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RESOLVING MATRIMONIAL CONFLICTS THROUGH MEDIATION UNDER INDIAN FAMILY LAW: AN ANALYSIS

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CONTENTS

Essay & Comments

RESOLVING MATRIMONIAL CONFLICTS THROUGH MEDIATION UNDER INDIAN FAMILY LAW: AN ANALYSIS

Shreya Chaubey*

Abstract

Matrimonial conflicts in India often escalate into prolonged litigation, straining the individuals involved as well as the judicial system. Mediation offers a collaborative alternative approach for resolving such family disputes, emphasising communication, reconciliation and mutually agreeable solutions. This paper examines how Indian family law facilitates mediation to resolve matrimonial conflicts, focusing exclusively on the Indian legal framework. It reviews statutory mandates - such as the duty of family courts to promote settlements - and analyses landmark case law that has encouraged mediation in marital disputes. The analysis shows that Indian legislation and judiciary increasingly favour mediation as a first resort to reduce the emotional trauma and adversarial intensity inherent in divorce, maintenance and child custody battles. Key Supreme Court decisions have underscored the importance of mediation, even in criminal matrimonial cases like cruelty allegations, by permitting settlements through mediation for the sake of justice and family harmony. While mediation shows promising success rates in family disputes, challenges persist, including ensuring genuine consent in cases involving domestic violence and the need for more trained mediators. Overall, the findings highlight mediation's growing role in Indian family law as an effective, humane mechanism for resolving matrimonial conflicts, aligning legal outcomes with the preservation of relationships and the best interests of families.

Keywords: *Mediation, Matrimonial Conflicts, Family Law, Alternative Dispute Resolution, ADR, Family Courts, Hindu Marriage*.

I

Introduction

Family disputes in India are undergoing a paradigm shift against the backdrop of rapid socio-economic changes. Traditionally, the family has been the fundamental unit of Indian society, with informal community mechanisms like village panchayats or elders' councils helping resolve marital discord. Mediation, in essence, is not alien to India - long before formal courts, community elders routinely mediated family conflicts to preserve social harmony.[1] However, in

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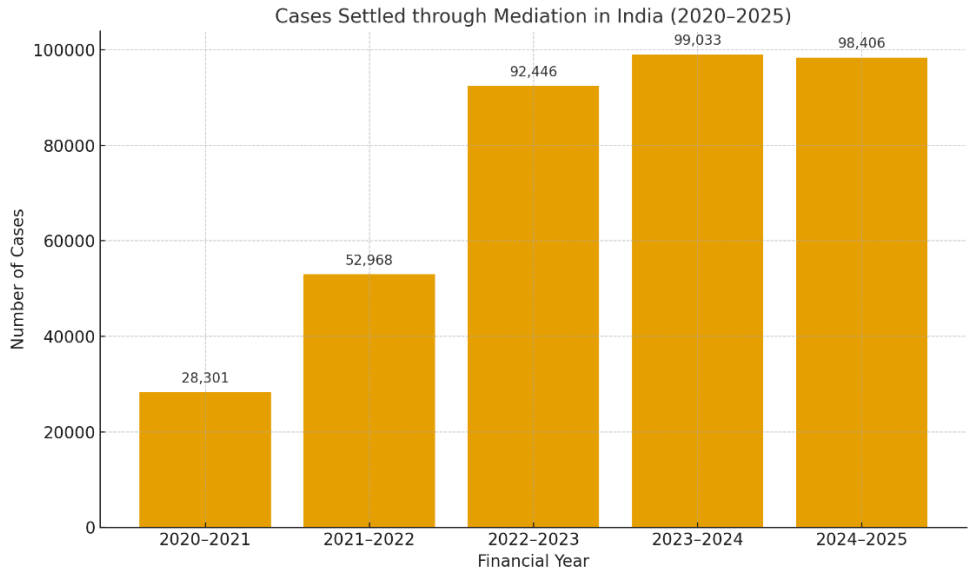
recent decades, India has witnessed a sharp rise in matrimonial litigation as social norms evolve. Supreme Court Justice B.V. Nagarathna recently noted that *"nearly 40% of marriages in the last decade have ended in divorce or separation,"*[2] a striking statistic that has created *"immense pressure on Family Court judges"* who face limited resources. The increase in marital breakdowns, coupled with greater legal awareness, means more couples are approaching courts to resolve issues of divorce, maintenance, child custody and domestic violence. This has led to what Justice Nagarathna describes as "package litigations," where one failed marriage spawns multiple cases - divorce proceedings, criminal charges (e.g. under Section 498A of the IPC for cruelty), domestic violence complaints, custody battles, maintenance claims, and so on. Such parallel, overlapping litigation not only overburdens the courts but also exacerbates stress and bitterness between the parties. It often leaves families emotionally shattered and *"little chance for reconciliation"*.

