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EFFECTIVENESS OF MEDIATION AND CHALLENGES IN RESOLVING FAMILY DISPUTES IN INDIA

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Abstract

Family disputes in India account for a large number of civil litigation, which mostly concern marriage and divorce, child custody, maintenance, inheritance and domestic relations. These conflicts are usually highly emotional, given the emotional impact it has on the individuals involved and on their future family relations, as well as the legal rights and interests of the parties. Traditional "litigation" frequently exacerbates conflicts, causing lengthy litigation, high costs and psychological stress. In this context, mediation has proven to be a good alternative to a conflict resolution that allows dialogue, cooperation, and mutually satisfactory resolutions, without sacrificing family peace. This was further reinforced by the enactment of the Mediation Act, 2023 which gives statutory importance to mediation and promotes pre-litigation and court-annexed mediation.

The paper is designed to provide an analysis of family mediation in India, its effectiveness in resolving family conflicts, judicial attitude towards mediation, practical and legal hurdles in the implementation of family mediation and recommend necessary changes in the framework of the mediation process. The research methodology employed in the study is doctrinal research whereby primary sources of information include constitution, statutes and judicial decisions and secondary sources include books, journal articles, Law Commission Reports and government publications. The research concludes that the mediation process has multiple merits, such as speedy resolution, confidentiality, cost savings, maintenance of relationships and reduction of the burden on the courts. Nevertheless, the implementation is still hindered by various factors including lack of awareness, lack of trained mediators, gender justice issues and infrastructural issues. The paper concludes that if the Mediation Act, 2023 is enforced properly and institutional changes are implemented, mediation can be made as the preferred method to resolve family disputes in India.

Keywords: Family Disputes; Mediation; Alternative Dispute Resolution; Family Courts; Mediation Act, 2023; Matrimonial Disputes; Access to Justice.

1. Introduction

1.1 Meaning of Family Disputes

Family disputes are disagreements among family members regarding their personal, marital, financial or custodial relationships. Typical conflicts usually involve matters of marriage, divorce, maintenance, child custody, guardianship, inheritance, domestic violence and the distribution of marital property.¹ Family disputes are also much more emotional and involve more settled interpersonal relations than commercial disputes. In this context, litigation is adversarial in nature, which can further intensify conflict over the course of the case, and so it is important that there are alternative dispute resolution (ADR) processes that are agreed to.²

1.2 Concept of Mediation

Mediation is an alternative dispute resolution (ADR) process that is voluntary, confidential, and structured, where the parties are also helped by an impartial third-party, called a mediator, who helps them negotiate a mutually agreeable resolution. The mediator does not make a decision, but facilitates communication, helps to determine mutual interests, and assists the parties to reach a practical solution. When used in family disputes, mediation is more than just about settling legal matters – it's about keeping families alive and encouraging shared decision-making, especially when there are children or ongoing family responsibilities.³

1.3 Importance of Mediation in Family Law

The pile-up of matrimonial and family law cases in the Indian courts have brought efficiency and less adversarial ways of settling disputes into the fore. Mediation has become a viable process due to the fact that it is cost-effective, confidential, flexible and relatively quick. It helps parties become engaged in creating solutions that meet their individual needs and decrease emotional strain and maintain family ties. The enactment of the Mediation Act, 2023 is yet another evidence of India's efforts to institutionalise Mediation as a part of the justice delivery system. The Supreme Court has also repeatedly active encouraged mediation in family disputes wherever possible for reconciliation.⁴

Although mediation has been recognised by the law and encouraged by the judiciary, it has not reached the level of its potential in India in the context of family disputes. These problems call

¹ Constitution of India, arts. 14 & 21.

² Family Courts Act, 1984, No. 66 of 1984, § 9 (India).

³ Mediation Act, 2023, No. 32 of 2023 (India).

⁴ Salem Advocate Bar Association (II) v. Union of India, (2005) 6 SCC 344; Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24.

for investigation of the feasibility of mediation as a means of achieving fair, accessible and sustainable justice in family conflicts.

