibilities for greater understanding, satisfaction with the process and creative options for resolving the dispute. It must be understood that a psychologist mediator, like any other mediator, operates as a neutral, and not as a treating clinician. The role of the psychologist mediator is never to diagnose or treat any person involved in the mediation, just as the role of an attorney-mediator is not to legally advise or represent any person involved in the mediation. However, just as the attorney mediator's legal acumen and experience are assets in mediation, the clinical skills and

experience used in assessment, diagnosis and treatment by psychologists are invaluable in the mediation context.⁵

When we talk about mediation, divorce and children, Lowenstein (2009) describes mediation as, “one of the interventions in place to put parents in control of the decision making regarding their divorce and future of their children” (p. 234)

Understanding the benefits of having a psychologist as a mediator before we analyse the benefits of mediation itself for children, we must understand the damage that a litigious divorce can do to children and thus we will be able to say what mediation can avoid.

First of all, we must understand that each child, family, divorce and what caused the divorce is different, and not all rules and studies apply to all cases involving children. Each family and child has their own personalities, weaknesses and often existing problems; however, they are not externalised. In many cases, even the family's financial situation must be taken into account.

During my research on the topic, I was able to find an analysis that refers to the subject where the first was in 1991 and the second was reported in 2001, where it said that " children with divorced parents continued to occur significantly lower on measures of academic achievement, conduct, psychological adjustment, self-concept, and social relations " (Amato and Keith 1991; Amato and Booth 1997 as quoted in Amato 2001). Also, Ashley Marcini states the following:

Academically, kids going through a divorce may earn lower grades and even face a higher dropout rate compared to their peers. These effects may be seen

⁵ Diamond, Ilene. (2011). The value of a psychologist mediator. Retrieved from: <https://www.mediate.com/articles/diamondi1.cfm> [Accessed: 19 Sept 2020].

as early as age six but may be more noticeable as kids reach the ages of 13 to 18 years old. There are several possible reasons for this link, including that children may feel neglected, depressed, or distracted by the increased conflict between their parents. With time, less interest in academics at the high school level may trickle over to less interest with furthering their education overall.⁶

An important point to mention is that children after divorce tend to spend less time with their parents and may come to feel neglected, taking into account that the father will usually move to another house and a mother who will no longer have her husband's financial aid must work longer hours so that she can maintain the house.

After the parents separate, it may occur that the children lose emotional security. (Amato and Afifi 2006). Another important fact is that the child may have less contact with the parent and the family of the relative who does not have custody, which can make him feel insecure. According to Amato (2001), children of separated parents tend to have lower scores when it comes to social relationships and also about self-concept.

Children and adolescents are in a constant phase of change where trauma can cause psychological damage for life. Depression and anxiety are recurrent illnesses after the divorce process occurs. (Strohschein 2005). On a website specialising in parenthood, in her article, Ashley Marcin (2020) says the following about depression in children of separated parents:

While a child may initially feel low or sad about the divorce, studies report that children of divorce are at risk of developing clinical depression. Even more concerning, a few are also at higher risk of suicide threats or attempts.

While these issues can impact kids of any age, they tend to be more prominent

⁶ Marcin, Ashley. (2020). 10 Effects of Divorce on Children — and Helping Them Cope. Retrieved from: <https://www.healthline.com/health/parenting/effects-of-divorce-on-children> [Accessed: 19 Sept 2020].

with kids ages 11 years and older. And boys may be more at risk of suicidal thoughts than girls, according to the American Academy of Pediatrics. Enlisting the help of a licensed mental health professional is critically important for this reason.⁷

Studies indicate, children of separated parents tend to start sex life earlier than those who have a family with non-divorced parents and compared to girls that her father left the house before she was five years old are eight times more likely of becoming pregnant in adolescence and boys in the same situation tend to have a higher sexually transmitted infection rate. (Ellis et al. 2003). Also, Ashley Marcin states the following:

Abuse of alcohol and drugs, aggressive behaviour, and early introduction to sexual activity are also possible. For example, studies show that teen girls tend to have sex at earlier ages when they live in a household where the father isn't present. Research does not show the same risk for boys. And this early "sexual debut" may be attributed to several factors, including modified beliefs about marriage and thoughts on childbearing.⁸

Related to the marriage of children of separated parents, as adults, they tend not to see marriage as permanent. (Weigel, 2007). An important study conducted in 1998 in Sweden showed an alarming number where children living with single parents are more than twice as likely to experience serious psychiatric problems and in many cases can lead to commit or

⁷ Marcin, Ashley. (2020). 10 Effects of Divorce on Children — and Helping Them Cope. Retrieved from: <https://www.healthline.com/health/parenting/effects-of-divorce-on-children> [Accessed: 20 Sept 2020].

⁸ Marcin, Ashley. (2020). 10 Effects of Divorce on Children — and Helping Them Cope. Retrieved from: <https://www.healthline.com/health/parenting/effects-of-divorce-on-children> [Accessed: 22 Sept 2020].

attempt suicide and in other cases develop problems with drinking alcoholic. (Brown et al. 1998).

Another important point to emphasise is about the physical health of these children; when they live in a complete family nucleus, they tend to get sicker than children who live in a complete family nucleus, being 12% in complete family nuclei and 22% when comes from family nuclei of single parents. (D.L. Blackwell. 2010).