Table 1: Number of Cases Settled Through Mediation in India (2020–2025)

Financial year	Cases settled through mediation (India)
2024–2025 (Apr 2024–Mar 2025)	98,406
2023–2024 (Apr 2023–Mar 2024)	99,033
2022–2023 (Apr 2022–Mar 2023)	92,446
2021–2022 (Apr 2021–Mar 2022)	52,968
2020–2021 (Apr 2020–Mar 2021)	28,301

[1] Kamakshi Puri, "Mediation in Family Law Disputes in India" (Mapping ADR, Jindal Global University). Discusses the prevalence of mediation in family disputes and notes that approximately *80% of court-referred mediations* in a given period were matrimonial or family matters. Highlights that over 25,000 family cases were referred to mediation between 2011-2015, indicating the dominance of family disputes in mediation statistics.

[2] Justice B.V. Nagarathna, Address at Southern Region Family Courts Conference (2025) - *Courtbook* report by Shivam Y. titled "Justice BV Nagarathna Calls for Mandatory Mediation Before Filing Family Court Cases." Cites that *"nearly 40% of marriages in the last decade have ended in divorce or separation"* in India, contributing to huge pressure on family courts. Advocates for mandatory pre-litigation mediation in family disputes and suggests that lawyers be involved only when necessary, encouraging parties to communicate respectfully to resolve issues. Also lists the lack of trained mediators and counsellors as a key challenge in the current system.



Source: *NALSA*

Within this context, mediation has emerged as a pragmatic and emotionally intelligent approach to handle matrimonial conflicts. Unlike the adversarial court process that positions spouses as opponents, mediation facilitates dialogue in a less formal, more conciliatory environment. Parties have the agency to communicate their grievances and needs with the help of a neutral mediator, rather than through combative legal pleadings. This process can significantly reduce the acrimony and psychological trauma of family disputes. It also addresses a cultural reality: many Indians are hesitant to wash their "dirty linen" in public through court trials, especially in sensitive matters of marriage. Mediation, being private and confidential, provides a safe space for resolving issues without publicity. In fact, confidentiality is one of the hallmarks of family mediation - Indian courts have emphasized that mediation communications must remain privileged and not be disclosed, acknowledging that secrecy encourages candor. For example, in *Moti Ram v. Ashok Kumar*, the Supreme Court stressed that mediators should not reveal what transpired during sessions, noting that privacy in mediation offers much-needed respite for warring spouses who fear public exposure of their disputes.[3]

Another advantage of mediation in matrimonial matters is its potential to preserve relationships. Even if a marriage ends, mediation can help the couple part on amicable terms and cooperate better in future - which is especially crucial if children are involved. The collaborative problem-solving ethos of mediation focuses on the future (e.g. co-parenting plans) rather than solely apportioning

[3] *Moti Ram v. Ashok Kumar*, AIR 2011 SC 1238.

blame for past actions. Mediation also tends to be faster and less costly than litigation in India's notoriously slow court system. By reaching a settlement through mediation, couples can avoid years of courtroom battles. This not only saves time and expense, but also spares the family the prolonged anxiety of a pending case. In view of these benefits, there has been a strong push in Indian family law to integrate mediation as a core dispute resolution method.[4]

