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Mediation in Matrimonial Disputes in India: Legal Framework, Role & Implementation Challenges

Mrunal Pratap Dhamale

Vishwakarma University, Pune

ABSTRACT

Matrimonial disputes have emerged as one of the most litigated problems before the family courts in India. Conflicts arising in marriage often involve complex emotional, social and financial issues that not only affect the spouses but also children and extended family members. Common issues which arise in matrimonial litigation include divorce, judicial separation, maintenance, domestic violence, child custody and matrimonial property related disputes. Due to the sensitive nature of these disputes they tend to result in long emotionally stressful legal battles. Mediation involves a third party — a neutral mediator — who helps the parties in a dispute to negotiate with each other and find solutions acceptable to both. Unlike traditional court proceedings, the focus in mediation is on cooperation, dialogue, and mutual understanding rather than confrontation. This study examines the influence of mediation in the context of matrimonial disputes within India, elucidating its fundamental principles, significance, and advantages alongside its potential to mitigate the backlog of cases within the courts. The paper further addresses obstacles encountered in the effective application of mediation and proposes strategies to enhance its efficacy in the resolution of familial conflicts.

Keywords: Mediation, Matrimonial Disputes, Family Courts, Alternative Dispute Resolution, Mediation Act 2023, Legal Framework, India.

I. INTRODUCTION

Family disputes are highly sensitive in nature because they deal with personal relationships, emotional ties, and deeply-rooted social values. Matrimonial conflicts create serious psychological and financial stress for not only the spouses but for their families as well. These disputes have a direct impact on the private lives of the individuals concerned and may even carry long-term consequences for children and other members of the family unit. In India, such disputes ordinarily go to family courts where they are adjudicated through formal legal procedures, with both sides

presenting evidence before a judge who then decides the case on the basis of arguments and the respective legal positions advanced.

However, the adversarial nature of traditional litigation may sometimes increase conflicts instead of settling them peacefully. Court proceedings entail multiple hearings, legal formalities, and procedural delays. As a result, marital disputes can take several years to settle. During this period the parties experience emotional distress, financial pressure, and social stigma. In many cases, prolonged litigation further impairs the relationship between the spouses, rendering reconciliation almost impossible. Moreover, as court proceedings are generally public, personal family matters are exposed to public scrutiny, causing additional embarrassment for the parties involved.¹

The rising number of matrimonial cases further strains the judicial system. Family courts are often overburdened, making it difficult to deliver swift and effective justice. Disputes requiring immediate attention — such as maintenance or child custody — are delayed alongside more complex matters. Such delays not only affect the individuals concerned but also erode public confidence in the justice delivery system.²

Mediation provides a structured yet adaptable forum for parties to express their concerns and expectations, with a neutral mediator guiding the process. The mediator does not make decisions; instead, they facilitate communication and explore possible solutions. Rooted in conversation, understanding, and voluntary agreement, mediation actively involves both parties in resolving their disagreement with the goal of crafting a solution that addresses their shared interests and practical needs. Mediation is therefore increasingly recognised as an effective tool for matrimonial dispute resolution in India.

¹ Legal Services Authorities Act, 1987, No. 39 of 1987 (India).

² *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

II. CONCEPT OF MEDIATION

Mediation is a voluntary, cooperative process whereby a third party called a mediator helps disputing parties reach a mutually acceptable settlement. The mediator is not empowered to impose a decision or judgment; instead, they provide a forum for communication and establish a constructive environment in which both sides can openly discuss their expectations. The primary function of the mediator is to facilitate discussion, clarify miscommunications, and encourage the parties to consider options that may result in a fair and mutually agreed resolution of the dispute.³

Court proceedings are subject to strict rules, formal evidentiary requirements, and procedural constraints. Mediation, by contrast, offers the parties freedom to communicate and take an active role in working out their dispute. The parties themselves negotiate the terms of settlement rather than leaving the final decision entirely in the hands of a judge. The mediator promotes respectful dialogue and assists both parties in considering practical and realistic solutions. Through mediation, parties

are able to negotiate important issues such as maintenance, alimony, child custody, visitation rights, and matrimonial property division.

