1. Title of the manuscript

Mediation in Matrimonial Disputes: Justice or Compromise?

2. AI Disclosure Statement

AI assistance was used solely for grammar refinement and language editing. All substantive content and intellectual contributions are entirely the author's own work.

3. Abstract

At the time of his internship at DLSA, the author had the opportunity to experience matrimonial and family mediation. The author observed whether mediation serves as a tool for securing speedy justice or acts as a tool for compromise. This article starts by discussing the framework of Mediation in India for Matrimonial Cases by analysing different statutes and further discusses whether it is a Tool of Empowerment or merely a Tool of Compromise. The article further discusses the judicial approach and case analysis, through which it examines how courts balance reconciliation with the delivery of justice, and provides a comparative analysis of the frameworks in the United Kingdom and Australia. Furthermore, the article makes some recommendations to improve mediation in India. The article concludes that although mediation is an important means of settling matrimonial and family disputes, its legitimacy will depend on our ability to ensure that settlements are fair and justice is actually delivered.

4. Keywords

Mediation, Matrimonial disputes, Settlement, family court, Compromise

I. Introduction

Mediation is an important and party-friendly method of Alternative Dispute Resolution (ADR) where a neutral, impartial third person called a mediator tries to settle the dispute between the parties without any complex judicial procedure or heavy court and legal fees. The mediation process has become an accessible process in the settlement of family and matrimonial disputes. The use of mediation as an ADR has increased tremendously in India in recent years due to its distinctive features such as privacy and confidentiality, voluntary nature, informal and flexible procedure, and focus on problem-solving. As of 30 April 2026, the total number of cases before the Allahabad High Court Mediation and Conciliation Centre was over 60,000, with a 36% success rate in matters where sessions were held.[1] In matrimonial cases, the use of mediation can help parties to reconcile and preserve the sanctity of the marriage. The main aim of mediation is to solve the dispute by mutual and collaborative negotiations by addressing the ongoing domestic dispute and resolving it mutually. Section 23(2) of the Hindu Marriage Act, 1955 says the court should make every possible effort to reconcile the spouses before passing a divorce decree. Additionally, Section 9 of the Family Courts Act gives the family court the duty to assist and persuade the parties in arriving at a settlement. The Supreme Court has expanded the scope of mediation of matrimony even to non-compoundable criminal charges like domestic violence (IPC Section 498A)[2]. The main function of mediation lies in its advantages over traditional litigation, as it offers cost-effective and rapid dispute resolution with confidentiality. Mediation relies on an informal and flexible procedure, unlike conventional litigation. Mediation has given a transformative shift to the Indian legal landscape and provided a more amicable and efficient way of dispute resolution in India.

II. Framework of Mediation in India for Matrimonial Cases

The legal framework of mediation in India derives its power from different Acts and statutes designed for amicable and easy settlements, unlike complex litigation procedures. The mediation in India gets its framework from the acts and statutes discussed below:

1. **The Hindu Marriage Act, 1955:** Section 23(2) of the Hindu Marriage Act, 1955 tells the court to make every effort for reconciliation before passing a divorce decree, and

[1]Statistics, Allahabad High Court Mediation and Conciliation Centre, https://www.allahabadhighcourt.in/mediation/mediation.html (last visited Aug. 08, 2026) (on file with author).
[2] K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226 (India).

Section 23(3)[3] gives the court the discretion to temporarily adjourn the case not exceeding fifteen days and refer the spouses to a mediator, who can be appointed either by the court or parties to dispute. The Hindu Marriage Act encourages reconciliation and out-of-court settlement and tries to save the marriage.

2. **The Family Courts Act, 1984:** Section 9 the Family Courts Act[4], directs family courts to work for the settlement of disputes. Section 9 empowers the courts to assist and encourage the disputing parties to compromise and gives judges the power to adjourn formal proceedings if there is any chance of settlement between the parties. The Act gives more significance to settlement than litigation.
3. **Section 89 of the Code of Civil Procedure, 1908 (CPC):** Section 89 of the Code of Civil Procedure, 1908[5] provides the framework for court-annexed mediation. It gave the courts wide discretion to refer civil cases for arbitration, mediation or Lok Adalat if the judicial officer believes there is any chance of settlement between disputing parties.
4. **The Mediation Act, 2023:** The Mediation Act, 2023[6] gives a legal framework that institutionalises mediation and ensures settlements to be legally enforceable once signed by the parties and authenticated by the mediator. The Mediation Act also provides procedures for the appointment, termination, and replacement of mediators.