Importantly, the Indian legislature and higher judiciary had envisioned the need for amicable dispute resolution in family matters even before mediation became formalized. As early as 1976, the Code of Civil Procedure (CPC) was amended to introduce *Order XXXIIA*, directing that in suits concerning the family, courts *"shall make efforts for settlement"* between the parties (a legislative recognition that family disputes need a different approach than ordinary civil cases). Subsequently, Parliament enacted the Family Courts Act, 1984, to establish specialized Family Courts in every district. These courts were designed to handle matrimonial and child-related cases in a less formal, more reconciliatory atmosphere. Section 9 of the Family Courts Act imposes a duty on Family Courts to seek a settlement in every suit or proceeding concerning marriage or family issues. The law explicitly says the court *"shall, in the first instance, where it is possible to do so, assist and persuade the parties in arriving at a settlement"* of the dispute. It even empowers Family Courts to adjourn proceedings at any stage if it appears there is a reasonable possibility of settlement, to enable attempts at reconciliation. This statutory mandate goes hand in hand with the employment of Family Court *counsellors* - trained professionals in psychology or social work - who interact with the spouses in chamber meetings to explore if the marriage can be saved or an amicable separation arranged. The incorporation of counsellors and marriage guidance experts into the family justice system reflects an understanding that matrimonial conflicts often stem from deep-seated interpersonal issues that a purely legal adjudication cannot fully resolve. Thus, from the outset, Indian family law has embedded mediation and conciliation within the judicial process itself.

Furthermore, personal laws governing marriage in India also prioritize reconciliation. For instance, Section 23(2) of the Hindu Marriage Act, 1955 requires that before granting a divorce decree,[5] the court must *"make every effort to bring about a reconciliation"* between the spouses, and may even adjourn the case for this purpose. Similarly, under Section 34(3) of the Special Marriage Act, 1954 and provisions of the Parsi and Christian divorce laws, there are requirements or at

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[4] Law Commission of India, *Report on Mediation and Conciliation of Family Disputes*, Report No. 259, 2015.

[5] The Hindu Marriage Act, 1955, Section 23(2) - Requires that before granting a divorce, the judge must endeavour to bring about reconciliation between the spouses, and under Section 23(3) may refer them to a suitable mediator for this purpose. This reflects the law's priority for amicable resolution. *(Discussed in Mapping ADR article)*.

least encouragements for judges to attempt to preserve the marriage if possible. These laws authorize the judge to appoint intermediaries or refer the couple to mediation when a glimmer of hope for saving the marriage exists. In effect, the Indian legal framework does not view divorce proceedings purely as contests to be won or lost, but as matters in which the state has an interest in attempting reconciliation before irrevocably dissolving a family unit.

Over the last two decades, the emphasis on mediation has only increased, dovetailing with broader reforms promoting Alternative Dispute Resolution (ADR). In 1999, the Code of Civil Procedure was amended to introduce Section 89,[6] which formally empowers civil courts to refer disputes to ADR, including mediation, if it appears that an element of settlement may exist. Though Section 89 CPC applies to civil cases generally, its significance for matrimonial disputes is paramount because family matters form a substantial chunk of civil litigation. Notably, as per a study by the Vidhi Centre for Legal Policy, approximately 80% of all court-referred mediations in some years were family disputes. Over 25,000 family law cases were sent to mediation between 2011 and 2015 in just a few jurisdictions studied, constituting the vast majority of mediated cases. This statistic vividly illustrates that mediation has become the preferred route for resolving family disputes in practice. Family Courts across the country routinely direct couples to mediation centers annexed to the courts, early in the litigation. In many jurisdictions, it has become almost a reflex for judges to ask, "Have you tried mediation?" when a new divorce or 498A (dowry harassment) case comes before them. The rationale is clear: a negotiated settlement, if achievable, is better for all involved than a judicial decree imposed after adversarial proceedings. Even a partial settlement can simplify and shorten the litigation.