2. Evolution and Legal Framework of Family Mediation in India

2.1 Evolution of Mediation in India

Mediation practice is very well entrenched in India's socio-cultural heritage as village elders, caste panchayats and community leaders used to settle family and community conflicts. These native processes were about reconciliation and the restoration of social harmony, and not about a form of contestation and adjudication. As the judicial system progressed to its current form, litigation slowly took the place of informal means of resolving conflicts, but with the growing delays of the courts, building up of cases, and the delicate matter of family disputes, interest in alternative means of settling conflicts, known as alternative dispute resolution (ADR), began to grow. With the enactment of the Code of Civil Procedure (Amendment) Act, 1999, introducing Section 89 of the Code of Civil Procedure, 1908, India took a quantum leap towards the institutionalisation of mediation. The Mediation Act, 2023 allows for a comprehensive statutory framework for both pre-litigation mediation and court-referred mediation to build on the existing foundation of mediation.⁵

2.2 Constitutional Basis

The general principles of the Constitution of India are favourable to consensual dispute resolution as the constitution does not refer to mediation explicitly. Under Article 14 there is a right to equality before the law and equal protection of laws, which includes the fair and effective right to access justice. Under Article 21, the right to life and personal liberty, has been read to cover the right to a speedy and meaningful justice. The mediation process is a participatory and less adversarial method of dispute resolution which helps to achieve this constitutional goal.⁶ Moreover, under Article 39A of the Directive Principles of State Policy, it is the duty of the State to ensure equal justice and the provision of free legal aid, which would lead to the establishment of mechanisms to make justice more accessible and affordable, such as mediation.⁷

⁵ Mediation Act, 2023, No. 32 of 2023 (India).

⁶ Constitution of India, art. 14.

⁷ Constitution of India, art. 39A.

2.3 Statutory Framework

There are a number of legislations that regulate family mediation in India. The provision of section 89 of CPC, 1908 allows civil courts to refer any case to mediation if there is any element of settlement between the parties.⁸ The Mediation Act, 2023, brings together the law concerning mediation, including the recognition of mediated settlement agreements, and introduces legal recognition for institutional mediation, online mediation, community mediation and court-annexed mediation. The Family Courts Act, 1984 states that reconciliation is preferred over adjudication and Family Courts are required to try for settlement before taking decisions on matrimonial disputes.⁹ In a similar fashion, courts are bound to try to reconcile the spouses before granting any matrimonial relief under the Hindu Marriage Act, 1955, where possible. The Protection of Women from Domestic Violence Act, 2005 also allows for counselling and settlement in appropriate cases, without infringing on the rights and safety of the aggrieved woman. Further, Legal Services Authorities Act, 1987 encourages amicable settlement through Lok Adalats and legal aid institutions, which supplements the overall framework of ADR.¹⁰

2.4 Court-Annexed Mediation

In India, mediation is now part and parcel of our judicial system by introducing mediation centres, set up by the Supreme Court, High Courts and District Courts. Confidentiality and the voluntary nature of mediation are preserved in these centres, which are supervised by the judiciary. The Supreme Court has in all its rulings strongly urged the courts to first entertain cases, and when appropriate, refer them to mediation, before resorting to adjudication, especially marital and family issues. In Salem Advocate Bar Association (II) v. Union of India, the Court has confirmed the constitutionality of Section 89 CPC and has accepted mediation as one of the methods to ensure a reduction in litigation¹¹ The Court further, in Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., explained the nature and manner of the court-annexed mediation, stating that it is appropriate for family and matrimonial conflicts where the preservation of family life is an overriding concern.¹²

⁸ Code of Civil Procedure, 1908, § 89.

⁹ Family Courts Act, 1984, No. 66 of 1984, § 9.

¹⁰ Legal Services Authorities Act, 1987, No. 39 of 1987, §§ 19–20.

¹¹ Salem Advocate Bar Association (II) v. Union of India, (2005) 6 SCC 344.

¹² Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24.