As we can see and it was mentioned above, divorce can be harmful in countless ways for children and such negative points that divorce can cause can last a lifetime and that even though some may recover during life, others, sequelae may remain forever and in many cases, these children throughout their lives may even attempt or commit suicide. Depression and anxiety are in the author's point of view since this article is one of the most serious consequences that a complicated divorce can cause, and therefore, everything that can be done to prevent, prevent or remedy the side effects of divorce must be done.

After analysing, we can say that divorce can cause innumerable problems in the lives of children and adolescents, some of which are very serious, such as depression and anxiety that can last for a long time and in extreme cases as mentioned above lead to suicide.

However, there are other negative consequences that divorce can leave, such as, for example, the early use of alcoholic beverages, the early start in sexual life where pregnancy or sexually transmitted diseases may come from, and even losing faith in relationships, since children of separated parents tend to no longer believe in marriage as something lasting that needs commitment. After identifying the negative points that divorce can bring to these children, we now need to show the benefits that mediation has and why using it can be something to be used to prevent or remedy the trauma that the litigious divorce can cause. For many, even

nowadays, divorce is something that must be resolved in court, and that when a settlement is not reached, a third party should decide, and when we talk about litigious divorce, who will make the decisions will be the Judge.

Today, many are still unaware of the benefits of mediation as a method for resolving conflicts. Mediation is a method where the parties agree to participate, and with the help of a mediator who guided them, they found the best solution, in the case of mediation the mediator only helps the parties to find the solution to the problems that are beneficial to both, therefore, both are winners of mediation. First, we need to understand what mediation is, better known as an alternative to court where the parties choose to mediate and find a mediator who will help them resolve the dispute. According to Marian Grande (2020) mediation is:

Mediation is an alternative to court. Mediation employs a professionally trained, unbiased and neutral third party called a mediator, who does not judge the case but helps facilitate a discussion, limit the issues, and put them in perspective to assist the parties in resolving the dispute. Mediation is non-binding, so the parties work toward a voluntary agreement on key issues which is then drawn up into Minutes of Settlement, which is enforceable. Parties participating in mediation have an incentive to reach an agreement because they do not want to proceed to trial to be bound to the Judge's order instead.⁹

Regarding the litigation, it is unpredictable, can last a long time, be more expensive and drain you emotionally. (Marian Grande, 2020).

⁹ Grande, Mariam. (2020). Family Mediation vs Family Litigation. Retrieved from: <https://www.mediate.com/articles/grande-family.cfm> [Accessed: 25 Sept 2020].

Mediation is far less stressful than a litigious divorce process, where there may be arguments, having to go to the court where the Judge will make the decisions regarding the divorce. Emily Andrews, (2018) also said regarding mediation and the stress “Less stress on you means less stress on the whole family. Your kids will benefit as will your job. People going through a divorce tend to be more distracted at work and less efficient overall. If your mediation goes smoothly, your divorce should not negatively affect any other areas of your life. The reduced stress factor alone is a huge benefit for choosing mediation.”

In the paragraph above we can identify one of the benefits of mediation for children, since during the litigious divorce process there can be enormous tension and cause stresses that can affect numerous areas of the life of those who are divorcing, including their children, who are the focus of this study.

Considering the fact that mediation has the ability to reduce the stress that can affect many areas of the life of those who are divorcing, making mediation the best choice, since the process for being less formal and less stressful can benefit everyone.

Divorces are undoubtedly complicated, and the changes that come with divorce can cause adaptation difficulties for everyone, including children, which can aggravate cases of anxiety and depression, as mentioned in this study. One of the changes that divorce can cause can be in the standard of living that the family led, before the divorce, they were both parents keeping the house, and after the divorce this can change and cause everyone's standard of living to change dramatically.

Changes in the financial standard of living of parents and children often lead to the sale of real estate, change of house, school, which in itself should be stressful for children, now imagine all the changes and even the adaptation of that your parents' marriage is over.

Regarding the financial changes that divorce can cause, choosing litigation becomes the worst choice. Mediation is known that it is advantageous because it is cheaper than litigation, and litigation can lead to bankruptcy. Studies indicate that mediation tends to be 40 to 60% less expensive than litigation. Regarding this, Emily Andrews in her article for the Mediate website states the following:

On average, the typical cost is about 40-60% less. The cost of mediation depends on the complexity of splitting the assets, child visitation schedules and other concerns. Even in complex cases though, the cost should be much less expensive. You might be shocked at how little it costs to hire a mediator instead of a fancy, high-priced divorce lawyer. The cost of getting divorced will vary from state to state but hiring attorneys and using court resources in many cases can bankrupt you. If you can proceed with a divorce and save money, mediation may be the best option for you, and you won't end up broke. In some cases, people stay married because they cannot afford a divorce. In these situations, mediation might be their only solution.¹⁰

One of the issues that can and should be discussed is the change that divorce will cause in the lives of children, with all the stress that a litigation process can cause this can become just another reason to cause more stress. When parents get divorced everything changes in the children's lives and deciding how the parents will live after the divorce is important so that they don't feel neglected by one of the parties, and therefore, mediation becomes more effective because the parents themselves, together, they will be able to decide together the