5. Institutional Forums of Mediation

- **Court-Annexed Mediation Centres:** Court-Annexed Mediation Centres are the mediation centres established under the supervision of courts to help parties to resolve the conflict pre-litigation or at the time of litigation. Court-Annexed Centres are the most effective forum for resolving matrimonial disputes due to their safe and private environment, unlike traditional courts, which encourage parties to communicate openly. Between 2011 and 2015, 80% of total cases before the Bangalore Mediation Centre were matrimonial cases[7], which shows the confidence of parties in Court-Annexed Mediation Centres as an ADR Mechanism to resolve their matrimonial dispute.

[3] The Hindu Marriage Act, No. 25 of 1955, § 23(3), India Code (1955).
[4] The Family Courts Act, No. 66 of 1984, § 9, India Code (1984).
[5] The Code of Civil Procedure, No. 5 of 1908, § 89, India Code (1908).
[6] The Mediation Act, No. 32 of 2023, India Code (2023).
[7] Vidhi Centre for Legal Policy, Strengthening Mediation in India (Dec. 2016), https://vidhilegalpolicy.in/wp-content/uploads/2019/05/26122016_StrengtheningMediationinIndia_FinalReport.pdf (last visited Aug. 08, 2026) (on file with author).

- **Nari Adalat (Women's Courts):** Specialised quasi-judicial and NGO-led forums known as Nari Adalat have been established to resolve matrimonial disputes and to provide a comfortable and secure environment to women with the help of all-women mediators for mediation.

III. Mediation as a Tool of Empowerment

The process of mediation gives control of dispute resolution into the hands of the parties from traditional courts. Mediation is a party-centric process; it prioritises the needs and concerns of the parties. Mediation is an entirely voluntary and self-determining procedure; the parties have the right to appoint, terminate, and replace the mediators, schedule the sessions and decide the final settlement terms with amicable means. The mediator cannot impose decisions like a judicial court; the mediation relies on solving the problem by mutual consent. The parties can opt out of the mediation anytime, if they feel it's no longer needed.

Unlike courts, mediation operates under strict privacy and gives parties a comfortable and secure environment to discuss personal and sensitive domestic issues without public records and protects the individual's dignity and reputation. The Mediation Act, 2023, enforces confidentiality between parties and the mediator to keep all communications, recordings and proposals private. Mediation reduces financial as well as emotional burden. Mediation gives relief to the parties by providing a low-cost ADR method and gives an alternate way from heavy court litigation and legal fees, to a smooth and easy dispute resolution. Mediation saves parties from trauma and stress, which comes from long legal court battles, by giving a comfortable and easy resolution for families. As mediation focuses on problem-solving rather than adversarial confrontation, it helps to preserve fragile relationships. The mediator helps parties to get into a conversation to bargain for their interests to preserve their marriage through mutual efforts.

Also, due to the overburdened Indian courts, the traditional cases filed in the district courts can take years to get any relief. Mediation came as the most efficient alternative to solve the dispute much faster than litigation. The Mediation Act legally mandated resolution with a 120-day strict limit to resolve civil or commercial disputes, with a maximum of a 60-day extension if agreed by the parties. This empowers parties to solve their disputes and get relief within months.

IV. Mediation as a Tool of Compromise

Mediation functions as a mechanism of compromise rather than an instrument of justice due to major inequalities between the parties in matrimonial disputes. Mediation does not guarantee equality in bargaining power, especially in matrimonial disputes it relies on mutual agreement at the time of mediation. In Indian society, due to prolonged patriarchal norms, women are generally in a weaker position in their marriage. These inequalities may arise during mediation proceedings and can influence the party to negotiate freely and effectively. As a result, the mediation settlement may reflect existing inequalities in the marriage. In most of the matrimonial cases, women may lack financial independence or stable employment. Dependence on the other party can create pressure to accept a settlement on less favourable terms to get immediate financial security.

After the Supreme Court of India allowed courts to refer cases filed under Section 85 of the BNS[8] (Section 498A of the Indian Penal Code (IPC)[9]), the abuser can easily escape punishment without any accountability, which undermines the deterrent effect of criminal law, and the victim of domestic violence may experience fear and trauma, increasing the chances of acceptance of unjust settlements which defeats the purpose of mediation as it fails to get a truly voluntary settlement.

As we know, the main purpose of mediation is to help the parties compromise and preserve their marriage due to family and social pressure. The family often tries to get the vulnerable spouses to reconcile rather than pursue legal remedies. As matrimonial disputes are considered private, families hesitate to approach courts to maintain the privacy of the spouses. And due to social and cultural norms, the vulnerable spouse has much pressure to make a compromise instead of seeking justice.

V. Judicial Approach and Case Analysis

Different courts in India have significantly recognised mediation as an effective ADR mechanism for resolving matrimonial and family disputes and acknowledged that it should be voluntary and parties should not compromise on justice. The Indian courts have emphasised the balance between amicable settlements and justice, and encouraged the use of mediation in family and matrimonial disputes, which are private and emotional in nature.