The judiciary's support for mediation in matrimonial cases is not merely theoretical; it has translated into tangible outcomes. Court-annexed mediation centers have reported significant success in settling family disputes. While not every case results in reunion or agreement, a meaningful percentage does. In fact, the Supreme Court observed that roughly 10-15% of matrimonial cases sent for court-directed mediation get resolved successfully.[7] This means that out of every 10 couples who attempt mediation, at least one or two are able to settle their differences or agree on amicable terms of separation, thereby obviating the need for a contested trial. These numbers are encouraging, given how intractable and emotionally charged matrimonial conflicts can be. Each settlement also means one

[6] Code of Civil Procedure, 1908, Section 89 and Order XXXIIA - Section 89 (inserted in 2002) empowers courts to refer disputes to mediation or other ADR if elements of settlement exist. Order XXXIIA Rule 3 (inserted in 1976) directs courts in family suits to make efforts at settlement. The Salem Advocate Bar Assn. v. UOI (2005) judgment upheld these provisions and led to framing of Mediation Rules, emphasizing ADR to reduce pendency.

[7] *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226.

less case clogging the courts and one family saved from the ordeal of protracted litigation.

Given these trends, it is not surprising that voices from within the judiciary have been calling for making mediation essentially a default step in family disputes. Justice Nagarathna, in her 2025 address, strongly urged that *"pre-litigation conciliation/mediation [be] a mandatory procedure before a case is filed in the Family Court"*.[8] Her rationale is that once legal pleadings and allegations fly in court, positions harden and bitterness escalates - whereas early mediation could resolve issues before that "point of no return" is reached. She emphasised that trained mediators (or even retired judges serving as mediators) should be available to families as the first port of call, to prevent disputes from immediately entering the courtroom in an adversarial form. This reflects a broader shift towards institutionalising mediation in the justice system. Indeed, as we shall discuss later, the Parliament has heeded this call to a large extent by enacting the Mediation Act, 2023, which aims to mainstream mediation across all civil disputes, including family matters.

In sum, the introduction establishes that matrimonial conflicts are uniquely suited to mediation due to the personal and emotional factors involved. The Indian legal system, through both statutes and judicial policy, increasingly encourages parties to resolve their differences through dialogue and compromise with the help of mediators. The remainder of this paper will delve into the specific legislative provisions enabling mediation in family law, analyse important case laws that have shaped the mediation landscape, and discuss how mediation is applied in practice to matrimonial disputes under Indian law. The focus will remain solely on Indian law and jurisprudence. By examining this framework, we can better understand the efficacy, as well as the limitations, of mediation as a tool for resolving matrimonial conflicts in India.

Methodology

This research adopts a doctrinal and analytical methodology focusing on Indian family law. It involves a detailed examination of statutory provisions and case law to understand the role of mediation in resolving matrimonial disputes. Primary sources such as statutes, viz., the Family Courts Act, 1984, the Code of Civil Procedure, 1908, the Hindu Marriage Act, 1955 and judgments of Indian courts have been studied to discern the legal framework and judicial approach toward mediation in family matters.

In addition, secondary sources, such as law commission reports, policy papers etc., have been consulted for context and critique. Data on mediation success rates and

[8] B.V. Nagarathna, Justice, Supreme Court of India, *Keynote Address at the National Conference on Mediation and Family Justice* (New Delhi, 2025).

usage in family courts have been referenced from empirical studies to supplement the doctrinal analysis. The methodology is qualitative; it relies on interpreting legal texts and judgments, and there is no field survey or statistical analysis conducted by the author.

The scope of this paper is confined to Indian law and practice. Comparative international perspectives are not within the ambit of this paper, except for incidental references for contrast.

The paper attempts to answer questions such as: What duties do Indian courts have to encourage mediation in family cases? What have been the courts' attitudes towards mediated settlements, especially in sensitive issues like dowry harassment or domestic violence? How have recent developments, like the Mediation Act, 2023, changed the landscape?

II

Mediation in Matrimonial Disputes: The Legal Framework

Indian family law contains several legislative provisions that explicitly or implicitly encourages the use of mediation and conciliation in matrimonial conflicts. These laws form the foundation that empowers courts to steer parties towards amicable settlement rather than adjudication.