¹⁰ Andrews, Emily. (2018). Five Huge Benefits of Choosing Mediation. Retrieved from: <https://www.mediate.com/articles/andrewsa1.cfm>[Accessed: 27 Sept 2020].

points related to their children's future, and in relation to that, Sabine Walsh states the following:

Many couples find that mediation offers them the opportunity not only to agree on the terms of their separation but to learn new communication skills that will help them work effectively as separated co-parents. The transition from a loving relationship to separated co-parenthood is a challenging one, but one that mediators are very familiar with. In offering an impartial, non-judgmental forum for discussion, and referral to other support services if necessary, mediation can make this transition easier.¹¹

Two other important points are in relation to time and confidentiality. Litigious lawsuits can take years until you have a judge's decision. This can be a serious cause of stress which would lead the child to suffer from uncertainties over a long period of time.

Mediation is a method of conflict resolution that is more flexible, where the mediator will guide the parties to communicate, negotiate, and have a brainstorm to find together, as quickly as possible the best solution for the problems to be solved and in relation to this Emily Andrews (2015) considers that 'You may find that you have options available to you in mediation that a court-centred divorce does not allow. Mediation offers a lot of flexibility and if you and your partner agree on the details and your mediator feels that it is fair, you can pretty much dictate how you want to split the assets and handle child affairs. This flexibility

¹¹ Walsh, Sabine. (2015). Mediation, an alternative to the divorce court. Retrieved from: <https://www.irishtimes.com/life-and-style/people/divorced-ireland/mediation-an-alternative-to-the-divorce-court-1.2084260> [Accessed: 28 Sept 2020].

can ease a lot of tension during negotiations.' When we talk about the flexibility of mediation, Lester Levy also states the following:

The mediator is charged with establishing a reliable, coordinated and organised process, involving such steps as pre-meeting planning, establishing agendas, ensuring the presence of necessary attendees, facilitating the exchange of technical data, identifying key documents and other information needed to make informed settlement decisions, and sequencing the issues to be considered in multiple meetings, including separate insurance and consultant briefings if necessary. The flexibility inherent in the mediation process is a critical element in establishing the most efficient path to reach a settlement in each individual case. Unlike court rules of procedure, the focus and first priority of mediation is an agreement ending the conflict among all disputants. To paraphrase Woody Allen, if it bends, it's mediation; if it breaks – well it's going to be a long and arduous journey through trial in court.¹²

In the paragraph above, we can identify another benefit for children, in this case, we are talking about flexibility, where their parents will have greater autonomy and flexibility to decide the interests of their children in the best possible way.

When we talk about the end of the marriage and the beginning of a divorce process, for many, a long and lengthy process of discussions and division of assets begins that was acquired during the marriage. Discussions about material goods can take time and be really

¹² Lester, Levy. (2016). Flexibility Is Key to Success in Mediation. Retrieved from: <https://environmentaladr.com/environmental-mediation-vs-litigation/flexibility-key-success-mediation>. [Accessed: 02 Oct 2020].

stressful for the couple, since when there are resentments, one side may want to complicate the life of the other.

The division of assets in the litigious process will be decided by the Judge, who was judging the cases and will take the decision he deems most convenient based on the facts presented.

Usually, but not always, fights over property can become a huge headache, further damaging the already strained couple's relationship.

With so many conflicts related to assets, money, division, something extremely important can be neglected, and in this case, it is not an objective or money that can be divided, we are talking about a human being, often a child who does not understand much about the subject or even a teenager who may come to think it is the cause of divorce.

Neglecting your children's lives and future during this phase of divorce decisions can be extremely damaging to them. Exposing children and adolescents to a court to speak in front of a judge can be traumatic and increase tension, even more, often causing children to choose one side and blame the other as discussed earlier in this paper.

When parents decide to choose to mediate rather than litigate, we can already say that they took a primary step to save their children from the unnecessary stress that they would face during a litigation process.

When it comes to focusing on the lives and future of children so that they are not neglected without a doubt, mediation will be the best choice for dealing with a divorce where it involves children.

Mediation is more peaceful and the child is the sun while all other matters are going to be the planets of the solar system, in other words, mediation will occur with the child as a priority.

With divorce and children, in litigation, a battle for the custody of children can begin that can be extremely harmful to them. Mediation is by nature a method of cooperation and all decisions regarding children's lives will be taken by both parents together. In mediation, children are less affected and do not need to go to court to in any case testify on behalf of a parent. Regarding the benefit of mediation being child-focused Emily Andrews also states the following:

This one benefit might be the most important. Protecting your children from harmful exposure to anger, confrontation, and the messy details of their parent's divorce is priceless. Choosing mediation may help your children stay happy and well adjusted despite the new circumstances. Unlike with traditional divorce, most people who use mediation feel satisfied with the results and the process itself. You will most likely feel safer, more confident and in control of the process. Divorce can be extremely challenging and painful. Mediation presents a much better option by making it less stressful, less expensive and is more comfortable for the whole family.¹³

¹³ Andrews, Emily. (2018). Five Huge Benefits of Choosing Mediation. Retrieved from: <https://www.mediate.com/articles/andrewsa1.cfm> [Accessed: 05 Oct 2020].