Confidentiality is a cornerstone of the mediation process. Communications made during mediation are kept private and cannot be used as evidence in subsequent court proceedings. This confidentiality enables the parties to speak freely and candidly about their concerns without fear that their words will be weaponised against them later. By encouraging discussion and fostering mutual understanding, mediation provides an effective method for resolving conflicts while protecting the dignity and emotional well-being of those involved.

³ Law Commission of India, 238th Report on Amendments to the Arbitration and Conciliation Act, 1996 (2014).

III. LEGAL FRAMEWORK OF MEDIATION IN INDIA

India has seen the evolution of its legal system regarding conflict resolution primarily through legislative development and judicial decision-making. Over the past several years there has been a growing recognition of the emotional and relational dimensions of matrimonial disputes, resulting in a shift from adversarial litigation towards amicable resolution. Mediation in India is not governed by a single comprehensive statute; rather, its framework is drawn from several enactments and judicial pronouncements affirming the constitutional validity of mediated settlements.

Section 89 of the Code of Civil Procedure, 1908 was the first provision to include mediation as a method of achieving justice, introduced through the 1999 amendments with the goal of encouraging courts to explore possible settlements prior to entering litigation. Courts now have the authority to refer disputes — including matrimonial disputes — to alternative dispute resolution mechanisms where elements of settlement are present. In *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.*, the Supreme Court clarified that marital issues are particularly good candidates for mediation because of their sensitivity and the importance of preserving family relationships.

The Family Courts Act, 1984 is another pillar of this framework. Under Section 9 of the Act, family courts must encourage and promote reconciliation prior to proceeding to trial. The statute places an explicit priority on reconciliation and mediation rather than adversarial adjudication. Family Courts typically have counsellors, psychologists, and social welfare professionals who assist in resolving marriage-related disputes by addressing the communication and emotional dimensions of conflict, not merely the legal ones.⁴

The Legal Services Authorities Act, 1987 plays a vital role in promoting mediation by providing access to justice via alternative dispute resolution avenues. Section 12 provides women, children, and economically disadvantaged individuals with free legal aid, allowing them to participate equally in mediation without financial restriction.⁵ Section 4 establishes the National Legal Services Authority (NALSA), which develops national policy on mediation and promotes

public awareness. Section 19 provides for the organisation of Lok Adalats — informal forums for amicable dispute resolution — and Section 21 renders the awards of Lok Adalats as final and binding decrees of a civil court, ensuring enforceability of mediated settlements.

The Mediation Act, 2023 marks an enormous shift in the Indian dispute resolution landscape by conferring constitutional recognition on mediation as a separate and structured mechanism. Section 5 introduces pre-litigation mediation, encouraging parties to seek amicable settlement before approaching a court.⁶ Section 18 renders agreements reached through mediation legally binding, akin to a court order — a provision of particular value in disputes involving child support, alimony, custody, and property. Section 22 ensures confidentiality of all mediation communications, while Section 24 mandates mediator impartiality and Section 26 promotes institutional mediation through accredited service providers.

The Indian judiciary has been proactive in promoting mediation. In *Salem Advocate Bar Association v. Union of India*, the Supreme Court upheld the constitutionality of Section 89 CPC. In *K. Srinivas Rao v. D.A. Deepa*, the Court recognised that mediation in matrimonial disputes prevents unnecessary litigation and reduces emotional harm to the parties. Judicial support has catalysed the creation of court-affiliated mediation centres throughout the country, staffed by trained mediators, which have contributed significantly to reducing the backlog of matrimonial cases.

⁴ Family Courts Act, 1984, § 9 (India).

⁵ Legal Services Authorities Act, 1987, § 12 (India).

⁶ Mediation Act, 2023, § 5 (India).