Section 9 of the Family Courts Act, 1984, obliges family courts to make efforts for settlement in every suit or proceeding concerning marital or family issues.[9] The language of Section 9(1) is mandatory in tone - it states that in the first instance, the court *"shall… assist and persuade the parties in arriving at a settlement"* wherever possible, consistent with the nature of the case. To facilitate this, the court is given flexibility to follow any procedure it deems fit, effectively authorising informal mediation or counselling sessions under the court's auspices. Section 9(2) goes further to empower the court to adjourn proceedings if it sees a reasonable chance of settlement, thus creating space for negotiation. In practice, family courts refer the couple to in-house counsellors or mediation centres at this stage. This statutory duty to attempt settlement is a hallmark of the family court system in India. It shows legislative intent that judges should exhaust the possibility of reconciliation or amicable resolution before proceeding with a contested trial. Even if court-appointed counsellors report failure to reconcile, the statute suggests continuing efforts - indeed, many judges send parties to a second round of mediation with a professional mediator after counsellor-assisted talks, because a formal mediation

[9] Family Courts Act, 1984, Section 9 - *Duty of Family Court to make efforts for settlement.* The law obliges courts to *"assist and persuade"* parties towards a settlement and allows adjournments for this purpose. It institutionalizes an obligation for mediation/conciliation in matrimonial proceedings. *(Source: India Code text of Family Courts Act).*

process might succeed where informal counselling did not. Simply put, the Family Courts Act builds mediation into the judicial process, making it not just an option but a duty of the court to earnestly encourage settlements.

In addition to the Family Courts Act, 1984, various personal laws governing marriage reiterate the importance of reconciliation. Section 23(2) of the Hindu Marriage Act, 1955 provides that before granting a decree of divorce, the court *"shall… make every endeavour to bring about a reconciliation between the parties"*. Under Section 23(3), the court may even refer the matter to a person named by the parties or appointed by the court for the purpose of reconciliation, effectively meaning a mediator or counsellor. Corresponding provisions are found in the Special Marriage Act, 1954 and the Parsi Marriage and Divorce Act, 1936, which allow (or require) the court to postpone proceedings to enable attempts at settlement. The intent across these statutes is uniform - divorce should not be granted until the court is satisfied that all efforts at saving the marriage or reaching an amicable understanding have been made. Even the civil procedure rules echo this approach: *Order XXXIIA of the Code of Civil Procedure*, applicable to family matters, advises judges to adopt a less formal, mediatory approach and record what efforts at settlement were undertaken. Thus, legislation weaves mediation and conciliation into the fabric of matrimonial litigation.

It is important to note, however, that until recently, these laws stopped short of making mediation mandatory in a strict sense. The word "shall" in Section 9 of the Family Courts Act and Section 23 of HMA places a strong obligation on the judge, but ultimately, the judge cannot force parties to settle. The law mandated an attempt at mediation, not a guaranteed mediated result. Indeed, a 2021 analysis pointed out that there is *"nowhere in law a mandatory requirement"* that mediation must be conducted or that a settlement must be reached - the power to refer a case to mediation is discretionary, though strongly encouraged. Moreover, any settlement arising from mediation has no binding effect until the court approves it. If the parties settle, they typically sign a settlement agreement which the court can convert into a decree or order, lending it enforceability. But if mediation fails, the case simply returns to litigation without prejudice. This framework ensures that while mediation is promoted, it remains a voluntary, party-driven process at its core.

A turning point in institutionalising mediation in India was the enactment of Section 89 of the CPC in 2002 (pursuant to the CPC Amendment Acts of 1999 and 2002). Section 89 allows courts in any civil proceeding to refer the parties to various ADR methods - arbitration, conciliation, judicial settlement, including Lok Adalat, or mediation - if it appears to the court that there exist elements of a settlement. This provision mainstreamed court-referred mediation. Matrimonial disputes, being civil proceedings (except criminal complaints under IPC 498A or Domestic Violence Act cases, which go to criminal courts), squarely fall within the ambit of