Considering the facts cited above, we can say that the role of parents during divorce should be to put children first. Focusing the whole process on them will bring numerous benefits such as the fact that the mediator can guide parents to work on communication not only with each other but also with their children. In this aspect of communication, I refer to the fact that parents would communicate more with their children during the process, not excluding them and explaining to them in a peaceful way how everything will come together. This will not always be possible, but it is worth the try. On this subject, Shannon Rios Paulsen states the following:

Communication is another responsibility of the parent. Depending upon the stage of divorce that you are in, it is very important for you to communicate with your children about this event. In the initial communication to the children, it is optimal if both parents can communicate about the divorce together; however, this may not always be possible. Children are very perceptive, and it is best for you to be open and honest with them. It is very important that your children know you are not leaving them and that both of you still love them very much.¹⁴

Many conflicts happen and can get out of control due to lack of communication. Communicating, expressing your feelings, being heard, can be extremely crucial in resolving a conflict. Many times in life, we just want someone who understands our point of view and the tension that a conflict causes can make this even more difficult. Now imagine the lack of communication in a divorce where the nerves are often already disturbed. Everything in life can often be decided calmly by talking, and for this reason, mediation can help in the divorce

¹⁴ Paulsen, Rios Shannon. (2014). Parenting, Mediation, and Divorce: Meeting the Needs of Our Children. Retrieved from: <https://www.mediate.com/articles/RiosPS5.cfm> [Accessed: 05 Oct 2020].

process. The divorcing couple will be guided by the mediator to think, to find together the best way out of the problem that plagues them.

When we talk about divorces that involve children, the act of communicating and expressing themselves becomes even more necessary. In this case, communication will not only be between the couple divorcing but between the couple and their children. Children are in general the greatest good that the marriage that did not work will leave and in the view of the author of this dissertation they are the greatest non-material good that every couple can have and for that reason, without a doubt, must be protected and considered as an absolute priority. Talking about communication and co-parenting is extremely important and a website specialised in divorce states the following about the topic:

Effective parenting after divorce requires effective communication – both between the co-parents and between the parents and children. Even if they don't like each other, or disagree on many issues, divorced parents still have to work together as a team as far as their children are concerned. In addition, the lines should always be open for the children to express their thoughts and feelings and to be aware of the new rules and boundaries. Everybody should know what's going on. With stronger co-parenting communication, there will be less chance of misunderstandings and conflicts between the ex-spouses – and a better chance of a healthy upbringing for the children. Both co-parents and the children must be equally clear about the rules and schedules. Their reactions to the new rules will vary according to their age and temperament: older children may be averse to sudden changes to a family situation they've been accustomed to as long as they remember, while others are too young to understand what's going on and become used to the separate-parents

environment as they age. On the other hand, because divorce is more commonplace today than ever before, the kids may be more hip to the situation than you think. Hopefully, you know your children well enough to anticipate their reactions and have a plan for dealing with them.¹⁵

In the view of the author of this article, I believe that communication is the best benefit that mediation can bring to the process that will benefit the children involved. Communicating and making them aware of what is happening will make them feel safe and loved by their parents, after all their future, their needs are also being discussed in the process, and therefore they should be consulted directly or indirectly in the process that concerns their future. Obviously, in some cases, when the child is unable to understand what is happening, he must be spared any stress, either because he is very young or sometimes because it has a disability.

When we talk about mediation and communication, we can say that this is something good that mediation brings to clients. As mentioned above, communication is important and should be used for good. In this case, measurement can help with the mediator as an assistant. The mediator will take the parties in an impartial way to communicate, and when we talk about divorce, he can get parents to communicate with their children, even if it is during the process, after all, better late than never. About communication in the mediation process, Tina Mears states the following:

In divorce mediation, communication is a key component to success; yet it is extremely difficult to achieve that success because of the newness of the situation and the intense emotions inherent in any divorce. It is possible to achieve peaceful, consistent and purposeful communication with your former

¹⁵ Cottrill, Jeffrey. (2018). Successful Co-Parenting Communication after divorce. Retrieved from: <https://www.divorcemag.com/articles/co-parenting-communication>. [Accessed: 05 Oct 2020].

partner. It all begins with your mindset. Think about communication as having the highest purpose: your child and family's well-being. The beauty of mediation is that it's not about winning or losing, as in litigation; it is about communicating with each other through each decision.¹⁶

Talking about communication in the divorce process, we must consider important points that must be followed by the parties and the mediator so that the children's needs are given priority and priority before they are heard. One of the points to be noted is curiosity. Sometimes we tend to jump to conclusions from certain situations before we even know all the information about. For this reason, it is necessary to be aware and to be literally curious and to be willing to listen to the facts before making a decision, for this to happen you need to be a good listener, and in this case, the mediator will be there to ensure that the parties speak and be heard respectfully one at a time. Often even our body language can say a lot about us, whether we are open to negotiation, whether we are comfortable, and so on. Therefore, having an appropriate body language will bring more confidence to the other party and also to yourself, since it will make the environment more peaceful, but the most important of all is to be willing to listen and focus on solutions to the problem. When you are actively listening to what the other party is saying, with body language it pacifies the party to be more willing to express themselves openly by facilitating that both find the best possible solution. (Tina Mears, 2018). Taking these factors mentioned above, we can say that communication will make parents focus more on what matters, which in this case is the needs and future of their children.