IV. ROLE OF MEDIATION IN MATRIMONIAL DISPUTES

Mediation plays a significant role in resolving matrimonial disputes because such disputes invariably carry emotional, relational, and personal dimensions alongside their legal aspects. One of its most important functions is the facilitation of communication. Matrimonial conflicts commonly stem from misunderstandings, poor communication, and emotional stress. Mediation provides a safe, non-judgmental space in which both parties can speak freely about their emotions, concerns, and expectations, thereby reducing misunderstandings and clarifying their respective positions.

The promotion of reconciliation is another key function. Because mediation is oriented toward dialogue and understanding rather than blame-attribution, it creates an opportunity for couples to work through their differences and potentially preserve their marriage. Even where reconciliation is not possible, mediation assists the parties in achieving a dignified and peaceful separation. By cooperatively negotiating the terms of separation, the couple avoids the lengthy, costly, and emotionally damaging litigation process. This materially reduces the risk of hostile post-separation behaviour, particularly where children are involved.

Mediation also assists with resolving practical issues such as child custody, maintenance, alimony, and property division. The parties communicate their interests directly and generate solutions tailored to their specific situation. Because the resulting agreement is one the parties themselves have crafted, they are far more likely to comply with its terms, reducing the probability of future disputes. Mediation thus offers a non-adversarial, cooperative approach to marital conflict — one that is simultaneously more humane and more effective than conventional litigation.

V. BENEFITS OF MEDIATION IN MATRIMONIAL DISPUTES

Speed of resolution is one of the most significant advantages of mediation. Court cases involving marital disputes are subject to procedural delays and caseload backlogs and may take years to reach finality. Mediation, by contrast, generally resolves most disputes within a few sessions, sparing the parties prolonged stress and uncertainty and enabling them to plan for their futures without delay.

Cost-effectiveness is equally important. Litigation involves court fees, attorney fees, and a host of incidental costs that can impose significant financial hardship. In many jurisdictions, mediation services are provided at no cost through legal aid bodies or community mediation centres, making the process accessible to individuals from lower economic backgrounds.

Preservation of relationships is a benefit of particular importance in matrimonial matters. Mediation promotes cooperation, understanding, and mutual respect rather than perpetuating the animosity engendered by adversarial proceedings. Where parties share children, maintaining a functional post-separation relationship is essential to the children's well-being, and mediation supports this objective.

Confidentiality protects the parties from the exposure inherent in public court proceedings. All communications made during mediation are legally protected from disclosure in subsequent proceedings, enabling parties to speak honestly and openly — with direct benefits for the quality of the outcomes achieved.

Flexibility and party autonomy distinguish mediation from adjudication. A court is bound to decide according to law and evidence; parties to mediation may craft solutions uniquely suited to their circumstances, including bespoke arrangements for child custody, visitation, and support. Because both parties have actively consented to the settlement, compliance rates are substantially higher, reducing the probability of post-settlement litigation.

Reduction of court burden constitutes a systemic benefit. The increase in matrimonial case filings has placed enormous pressure on Indian family courts. By channelling disputes away from the litigation pipeline, mediation decreases the backlog of pending cases, frees courts to focus on legally complex matters, and improves the overall efficiency of and public access to the justice system.⁷

⁷ Salem Advocate Bar Association v. Union of India, (2005) 6 SCC 344.

VI. CHALLENGES IN IMPLEMENTATION OF MEDIATION IN MATRIMONIAL DISPUTES

Public ignorance constitutes one of the major barriers to the wider adoption of mediation. Many individuals are unaware of their right to mediate or fail to appreciate its advantages. Most continue to seek resolution through the court system simply because they believe litigation is the only viable avenue available to them. This ignorance is most acute in rural and semi-urban areas where access to legal education is limited.

Shortage of trained mediators is another substantial practical barrier.⁸ Effective mediation requires a sophisticated combination of legal knowledge, communication skills, negotiation ability, and psychological insight. Professionally trained mediators are scarce in most parts of India, and their absence directly impairs the quality and success rate of mediation proceedings — particularly in sensitive family disputes.