[8] The Bharatiya Nyaya Sanhita, No. 45 of 2023, § 85, India Code (2023).
[9] Indian Penal Code, No. 45 of 1860, § 498A, India Code (1860) (repealed 2023).

- **Moti Ram (D) Tr. Lrs. v. Ashok Kumar (2011)[10]:** The Supreme Court has stated that mediation is a highly confidential procedure. To ensure confidentiality, the Supreme Court has instructed that the mediator should not write anything which was discussed, proposed or done during the mediation proceedings. The mediator's detailed transcripts of the mediation proceedings can compromise the confidentiality of the mediation process.
- **K. Srinivas Rao v. D. A. Deepa (2013)[11]:** The Supreme Court has seen the importance of mediation at an early stage to resolve matrimonial disputes, and the matrimonial issue will worsen due to fatigue from the prolonged litigation proceedings. Mediation is more effective when referred at an early stage rather than at a later stage of litigation. The Supreme Court also suggested that criminal courts handling cases involving allegations under Section 498A of the Indian Penal Code should direct the parties to explore the possibility of settlement through mediation.

In different cases, the Supreme Court of India has shown its confidence in ADR methods like Mediation to resolve disputes with confidentiality and at a much faster pace than litigation.

VI. Comparative Analysis

Mediation in United Kingdom requires both parties to attend a Mediation Information and Assessment Meeting (MIAM) before starting formal court proceedings not to compel parties to mediate but to educate them about mediation, where experts also analyse whether the dispute is suitable for mediation or formal court proceedings. The UK framework also acknowledges that mediation is not suitable for every matrimonial or family dispute. In the case of domestic abuse or other circumstances which make mediation inappropriate as alternate dispute resolution, exemption from the Mediation Information and Assessment Meeting is also available.

However, Australia has an even more structured approach to check the suitability of the case for mediation. Australia has a Family Dispute Resolution (FDR) framework where experts screen and assess parties before the commencement of the formal mediation procedure. The experts analyse factors like domestic violence, equality in bargaining power, psychological health of the parties or any factors which can affect their ability to negotiate freely. This screening test is not a one-time procedure. The mediators analyse the suitability throughout the

[10] Moti Ram (D) Tr. Lrs. v. Ashok Kumar, (2011) 1 SCC 466 (India).
[11] K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226 (India).

mediation procedure and they can terminate the FDR procedure whenever the mediation becomes inappropriate or the circumstances of the case change.

Both United Kingdom and Australia emphasise that mediation should be encouraged but evaluating case suitability must always take priority over settlement. Both recognise that mediation is not just a procedural alternative to litigation; it is a process where justice and fairness depend on ensuring that participants can negotiate voluntarily. Both frameworks demonstrate that the success of mediation should not be measured only by the number of settlements achieved. In India, matrimonial disputes often involve social pressure, domestic violence, unequal bargaining power and economic dependence.

VII. Recommendations For An Effective Framework

The success of mediation should not be evaluated only on the number of disputes settled. It depends upon whether settlements have been made voluntarily and without compromising the rights and dignity of both parties. To ensure fairness, mediation centres in India should perform a mandatory pre-mediation screening test to see whether the cases involve domestic violence, coercion or unequal bargaining power and prevent them from being referred to mediation because such cases will lead to injustice for the victim.

Mediators dealing with matrimonial disputes should get specialised training in economic dependency, gender-based violence, and unequal bargaining power to distinguish between voluntary reconciliation and involuntary compromise. The child's best interests should be the core of any mediation in a dispute involving a child. Settlements involving custody, maintenance and parenting should consider the psychological, emotional and physical welfare of the child.

The government of India should try to improve family courts, court-annexed mediation centres and legal aid by recruiting more trained mediators and creating awareness among the public to make justice more accessible through mediation. In cases of serious domestic violence or cruelty, the framework should ensure protection of victims and courts should monitor the mediation process in such cases to ensure that the settlements are voluntary and legal.

VIII. Conclusion

Mediation in India has evolved as an effective measure for peaceful settlement of matrimonial disputes or family disputes by providing a cost-effective and faster alternative for dispute resolution than litigation. Different statutes in India such as the Hindu Marriage Act, Code of

Civil Procedure, Mediation Act, 2023 and the Family Courts Act show commitment towards amicable means of settlement and reducing the burden on the judiciary. However, mediation is not a practical solution for every matrimonial dispute. For disputes that involve domestic violence or unequal bargaining power, mediation can unintentionally compel the victim to accept unfair terms. Therefore, the success of mediation depends not only on settlements but also on ensuring that justice and consent should be there with settlement. There must be a balanced approach combining judicial oversight, legal support, trained mediators and safeguards for the victim. This balanced approach can transform mediation into a mechanism that delivers both reconciliation where it's possible and justice where it's necessary.