¹⁶ Mears, Tina. (2018). Communication Tools for a Successful Mediation. Retrieved from: <https://www.ncrconline.com/divorce-family-law-mediation-articles/communication-tools-successful-mediation>. [Accessed: 08 Oct 2020].

Asking directly to a child or adolescent what he thinks is not the best way, this in the opinion of the author of this article should be done indirectly, talking, explaining, and all the time ensuring that they are together (parents) working so that they can find the best solution for everyone.

Divorce can bring feelings that are difficult to deal with and confusing, and even before the mediation process begins, children should know what is about to happen in their lives and the changes that divorce can bring. With so many changes happening in the lives of these children, lying to them will not be the best solution, despite not being aware of all the facts they can feel the tension, and not know what is happening and be left with the uncertainty of how things are going. Happening can increase the stress in your lives. In relation to this Donald T. Saposnek states the following:

In the midst of these difficult and confusing feelings, many parents do not even tell their children about the separation and divorce until days or even weeks after one of the parents has moved out of the house. However, not telling the children the truth in advance actually leaves them feeling betrayed and deceived by their parents. It also leaves them ill-prepared for this major event of their lives. Child development experts agree that deceiving or withholding the truth about their parents' separation and divorce does not protect children. Children always do better in hearing the truth than in hearing a lie or misleading information from a parent. It is not the parents' job to protect their children from the truth. Rather, parents should give accurate and

truthful information, and then help their children deal with the feelings that are generated.¹⁷

Communicating with children will make them feel safe and part of the process. Often children's wishes will be for their parents to be together again, but this does not always happen, and when they understand this they will want their parents to be able to create a peaceful environment together where they can live in harmony even after the end of the marriage.

Talking to the children and explaining the reasons for the end of the marriage and giving a version of the facts is the best way out, so parents should talk together and speak one version of the story so that there are not two different versions that will make the children feel confused and often believe that one of their parents is lying. About this, Donald T. Saposnek also states the following:

Children do not like hearing that one of their parents is the cause for the divorce and is responsible for the pain of everyone in the family. Children don't like having a "bad" parent but prefer to have two good parents. When the divorce is blamed on one of the parents, the children, in effect, are being persuaded to relinquish love for that parent, or, to feel confused and guilty about loving their "bad" parent and displeasing their "good" parent. If, however, both parents mutually take responsibility for the break-up, then their children are set free from being caught in the middle of a loyalty conflict.

When I ask parents to formulate a mutual story of their divorce, initially, many

¹⁷ Saposnek, T. Donald. Why Should We tell to Children? Developing a Mutual Story of the Divorce. Retrieved from: <https://www.mediate.com/articles/falleitorial.cfm> [Accessed: 10 Oct 2020].

are unable. Most of us, when rejected by a person we love or once loved, tend to protect our self-esteem by blaming another for our failures. Certainly, divorce provides a golden opportunity to do this. However, when each parent resists and rises above this tendency for the sake of the children, the children are provided with a chance for a better outcome.¹⁸

Parenting is complex, and when the couple finds out they are going to have a child; unfortunately, they do not come with an instruction manual. Dealing with phases, maturation, puberty is complicated and requires dedication and love. But raising children in a home made up of both parents is made easier by the division of tasks, by double love, the problem comes when the couple eventually decide that the marriage is over and want a divorce and as I mentioned above tell a version of the story for your children, together, is necessary and can avoid future problems. Lying to children will never be the best way out, psychologists say that the best way out will always be, to tell the truth, even if about insignificant things, always tell the truth so that your children feel safe and protected despite the moment of adaptation that will pass be It's hard for them to be sure it's going to be okay because they trust their parents.

An article for The Atlantic even mentions that not lying to children can avoid future problems, mentioning the following:

Parenting mistake also includes "distorting feelings," which may involve "telling children they feel something that they, in fact, are not feeling or, more

¹⁸ Saposnek.T Donald. Why Should We tell to Children? Developing a Mutual Story of the Divorce. Retrieved from: <https://www.mediate.com/articles/falleditorial.cfm> [Accessed: 17 Oct 2020].

frequently, telling them they are not feeling what they, in fact, are feeling." In other words, creating a discrepancy between what your child is experiencing and what you're *telling* them they feel creates unnecessary distress. Embrace the truth and help your child work through the confusing feelings. It will be much better for her health over the long term.¹⁹

As mentioned in this chapter, there are numerous problems that divorce can cause for children, such as depression, anxiety, early sexual initiation and in some cases even attempting or suicide. Many of these problems / traumas that follow these children and adolescents into adulthood are caused by the stress that divorce and its changes cause. According to psychologists and quoted in the article by Jennifer Paterson that states the following:

Kids may experience different stresses than their parents — such as worrying about doing well in school, relationships with their siblings and peers, and their family's financial situation — but they still experience the emotions. Mental health problems like anxiety, depression, and stress can have a detrimental impact on your child's long-term development, especially because their brains are still developing. Stress affects biological processes, taking its toll on the brain and body. Stress is your body's natural response to demanding or adverse circumstances. Biologically speaking, it's meant to help us deal with life-or-death situations. This fight-or-flight response causes a shift in hormones — including the release of cortisol and adrenaline — which elevates blood pressure and heart rate. Stress is beneficial in short-term