Social and cultural resistance can interfere with the mediation process. Ego, familial pressure, and social expectation may cause parties to resist compromise. The cultural stigma attached to divorce or separation — and a perception of mediation as a sign of weakness — can prevent parties from engaging openly and in good faith.

Infrastructural limitations present a further challenge. While many urban courts have established mediation centres, equivalent facilities are largely absent in rural and semi-rural areas. The uneven geographical distribution of mediation infrastructure limits the reach of the mechanism and exacerbates existing inequalities in access to justice.

Preference for litigation among lawyers and parties remains a cultural and professional obstacle. Some legal practitioners have a professional and financial incentive to advocate for litigation. Mediation is sometimes perceived as informal and less authoritative, discouraging its acceptance as a credible alternative to court proceedings.

⁸ Supreme Court Mediation and Conciliation Project Committee, Mediation Training Manual of India (2016).

VII. SUGGESTIONS AND REFORMS

Raising public awareness is the most essential first step. NALSA, State Legal Services Authorities, and educational institutions should undertake sustained, multi-channel campaigns — including workshops, community outreach programmes, and legal aid initiatives — to inform the public about mediation as an available and beneficial alternative to litigation. Increased awareness will empower individuals to choose mediation proactively rather than defaulting to the courts.

Standardised mediator training and certification must be established. Judicial academies, universities, and accredited mediation organisations should offer well-structured, nationally recognised training programmes. Standardised certification and mandatory continuing professional

development will ensure that mediators maintain competence and that the quality of mediation services is consistent across jurisdictions.

Expanding mediation infrastructure to rural and semi-rural areas is critical. Every Family Court in the country should have a dedicated mediation centre staffed by qualified mediators. Adequate physical facilities and institutional support, provided on a geographically equitable basis, will extend the reach of mediation to populations that currently have no access to it.

Operationalising pre-litigation mediation under the Mediation Act, 2023 should become a priority. Encouraging parties to engage in mediation before filing suits in court will allow disputes to be resolved more quickly, reduce emotional escalation, and substantially decrease the burden on family courts.

Strengthening judicial referral practice is indispensable. Judges should routinely refer matrimonial disputes to mediation at the earliest stage of proceedings, rather than awaiting protracted hearings. Consistent judicial support will normalise mediation, enhance its acceptance among litigants and practitioners, and improve its overall success rate.

VIII. CONCLUSION

Matrimonial disputes implicate not only legal rights but also the most intimate dimensions of human experience — emotion, family, love, and life itself. The traditional adversarial system, with its confrontational dynamics, escalates animosity, prolongs resolution, and inflicts financial and emotional damage on parties who are already vulnerable. Mediation has emerged as a more appropriate and humane alternative, centred on communication, understanding, and mutual agreement, enabling parties to resolve their differences without the corrosive effects of protracted litigation.

The legal framework for mediation in matrimonial disputes in India — encompassing the Code of Civil Procedure, the Family Courts Act, the Legal Services Authorities Act, and most recently the Mediation Act, 2023 — reflects a sustained legislative commitment to promoting mediation as the preferred mechanism for resolving family conflicts. Judicial endorsement and the proliferation of court-affiliated mediation centres have reinforced this framework and demonstrated mediation's capacity to achieve faster, less costly, and more durable outcomes than conventional adjudication.

Notwithstanding its considerable benefits, mediation continues to face significant implementation challenges: inadequate public awareness, a shortage of trained mediators, infrastructural deficits in rural areas, sociocultural resistance, and an entrenched preference for litigation among legal practitioners. These challenges must be addressed systematically through awareness campaigns, standardised training, expanded infrastructure, vigorous pre-litigation mediation programmes, and robust judicial referral culture.

If these reforms are successfully executed, mediation has the potential to become the primary mechanism for resolving matrimonial disputes in India — providing parties with a more expedient path to justice, relieving the strain on the judiciary, and ultimately fostering a legal culture that prizes kindness, dignity, and efficiency alongside the vindication of legal rights.

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