3. Role of Mediation in Family Dispute Resolution

Family disputes are not only legal issues but emotional, social and psychological issues that may necessitate legal solutions other than litigating an adversarial process. The use of mediation has proven to be a valuable tool in the dispute resolution process, as it can facilitate communication, maintain the family bond, and help to reach a mutually acceptable resolution. Mediation gives the parties who are in dispute the opportunity to be involved in the resolution of their conflict, in a confidential manner and with less hostility than would occur in the court system. The Family Courts Act 1984 and the Mediation Act 2023 both take into account the need to reach a settlement by mutual agreement in family proceedings and provide a guidance for courts to encourage a reconciliation where possible.¹³

3.1 Matrimonial Disputes

Mediation is a crucial process in solving matrimonial problems related to marital discord, incompatibility, restitution of conjugal rights and for allegation of cruelty. Mediation offers spouses a chance to voice their complaints in a non-threatening setting instead of going straight to court. In many instances misunderstandings can be sorted out and reconciliation and marriage preserved. Mediation can help to create an amicable resolution even when it is not possible to reconcile, as it can help to resolve any future obligations.¹⁴

3.2 Divorce and Judicial Separation

Mediation helps parties in divorce and judicial separation to reach an agreement on issues of dissolution of marriage, finances, child custody, and future contact. The Supreme Court has highlighted the importance of mediation in matrimonial matters and has consistently urged courts to promote mediation as a mechanism to avoid the acrimony of litigation in order to achieve voluntary settlements between parties where feasible.¹⁵

3.3 Child Custody and Guardianship

Child custody disputes primarily concern the welfare and best interests of the child rather than the competing rights of parents. Mediation provides parents with an opportunity to develop cooperative parenting arrangements concerning custody, visitation rights, education,

¹³ Family Courts Act, 1984, No. 66 of 1984, § 9; Mediation Act, 2023, No. 32 of 2023.

¹⁴ Hindu Marriage Act, 1955, No. 25 of 1955, § 23(2).

¹⁵ K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226; Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24.

healthcare, and upbringing. Such negotiated settlements minimise psychological trauma for children by reducing parental conflict and encouraging continued parental involvement. Courts have consistently recognised that consensual parenting arrangements are generally more beneficial than rigid judicial orders where the child's welfare remains paramount.¹⁶

3.4 Maintenance and Alimony

Controversies over maintenance and alimony can be complicated, dealing with financial and personal factors. This allows parties to discuss practical solutions for spousal support plus payment schedules and modifying financial obligations based on the realities of their situation. There are fewer enforcement proceedings following the mediated settlement, as both parties usually comply with the agreement, rather than fighting the court decree.¹⁷

3.5 Property and Financial Disputes

Often, family disagreements involve issues arising from matrimonial property, inheritance, jointly-owned property, succession, business interests, and financial liabilities. Mediation provides the parties a chance to discuss options that they might not have in traditional litigation. Mediation is not a win-lose process, but a means of achieving a fair asset division, maintaining family bonds and preventing time-consuming civil litigation. The confidentiality of mediation also protects the financial privacy of family members.¹⁸

3.6 Elder Care and Intra-family Disputes

In cases involving the upkeep and care of aging parents, estate planning, family businesses and sibling or extended family conflicts, mediation has become increasingly significant in resolving disputes. These conflicts are not necessarily legal in nature, but are typically born of a lack of understanding, a sense of frustration, or differing expectations. Mediation helps open lines of communication, reestablishes trust, and encourages mutually consented responsibility. This is in line with the overall goal of maintaining the family harmony and protecting the interests of vulnerable family members¹⁹

¹⁶ *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42; Guardians and Wards Act, 1890, No. 8 of 1890, § 17.

¹⁷ Hindu Marriage Act, 1955, §§ 24–25; Code of Criminal Procedure, 1973, § 125 (now substantially replaced by the relevant provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023, for new proceedings).

¹⁸ Mediation Act, 2023, No. 32 of 2023; Code of Civil Procedure, 1908, § 89.

¹⁹ Maintenance and Welfare of Parents and Senior Citizens Act, 2007, No. 56 of 2007; Family Courts Act, 1984, § 9.