¹⁹ Walton.G. Alice. (2011). 12 Ways to Mess Up Your Children. Retrieved from: <https://www.theatlantic.com/health/archive/2011/10/12-ways-to-mess-up-your-kids/246806/> [Accessed: 17 Oct 2020].

situations, but when that stress response is always “on,” it can lead to problems. People can start to suffer from heart disease, obesity, and diabetes, not to mention mental issues like depression, fear, neediness, and the inability to learn new behaviours. This prolonged activation of the stress response is called “toxic stress.”²⁰

As we discussed in this chapter, there are countless problems that divorce can cause, and many of these are caused by stress, which brings numerous problems for children and adolescents over time and often perpetuates throughout life.

All this discussion related to divorce and its problems caused to children comes to a common point cited by countless psychologists and authors, with stress being the main cause of illnesses mentioned as negative points of divorce. Stress has been identified as the cause of most of the physical and mental problems that the traumatic period that these children and adolescents go through can cause. Getting the primordial answers that I, as the author of this work, hoped to get. This question is about the possibility of mediation to alleviate or avoid such short/long term problems/traumas that litigious divorce can cause for these children and adolescents.

Considering the main factors that cause stress-related illnesses and the articles mentioning what a divorce can cause in children we can countless benefits that mediation will bring to the process.

²⁰ Paterson, Jennifer. (2018). How Stress Affects Children & How to Manage it. Retrieved from: <https://psychcentral.com/lib/how-stress-affects-children-how-to-manage-it/> [Accessed: 19 Oct 2020].

Mediation alone aims to be a smoother, less formal process where all the tension, bureaucracy and time that the litigious process has does not exist in mediation.

For the mediation to take place, it is only necessary for the couple to agree to mediate and be willing to together, being guided by the mediator, find the best possible solution. In my view, the author of this work, mediation brings the main and most fundamental benefit to the couple who are divorcing and have children. This benefit is related to the fact that mediation will be focused on children and adolescents and their needs. They will be the focus of the whole process, having all the main decisions taken together by the parents thinking about the best for their children. In some cases, as mentioned in this discussion, the mediator may even be a psychologist who will have the most sensitive sensitivity to deal with delicate matters. In my view, everything related to children and adolescents is delicate, and that is why it is necessary to deal with the matter in the best possible way. Regarding the fact that mediation is focused on children for their protection, an article found states the following:

The goal of child-focused mediation is not to bring a child into the middle of the chaos of a divorce, but rather to ensure that their voice is heard during the process, and that they are advocated for. Mediators may use different methods, but the end goal and result are always the same; to provide a voice for children caught in the middle of a divorce and to ensure that divorcing parents are aware that every decision they make can impact their children. Mediators agree that divorce is not an 'adult-only' problem, and focused child mediators are trained in a variety of techniques to help divorcing families shift the focus to their children. To do this, experts say parents need to avoid the conflict-focused state of mind that is typical during the divorce process and instead

adopt a child-focused state of mind. "The family is a system," says an experienced child-focused mediator. "The goal in a child-focused mediation is to rebalance the family since divorce alters this system greatly. All family members need to be able to have a voice in order to move forward."²¹

When we talk about mediation being focused on children, we can ask ourselves how this should happen and how the mediator can help. Considering this fact, the article related to mediation focused on children mentions certain techniques that the mediator can use to help, such techniques mentioned are the following:

While different mediators may use different techniques, all mediators work towards bolstering communication between parents and their children. Many child-focused mediators refer to each parent as “mom” and “dad” rather than by their formal names, to remind them that while their relationship with each other may be ending or transforming, they are still both parents, and have a future duty of doing what is best for their children. Other mediators say they encourage divorcing spouses to view their parenting duties like a business relationship, with the goal being to develop emotionally healthy and well-rounded children. The ongoing conflict between co-parents is unhealthy for everyone involved, and even parents with intentions of hiding their fighting are often unsuccessful, as children are notoriously adept at picking up on conflict, even from another room. By treating future co-parenting duties as a

²¹ Pesce Law Group, P.C. (2016) How Child-Focused Mediation Protects Children During Divorce. Retrieved from: <https://www.dupagecountyfamilylawfirm.com/naperville-divorce-lawyer/mediation-protects-children-during-divorce>. [Accessed: 22 Oct 2020].

business relationship, both parents will hopefully be able to set their personal feelings aside and prioritise the best interest of their children.²²

Divorce mediation is focused on the needs of children; we can reach the main factor that causes most of the physical and mental health problems that the child can develop. Stress as mentioned was identified with the village that comes with the divorce, leading children and adolescents to develop diseases mentioned in this chapter.

The mediation according to Emily Andrews (2018) aims to be a less stressful and peaceful process. Taking this point into account and the factor that mediation will be focused on the needs and future of children and adolescents, we can say that mediation has the power to reduce the stress that a litigious divorce would cause to children and adolescents and therefore can consequently reduce the impacts that the divorce will cause. Thus, mediation can avoid or reduce the stress that has been identified as causing most of the problems that a child or adolescent can develop during and after their parents' divorce if they, their needs and future are not considered the most important of the matters to be discussed.