Section 89. The significance of Section 89 was amplified by the Supreme Court's proactive stance in the early 2000s. In *Salem Advocate Bar Association* v. *Union of India*,[10] a landmark case, the Supreme Court, while upholding the constitutional validity of Section 89 reforms, constituted a committee to frame Model Mediation Rules and to suggest practical ways to implement mediation in courts. The result was the Civil Procedure Mediation and Conciliation Rules, 2003, which were adopted (with local modifications) by several High Courts. These rules provide detailed procedures for how judges are to refer cases to mediation, how mediators are to be appointed, the timeframe for completion (usually 60 to 90 days), and the reporting of settlement outcomes. Thanks to the *Salem Bar Association* case, the infrastructure for court-annexed mediation - particularly mediation centres attached to courts and trained mediator panels - took shape across India. The Supreme Court emphatically stated that ADR, including mediation, is integral to the justice system and necessary for reducing the courts' backlog. Since then, High Courts in almost every state have set up Mediation Centres (often called Mediation and Conciliation Centres), and judges actively utilise Section 89 CPC to route matrimonial cases to these centres.

A further fillip came from the Supreme Court's judgment in *Afcons Infrastructure Ltd.* v. *Cherian Varkey Construction*,[11] which was not a family dispute but rather a commercial one. In that judgment, Justice R.V. Raveendran provided a lucid interpretation of Section 89 and removed certain anomalies that had confused courts about how to implement mediation. Importantly, the Afcons judgment listed categories of cases *"suitable for mediation"* versus those less suitable. It expressly identified that "all cases arising from strained or soured relationships, including disputes relating to matrimonial causes, maintenance, custody of children" are preeminently fit for mediation. The Court reasoned that in such relationship-driven disputes, a conciliatory process is preferable to an adversarial one, and there is a potential for preserving or at least civilly restructuring the relationship (for example, enabling co-parenting arrangements even if the marriage dissolves). By contrast, cases involving serious criminal allegations, fraud, or public interest issues were deemed not apt for mediation. The Afcons decision thus gave judicial endorsement to what was already a common-sense practice - virtually any matrimonial dispute should be referred to mediation as early as possible, as there is little to lose and possibly much to gain. The judgment also clarified that mediation is voluntary, and a party cannot be forced to settle;

[10] *Salem Advocate Bar Association* v. *Union of India,* AIR 2005 SC 3353

[11] Afcons Infrastructure Ltd. v. Cherian Varkey Constr. (2010) 8 SCC 24 - Supreme Court of India. Clarified implementation of Section 89 CPC. Notably categorized that *"disputes relating to matrimonial causes, maintenance, custody of children"* are suitable for mediation given the ongoing relationships involved. Held that a court-referred mediation agreement, if accepted by parties, should be recorded and made a decree to be binding.

the judge's role is to facilitate the option, not coerce agreement. Additionally, it was held that a mediated settlement requires the free consent of parties and once arrived at, the court should record it and pass a decree in its terms, giving it the status of a judgment. This means a mediated divorce settlement (say, on custody or alimony terms) is binding and enforceable once the court incorporates it in an order, just like any court verdict.

In recent times, the legislative framework for mediation received a monumental upgrade through the Mediation Act, 2023. This new law indicates the maturation of mediation in the Indian legal landscape. The Mediation Act, 2023, aims to promote and facilitate institutional mediation and make it a more formally recognised dispute resolution mechanism. It applies to a broad range of disputes, and explicitly includes *family disputes* within its scope. One of the key features of the Act is the introduction of mandatory pre-litigation mediation for certain classes of cases. The Act envisions that before parties file a lawsuit in court (or a petition in a family court), they should attempt mediation in good faith as a preliminary step. In fact, the law now *demands* that parties at least *attempt* mediation as a prerequisite to filing - a visionary shift from the earlier scenario where mediation was encouraged but not compulsory.[12] There are, of course, sensible exceptions carved out: if a case requires urgent interim relief or involves allegations of serious harm, parties can bypass pre-litigation mediation. For example, if a spouse needs an immediate protection order due to domestic violence, or an urgent injunction, the mediation prerequisite would not apply since that could endanger rights or safety. But barring such situations, the Act's message is clear: *"don't come to court before giving mediation a sincere try."* The Mediation Act also solidifies other aspects: it upholds the confidentiality of mediation communications,[13] sets timelines (a typical mediation should be completed within 180 days, extendable by 90 days by consent), and crucially, it provides for enforceability of mediated settlement agreements.