4. Effectiveness of Mediation in Family Disputes

In India, mediation is one of the most successful alternative ways of resolving family disputes, with a focus on cooperation instead of confrontation. Family disputes have ongoing relationships, emotional sensitivities and long-term responsibilities, which are not necessarily being managed through an adversarial litigation process. Mediation has been consistently recognised by Indian courts as a preferred alternative dispute resolution method for matrimonial and family disputes where compromise and reconciliation is possible. The enactment of the Mediation Act, 2023 has further strengthened this approach, offering a detailed and detailed framework for institutional and court-annexed mediation.²⁰

4.1 Faster Resolution

One of the foremost advantages of mediation is the speedy resolution of disputes. A traditional family litigation is typically long and drawn out, lasting several years due to delays and adjournment. However, mediation provides a process for the parties to work through a dispute in a relatively short time, but one in which a neutral third party helps guide the negotiating process. The Supreme Court has commented on the efficiency and practicability of mediation as an alternative to extended litigation and on the need to encourage mediation where settlements seem to be feasible.²¹

4.2 Cost-effectiveness

Mediation is much more cost-effective than traditional litigation methods, since it minimizes the need for court appearances, legal fees, court formalities, and incidental costs. When family conflicts involve maintenance, custody or long-lasting court proceedings, they have a serious impact on both husband and wife's finances. The mediation helps to prevent litigation which reduces the cost for litigating and helps to achieve the constitutional goal set in article 39A of the Constitution which gives affordable access to justice and promotes early settlement.²²

4.3 Confidentiality

In mediation, the process is confidential in contrast to an open court proceeding where statements made in court will be used against the parties in the proceeding. Confidentiality is

²⁰ Mediation Act, 2023, No. 32 of 2023 (India).

²¹ Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24; Salem Advocate Bar Association (II) v. Union of India, (2005) 6 SCC 344.

²² Constitution of India, art. 39A; Legal Services Authorities Act, 1987, No. 39 of 1987.

also of particular importance in family-related proceedings where there are claims of marital discord, domestic conflict, financial or child-related disputes, since it helps to preserve the dignity and privacy of family members. The Mediation Act, 2023 provides that confidentiality is one of the legal principles of mediation.²³

4.4 Preservation of Family Relationships

Preservation of interpersonal relationships wherever possible is the main goal of family mediation. Mediation can help spouses and other family members to learn about each other's concerns and to reach mutually acceptable solutions through constructive dialogue and voluntary participation. Wherever reconciliation is not possible, mediation can help parties to separate respectfully and cooperate with one another going forward, particularly regarding children. The Supreme Court has consistently pointed out that conflicts arising from marriage are especially conducive to mediation due to their personal and emotional aspects.²⁴

4.5 Psychological Benefits

Family conflict often leads to stress, anxiety, hostility and psychological trauma to both the parties in conflict, as well as the children. Mediation is a collaborative and non-adversarial process that brings about a decrease in emotional conflict and an increase in communication, empathy and understanding. This has the benefit of reducing the psychological toll of family conflicts and allows people to make decisions when they are not in a threatening atmosphere. Advantages of family mediation as compared to contested litigation have been found in several empirical studies, including greater satisfaction of participants, less interpersonal conflict and better communication after the mediation.²⁵

4.6 Higher Compliance with Settlements

Parties are more likely to adhere to the terms of a mediated settlement, as opposed to a settlement imposed upon them by a judge. Enabling people to participate voluntarily enhances their sense of ownership and responsibility for the terms of settlement, which helps to minimise the risk of further disputes and execution proceedings. The Mediation Act, 2023 also promotes compliance by providing the legally enforceable mediation settlement agreements under the

²³ Mediation Act, 2023, ch. VII (Confidentiality).

²⁴ K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226; Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24.

²⁵ See, e.g., Jay Folberg, Alison Taylor & Ann Milne, *Divorce and Family Mediation: Models, Techniques, and Applications* (Guilford Press, 2004); Lisa Parkinson, *Family Mediation* (4th ed., Family Law, 2015).

provisions of the Act.²⁶

4.7 Reduction of Court Backlog

Mediation is an effective component in alleviating the problem of judicial congestion by resolving the right kind of conflict rather than going through litigation. The Law Commission of India has consistently recommended greater use of mediation and other ADR mechanisms to improve judicial efficiency. Official reports published by the National Legal Services Authority (NALSA) demonstrate that mediation centres across the country successfully resolve thousands of disputes annually, including a substantial number of matrimonial and family matters. The Mediation and Conciliation Project Committee (MCPC) of the Supreme Court has also promoted the establishment of court-annexed mediation centres and standardised mediation training to improve settlement rates and institutional capacity.²⁷ Collectively, these developments demonstrate that mediation not only promotes access to justice but also strengthens the overall efficiency of the Indian justice delivery system.