For Rohit Garoo (2020) when we talk about divorce, there may be the positive side of their parents' divorce for children. It may sound strange, but when we understand what stress can cause, Rohit's statement makes sense. As mentioned above, stress and divorce can cause innumerable harm to these children. However, sometimes this stress exists in the couple's relationship even before they decide to divorce, causing these children to be exposed to a life of stress, which could cause even more trauma for them.

²² Pesce Law Group, P.C. (2016) How Child-Focused Mediation Protects Children During Divorce. Retrieved from: <https://www.dupagecountyfamilylawfirm.com/naperville-divorce-lawyer/mediation-protects-children-during-divorce>. [Accessed: 22 Oct 2020].

According to Rohit, there are positive sides to divorce, such as the fact that children would no longer have to live in a tense atmosphere, where parents are no longer able to come to an agreement generating discussions that would even cause children or adolescents to try to avoid the It is maximum to spend time at home, often preferring to stay with friends, to do other things on the street, which in a way would put them at risk, as they could get involved with the wrong people. According to Rohit, happy parents mean happy children and often divorce would be the solution to restore the happiness of the parents of these children. (Rohit Garoo, 2020).

Another important point is about the fact that when parents divorce and leave behind all conflicts, discussions they are ready to focus on their children, the past of discussions no longer exists, making their children return to focus of their lives. When the parents get over the end of the relationship, and the arguments come to an end, the adaptation for the children becomes something easier, where they can spend time with her parents even in separate houses, and this happens when the parents decide to leave the discussions aside and focus on your children. It is also important to talk about the fact that in the future children will not repeat their parents' mistakes. For example, when these children and adolescents experience their parents' divorce, somehow they learn better how to manage their own relationships, communicating better, showing a maturity and patience that they might not have had if they not experienced their divorce your parents. All of this, of course, can occur when divorce is done in a way where children and their needs are the focus of the parents during the divorce. (Rohit Garoo, 2020).

Considering all the facts and factors discussed in this chapter, we can list the benefits that mediation brings to the divorce process involving children. Some of these benefits may seem

insignificant at first, but when we analyse carefully, we can be dazzled by the power of something that sometimes in our day to day can be insignificant.

An example is that mediation will be focused on children, where the mediator will be a kind of impartial guide that will lead the parties to hear each other and focus on their children. Such a focus on the lives and needs of their children will make them see the real meaning of mediating, where they will be part of a faster, less expensive and less stressful process. As we have seen over the course of this chapter, cited by countless authors and psychologists, stress is the cause of numerous physical and psychological illnesses that can cause anxiety and depression in children, leading some to commit or attempt suicide.

6. Conclusion

Divorces have been around for a long time and have continued to exist. Although when people get married, they do not imagine that the marriage will end. With the end of the marriage, a long and stressful period can begin for the couple, and in some cases, they can last for years.

With the end of the marriage comes the time to decide the future, decide the division of assets and how life will be from that point forward. When we deal with just one couple getting divorced, we can assume that the problems to be solved are only of material content, but when that couple have children who still need care, everything becomes more complex and needs more attention and dedication from parents.

In the course of this work, as an author, I have sought to find and respond to the effects that divorce can cause for children and with it the negative consequences that a divorce can cause and also in relation to the benefits that a mediation process for divorce can bring to these children.

During the course of this work, it was also shown that having a psychologist as a mediator can bring benefits to the process.

During the research and data collection, I was able to find authors, psychologists, articles already published that helped me in the conclusion of this work and in answering the questions that I had as the focus of this work.

When we talk about divorce mediation by a mediator, we must consider the fact that when dealing with children, it makes the matter more sensitive. I was able to show that a psychologist as a mediator would help parents to deal better with the process. Psychologists know how to deal with sensitive issues better and have a greater inherent capacity in the profession to better understand situations, leading the divorcing couple to focus on what really matters, which in this case are children.

This work aimed to show that mediation will be beneficial for children because it can, and I dare say, it should be focused on the best interests, needs and future of children and for that reason, I was able to show that the psychologist as a mediator can better deal with the subject which in itself is delicate and sensitive. Children should not be considered as just a good to be shared and who will stay with them over the weekend. Children are the fruits of marriage that cannot be divided and should be a priority at this time in the couple's life.

This study did not aim to say that parents are wrong in getting divorced or that other material things are not important, but rather, it was meant to show what a litigious divorce can do in the lives of these children and adolescents if it is not dealt with properly— right way.

During the study, it was highlighted the numerous negative points that the litigious divorce has and that can affect children in the short and long term.

At the stage when parents decide to divorce, the ideal would be for parents to communicate their children, giving them only one version of the facts. Explaining that things will be different, but both will continue to love them equally. Usually, this does not happen; many parents decide to tell their children that they are getting divorced when the process is already underway, forgetting that despite children they have the sensitivity to catch the signs that something is not right. When parents are in conflict, it can happen that each of them gives a version of the facts to their children, causing in some cases the children to take sides with one parent and be angry with the other. Being excluded and left out can also make these children feel that they are no longer loved. All the changes that divorce causes, like changing schools, changing causes, changing the financial pattern are already difficult to assimilate causing

stress for children, now imagine all these changes happening and still be neglected by the parents who should give them love and focus.