III

Judicial Trends

Legislative provisions tell only part of the story; the judiciary's approach to mediation in family conflicts has been pivotal in shaping practical outcomes. Over the years, Indian courts - especially the higher judiciary - have delivered judgments that strongly advocate for mediation and sometimes innovate ways to accommodate settlements in complex matrimonial disputes. This section discusses some key judicial pronouncements that have guided the mediation landscape under Indian family law.

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[12] The Mediation Act, 2023, [No. 32 of 2023].

[13] *Id.*, Section 22.

One of the earliest and most frequently cited cases in this context is *B.S. Joshi & Ors*. v. *State of Haryana*.[14] This case did not directly arise from a mediation, but its outcome had profound implications for mediated settlements in matrimonial criminal cases. The facts were typical of many family disputes: a wife had filed a criminal complaint against her husband and in-laws under Section 498A of the IPC (cruelty and dowry harassment, a non-compoundable offence), but later the couple reconciled and sought to drop the charges. The legal issue was that since 498A is non-compoundable (i.e. the law does not allow the complainant to withdraw or settle it of her own accord), the High Court had refused to quash the proceedings. The Supreme Court in *B.S. Joshi* overturned that approach. It held that High Courts could exercise inherent powers, as prescribed under Section 482 of the Code of Criminal Procedure, 1972, to quash criminal proceedings in matrimonial matters if the parties have genuinely settled their dispute. The Court reasoned that denying a couple the chance to end litigation after they have reconciled would run counter to the ends of justice, since the purpose of the 498A provision - to protect married women from cruelty - is not undermined by permitting settlement in a particular case where the woman herself wants to forgive and forget. In effect, *B.S. Joshi* opened the door for mediated compromises in matrimonial offense cases, even when the law did not explicitly permit compounding. The judgment is often paraphrased to say that if the parties settle their matrimonial discord, the court should not hesitate to quash the proceedings to enable them to restore peace. This was a pragmatic decision acknowledging that rigid enforcement of law should not come in the way of a family resolving its own issues amicably. *B.S. Joshi* thus gave legal sanctity to mediation-like settlements in 498A cases by allowing the criminal case to be disposed of when a compromise is reached.

Following *B.S. Joshi*, there was initially some confusion and divergence in lower courts on how far this principle could be extended, given the technical bar on compounding certain offences. Ultimately, a larger bench of the Supreme Court in *Gian Singh* v. *State of Punjab*, (2012)[15] reaffirmed and clarified the position. The Court in *Gian Singh* held that for categories of offences that are overwhelmingly personal or private in nature (even if not formally compoundable in the CrPC), the

[14] *B.S. Joshi & Ors.* v. *State of Haryana*, (2003) 4 SCC 675 - Supreme Court allowed quashing of a criminal case under Section 498A IPC on the basis of a settlement between the parties. Held that in matrimonial disputes, if spouses settle, the High Court can quash the proceedings to secure the ends of justice. Paved the way for mediated settlements in dowry harassment cases by using inherent powers.

[15] Gian Singh v. State of Punjab, (2012) 10 SCC 303 - Supreme Court (Constitution Bench). Affirmed that High Courts may quash non-compoundable criminal cases if the offence is overwhelmingly personal or matrimonial in nature and the parties have amicably settled the dispute. This case solidified the legality of private settlements (including those reached through mediation) in family-related criminal cases.

High Court may quash proceedings if a genuine compromise is reached between the parties. This includes matrimonial disputes, which *"bear a civil flavor"* despite being couched as criminal cases, because the real issue is essentially a family conflict. The Court, however, drew the line at heinous and serious offenses (like rape, or murder, etc.) where settlement would not be allowed as it would be against public interest. Thus, after *Gian Singh*, it is settled law that matrimonial criminal cases (dowry harassment, domestic cruelty, etc.) can be quashed if mediated settlements are arrived at, subject to the court's discretion to ensure the settlement is free and fair. This approach has been consistently followed in myriad High Court decisions, bringing relief to many estranged couples who prefer a clean break over vindictive litigation.