5. Problems and Challenges in Family Mediation in India

Although mediation has been given great statute and judicial recognition and encouragement in family disputes, there are a number of structural, institutional and socio-cultural challenges. Although the Mediation Act, 2023 provides a detailed legal framework, family mediation can only be effective if there is greater awareness, capacity of institutions, professional skills, and participation. The potential of mediation as an effective family dispute resolution process is still limited due to a number of practical issues.

5.1 Lack of Awareness

The problem is that litigants are not generally aware of what mediation is and its value. Litigation is still seen by many as the right way of getting justice, and mediation is seen as a lack of courage or compromise. The limited legal literacy coupled with poor public awareness programmes has limited the use of mediation, especially in rural and semi-urban areas. The Law Commission of India has several times highlighted the need of public awareness in the promotion of alternative dispute resolution mechanisms.²⁸

²⁶ Mediation Act, 2023, provisions relating to mediated settlement agreements.

²⁷ Supreme Court of India, **Mediation and Conciliation Project Committee (MCPC)**, Mediation Training Manuals and institutional framework

²⁸ Law Commission of India, 129th Report on Urban Litigation—Mediation as Alternative to Adjudication (1988); Law Commission of India, 222nd Report on Need for Justice-dispensation through ADR, etc. (2009).

5.2 Shortage of Trained Mediators

Mediators' competence and neutrality are key to the quality of mediation. India still suffers from a lack of trained professionals with a knowledge of psychology, negotiation, family counselling, and conflict resolution, who are trained as mediators for families. While the Supreme Court has framed standardized training programmes through Mediation and Conciliation Project Committee (MCPC), there is lack of uniformity in the numbers of competent mediators across different States and districts.²⁹

5.3 Power Imbalance between Parties

Power imbalances, whether it be because of financial reliance, inequalities in education, emotional vulnerability, or social standing, is one frequent source of family conflict. Women, the elderly and the poorer spouse may believe that they must agree to an unfair settlement for fear of a long court battle. Therefore, mediators need to be mindful that negotiated settlements are voluntary, informed and non-coercive. Voluntariness is one of the basic principles of mediation provided for in the Mediation Act, 2023.³⁰

5.4 Domestic Violence Cases

Mediation in domestic violence cases has been a topic of much discussion. If physical abuse, coercive control or intimidation is present, it could be impossible to have equal participation during mediation. Protection of Women from Domestic Violence Act, 2005 emphasizes on preference for protection and safety of aggrieved woman and courts have held that mediation does not replace statutory protection where there is a finding of violence or coercion. Accordingly, mediation is a process that should only be considered following thorough evaluation by the judge of the facts, and only at the victim's own will.³¹

5.5 Gender Justice Concerns

Critics question the possibility of mediation to actually help to strengthen existing gender inequalities as it may lead to informal settlements that disregard women's legal rights in maintenance, residence, child custody, and matrimonial property. Women may not have independent legal advice and traditional social norms and attitudes may affect settlement

²⁹ Supreme Court of India, Mediation and Conciliation Project Committee (MCPC): Mediation Training Manual of India (revised ed.); Mediation Act, 2023.

³⁰ Mediation Act, 2023, No. 32 of 2023 (India).

³¹ Protection of Women from Domestic Violence Act, 2005, No. 43 of 2005; *Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 SCC 165.

negotiations. For this reason, gender-sensitive mediation practices and appropriate legal protection are crucial for to achieve substantive equality during the mediation process.³²

5.6 Cultural and Social Barriers

Indian courts may have to take into account the cultural traditions, religious beliefs, caste factors and social norms affecting the family relations when dealing with family conflicts. The social standing of the parties, as represented by family members and/or the community, can influence the parties' willingness to be candid about their interests in mediation or to settle the case for less than what is legally due. Socio-cultural factors sometimes make it less effective to use voluntary dispute resolution.³³