Before identifying the benefits of mediation for children, I sought to highlight all the harms that litigious divorce can cause. Litigious divorce can be extremely traumatic for children and can leave marks for a lifetime.

In principle, any litigation process is costly, time-consuming and stressful. At this point, it was shown that the factor of divorce being a long process could be bad for children. The adaptation period needs to occur, and when a litigious process is running, all the uncertainties hang in the air, and so does the adaptation period. Adapting to the new phase can take time and so choosing a process that is faster can be the best option for the couple who decide to focus on their children's needs and that is why mediation is the best option for a couple who is getting divorced. The mediator will guide parents to find the best solution for both of them by focusing on their children's needs. Taking this into account, the mediation process benefits from being faster, where the child will not be exposed to the long period of uncertainty that a litigious divorce can cause. When we talk about uncertainties, I am not only referring to the length of time this would take, but also to the fact that in the litigation process a judge will decide the issues that are being debated, while in mediation the parents will find the best solution together.

Considering the paragraphs above, we can show that the divorce process made through mediation will focus on the needs and the future of children, making this fact another benefit for them.

The litigious divorce process in addition to the troubled adjustment period can have serious consequences, which in some cases can even lead to death.

For many, it may seem like an exaggeration, but divorce can have serious consequences in the life of a child and adolescent if their parents do not make it a priority. In this work, it was identified that children and adolescents with separated parents tend to have an early sexual life and for girls, it can mean a teenage pregnancy and boys tend to become more infected with sexually transmitted diseases. Another negative fact that divorce can cause is related to school, children and adolescents tend to perform worse at school during and after the divorce process.

In some cases, as adults, these children tend to no longer believe in relationships because they take their parents' failed relationships as an example.

Numerous harms that divorce can cause were identified in this study, but the most worrying and that should be highlighted is the psychological sequelae that a traumatic divorce can leave. These psychological sequelae are related to anxiety and depression that, when not given the necessary attention, can lead these children and adolescents to even try or commit suicide.

Anxiety and depression are serious things, and when there is the slightest possibility of preventing or treating these problems, they must be taken into account and for this reason, mediation must be considered. When speaking in this way, it may seem that mediation is going to treat or cure such diseases; however, mediation can somehow prevent them from developing.

During the writing process of this study, I was able to identify, based on psychologists and articles already published, that stress can cause anxiety and depression. By identifying the link between stress and anxiety and depression, it is possible to understand why divorce can cause crises of anxiety and depression. The litigation process is stressful; it can take months to complete. Throughout this period, the children of their parents who are divorcing were exposed to a stressful and time-consuming process. All uncertainties, discussions, can leave trauma.

Talking about the problems that stress can cause for children was extremely important to identify the greatest benefit that mediation can have for children involved in the divorce process. Obviously, in this case I am talking about my personal opinion as an author; however, the fact that mediation alone is a less stressful process can have numerous benefits for children.

Stress was identified as the main village in the divorce litigation process. Exposing a child to a long and stressful process should not be considered, and that is why all parents should choose something less stressful and quick so that the process of adapting to these children's new lives is faster and without sequelae.

Taking into account the facts that stress is the biggest village present in the litigious divorce process, we can consider mediation to be less stressful the main benefit to be chosen.

It is concluded that mediation is a faster, cheaper, less stressful process and its main factor is the possibility of being focused on the needs and future of the children of parents who are divorcing.

In my personal opinion, the author of this study, mediation should be the main method of dealing with the divorce process when it involves children. The mediation will have a mediator that will lead parents to think and find together, the best solution for their children. Unlike the litigation process, mediation tends to be a process where everyone wins and the litigation process usually someone needs to lose. Taking this as a fact, choosing mediation should be considered the main choice and the litigious one only if it is extremely necessary. Choosing mediation is necessary when the parents' intention is to leave the problems and hurts aside and focus on the best for their children.

Finally, in conclusion, when children are considered a priority in the process, it will be easier to deal with and even prevent the physical and psychological health problems resulting from divorce. Mediation aimed at being focused on children, being less stressful and faster becomes the biggest benefit for children going through this difficult time of adaptation. Leaving personal problems aside and focusing on what really matters, parents realised that nothing matters more than their children's well-being. Finally, considering the harms that litigious divorce can cause, choosing a less stressful, faster and more focused process on the needs of children, in itself, becomes the greatest benefit of mediation for children.

7. Reflection

The biggest challenge for me during this research was to structure and put my ideas in order in a way that could positively add new ideas regarding divorce and mediation. Despite being a difficult process of research and writing, and with the world experiencing a pandemic situation, this work can help parents who need more information on how to save their children during a divorce process. Writing this work in difficult times was complicated, but I believe that I have achieved a satisfactory result.

Although mediation is widely considered today, I believe that few know that it can be focused on the needs and future of children when their parents decide to divorce.

Obviously, this study does not aim to propose a magical way to solve and save children from trauma, but the greater the sources of information that mediation can avoid or lessen such bad consequences that a litigious divorce can cause, all will benefit from to know that there is a smoother solution.

The process of collecting the data and adding it to my research so that I could answer my research question was arduous and challenging, but I believe it has been achieved and I have been able to answer it and this will have a significant contribution to the mediation, children and parents.

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