5.7 Delay despite Mediation

While mediation is supposed to be done for speedy resolution, delays can still occur due to repeated mediation sessions, non-cooperation by parties, adjournments of mediations, or mediations that are referred back to litigation after failing to reach a resolution. Sometimes mediation helps to create an extra round of delay, rather than shortening it, simply as a prelude to trial. In some cases mediation does not actually save time but adds to it, as another step in the pre-trial process³⁴

5.8 Non-uniform Infrastructure

The infrastructure of mediation is not uniform throughout India. Metropolitan-level courts have established court-annexed mediation centres and trained mediators; however, some district courts still lack specific mediation facilities, technological support, and administrative support. Such gaps impact access to mediation services and the quality of the mediation service, reducing the level of uniformity in the implementation of the Mediation Act 2023.³⁵

5.9 Enforcement Challenges

While the Mediation Act 2023 provides for legal recognition of mediated settlement agreements, practical issues still remain concerning implementation, interpretation and

³² Constitution of India, arts. 14 & 15; *Danial Latifi v. Union of India*, (2001) 7 SCC 740.

³³ Family Courts Act, 1984, No. 66 of 1984, § 9; Paras Diwan, *Modern Hindu Law* (29th ed., Allahabad Law Agency, 2022).

³⁴ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

³⁵ Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, **Report on the Mediation Bill, 2021** (Rajya Sabha Secretariat, 2022).

execution of settlements, especially with one party refusing to comply with the agreed upon settlement. The danger faced by mediation of losing the public's trust in it as an effective process for dispute resolution will not be overcome by the absence of effective enforcement procedures. Without effective enforcement procedures, public confidence in mediation as an effective dispute resolution process remains at risk.³⁶

5.10 Resistance by Lawyers and Litigants

Another difficulty is the opposition sometimes encountered by lawyers and litigants who view mediation as a deceptive method of avoiding litigation, or when it undermines the process of judicial adjudication. Mediation is sometimes used simply as a means to an end and some parties don't actually intend to reach an agreement at the mediation. The Supreme Court has consistently stated that mediation will only work when the parties are willing to do so in good faith. It is clear that in order to have mediation as a part of the Indian legal system going in the future, it is important for the legal profession to increase their awareness and the practice of mediation.³⁷

6. Judicial Trends

The Indian judiciary has been consistently acknowledging mediation as a viable option for resolving matrimonial and family conflicts. Judges have noted that family disputes have emotional, social and relational components which can't necessarily be resolved effectively in an adversarial proceeding. As a result, the Supreme Court has been encouraging where it can to settle amicably and reconcilably. In addition, the implementation of the Mediation Act, 2023 has further strengthened this judicial method by giving statutory status to mediation and bolstering court-annexed mediation in the country.

6.1 *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd. (2010)*

The Supreme Court in this historic decision outlined the meaning and application of Section 89 of the Code of Civil Procedure, 1908. The Court outlined the types of disputes that are appropriate to mediation, and particularly highlighted matrimonial and family disputes as being one of the most appropriate matters for consensual settlement. The judgement established

³⁶ Mediation Act, 2023, provisions relating to mediated settlement agreements and their enforcement.

³⁷ Salem Advocate Bar Association (II) v. Union of India, (2005) 6 SCC 344; K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226.

procedural guidelines for courts and also referred disputes to ADR procedures and greatly enhanced the institutionalization of mediation in India.³⁸

6.2 Salem Advocate Bar Association (II) v. Union of India (2005)

The Supreme Court confirmed the constitutionality of Section 89 of the Code of Civil Procedure and sanctions the establishment of structured mediation procedures in the judicial system. The Court called for the drafting of model rules of mediation and also highlighted the need of making ADR a part of the Civil Justice Administration. The judgment paved the way for court annexed mediation centers in India.³⁹

6.3 K. Srinivas Rao v. D.A. Deepa (2013)

The Supreme Court observed that with the growing instances of matrimonial disputes, mediation, as a mode of dispute resolution, ought to be tried in advance of litigation whenever it is contested. The Court highlighted that trained mediators and counsellors have a better understanding of the emotional and interpersonal elements of marital disputes. The judgment emphasized mediation's role in the preservation of marriage in the case of reconciliation and its facilitation of dignified separation in the case of rejection of reconciliation.⁴⁰

6.4 Amardeep Singh v. Harveen Kaur (2017)

In Amardeep Singh, the Supreme Court has ruled that it is not obligatory for the six-month period, which is provided by Section 13B(2) of the Hindu Marriage Act, 1955. The Court went on to state that if there is no chance of the parties to be reunited or any possibility of any attempt to reconcile or mediate, the Court will be inclined to dispense with the statutory period of waiting and thereby avoid needless lengthening of matrimonial disputes. The judgment is a pragmatic and settlement minded judicial attitude in family conflicts.⁴¹

6.5 Judicial Approach after the Mediation Act, 2023

Since the enactment of the Mediation Act, 2023, Indian courts have been continuing to promote consensual dispute resolution. The Supreme Court has been referring pending matrimonial petitions for resolution to the Supreme Court Mediation Centre before entertaining transfer

³⁸ Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24.

³⁹ Salem Advocate Bar Association (II) v. Union of India, (2005) 6 SCC 344.

⁴⁰ K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226.

⁴¹ Amardeep Singh v. Harveen Kaur, (2017) 8 SCC 746.

petitions, divorce cases, and related criminal cases on numerous occasions. The Supreme Court has been doing so on several occasions on pending matrimonial cases, before taking up transfer petitions, divorce and connected criminal petitions for resolving the matters through the Supreme Court Mediation Centre. In the past few years, the Court has made clear that mediation is the initial forum of choice for matrimonial disputes, and that a settlement is voluntary and fair. The judicial shift in this era is a step towards a new approach in family law dispute resolution, which is a movement from adversarial to collaborative processes.⁴²

Overall, the Supreme Court's jurisprudence demonstrates a consistent commitment to promoting mediation as an essential component of family justice. Judicial decisions have progressively expanded the scope of mediation, strengthened institutional mechanisms, and encouraged courts to prioritise reconciliation and negotiated settlements wherever consistent with the interests of justice.

7. Conclusion

In India, mediation has become a powerful tool for resolving family conflicts, offering a more compassionate and collaborative approach to resolving disputes than litigation. The present research focused on the development of mediation, its constitutional and statutory basis, the function of mediation in the settlement of the different types of family conflicts, the success of mediation, the difficulties in implementing mediation and the judicial attitude towards the development of consensual dispute resolution. The analysis proves that mediation has carved a niche for itself in the family justice system in India, especially in reference to the Mediation Act, 2023.

The study shows that mediation is very effective in family matters that involve disagreements within the family unit such as matrimonial, divorce and child custody, maintenance, property distribution, etc. It has a number of benefits such as speedy settlement, lowered litigation costs, confidentiality, maintaining family relationships, better mental health for the parties, increased adherence to settlement terms and a major reduction in the burden on courts. The continuous encouragement of Supreme Court and various High Courts further fortifies the acceptance of Mediation in the Indian Legal System.

⁴² Mediation Act, 2023, No. 32 of 2023; see also Supreme Court orders referring matrimonial disputes to the Supreme Court Mediation Centre in Transfer Petition (Civil) No. 1495 of 2025 (Order dated 3 September 2025), Transfer Petition (Criminal) No. 290 of 2025 (Order dated 4 December 2025), and proceedings culminating in amicable settlement through mediation (Order dated 13 May 2026).

However, several obstacles prevent mediation from being effective, such as lack of public awareness, lack of professionally trained mediators, a lack of power in negotiations, concerns about domestic violence and gender justice, unequal institutional infrastructure, issues of enforcement, and sometimes litigants and legal practitioners' resistance to mediation. These obstacles are significant, but by no means insurmountable. Rather they point out the areas of institutional change and ongoing capacity development.

The Mediation Act, 2023 has been a revolutionary step in the Indian dispute resolution landscape with its statutory recognition of mediation, institutionalization of pre-litigation and court-annexed mediation processes, recognition of online mediation, and the legal enforceability of mediated settlement agreements. With proper infrastructure, appropriate training, public awareness campaigns and gender sensitive protection measures, the Act can make a significant contribution to the access to family justice.

To conclude, mediation must not be considered as an alternative to litigation, but as a best choice of dispute resolution when voluntary settlement is possible in a family dispute. An integrated process of good professional mediation practices and effective legal protection can lead to sustainable solutions, justice, and family unity in India.

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