Perhaps the most celebrated Supreme Court decision on mediation in matrimonial conflicts is *K. Srinivas Rao v. D.A. Deepa*.[16] This case involved a husband seeking divorce on grounds of cruelty after a long saga of matrimonial discord, which included the wife filing a 498A criminal case that was allegedly based on false allegations. The marriage had effectively broken down and the couple had been living apart for many years. While granting divorce to the husband on ground of mental cruelty, the Supreme Court took the opportunity to issue general guidelines to all criminal courts and family courts dealing with matrimonial matters. The Court strongly lamented the bitterness and irretrievable breakdown that had occurred and observed that much of it could have been avoided had there been early counselling or mediation. It pointed out that *"10-15% of matrimonial cases sent for court-directed mediation get resolved"* and that if the parties in the present case had tried mediation at the outset, *"things wouldn't have been this ugly"*. Then, explicitly invoking Section 9 of the Family Courts Act, the Supreme Court in *K. Srinivas Rao* declared that mediation should be made compulsory in matrimonial disputes where there is any possibility of settlement. This is perhaps the closest one can get to a judicial mandate for mediation. Although the word "compulsory" was used, in practical terms it means judges should mandatorily refer parties to mediation at the earliest stage of matrimonial litigation, rather than leaving it to the parties' whims. The Court was particularly concerned with IPC 498A cases, which are criminal and non-compoundable. It acknowledged that while such cases involve criminal law, the underlying dispute is between family members. Therefore, criminal courts handling 498A complaints were urged to

[16] *K. Srinivas Rao* v. *D.A. Deepa*, (2013) 5 SCC 226. The Supreme Court, endorsing mediation in matrimonial conflicts, directed that mediation should be made compulsory in matrimonial disputes where possible. Advised setting up pre-litigation mediation desks in courts. In the context of IPC 498A cases, the Court urged that at any stage before trial, courts should refer parties to mediation if there's scope for settlement, provided both parties consent and the process is not misused. Noted that 10-15% of matrimonial cases get resolved through mediation, highlighting its utility.

refer the parties to mediation before proceeding with the case, as long as certain conditions are met. The judgment outlined these conditions clearly: (1) there should be elements of a settlement visible in the case, meaning the dispute appears to be of such nature that it can be resolved amicably (for example, a clash of egos or minor quarrels, rather than a brutal crime); (2) both parties must be willing for mediation - mediation is voluntary, so if either the wife or husband outright refuses to consider a compromise, it won't work; (3) the mediation process should not be used to dilute the rigour or purpose of 498A - in other words, the courts must be careful that mediation is not a ruse to let an offender off the hook without consequences in a genuine case of abuse; and (4) referring to mediation does not curtail the court's powers on matters like grant of bail - the legal process can continue in parallel, and if mediation fails the case proceeds normally. These safeguards were meant to ensure that mediation in 498A cases is done in a fair manner that does not undermine the law's intent to protect women from cruelty yet provides an opportunity to restore peace if the complaint was more about matrimonial friction than serious abuse.

The *K. Srinivas Rao* judgment had some very concrete follow-ups. It directed that "pre-litigation mediation cells or help desks" be established in courts, so that estranged couples could be guided towards reconciliation before embarking on full-fledged litigation. Following this, many courts, especially in larger cities, have set up help desks attached to Family Courts or District Legal Services Authorities to counsel couples on mediation options. The judgment also noted a specific scenario: some states (like Andhra Pradesh) had amended criminal law to make 498A compoundable with court permission, which aided mediation efforts. Even where such amendment was not in place, *K. Srinivas Rao* effectively told courts to be open to settlements.

The impact of such judicial endorsements has been significant on the ground. High Courts across India have echoed the Supreme Court's sentiments. For instance, the Allahabad High Court held that even if the Family Court's counselor gives a failure report, the court *"shall refer the parties to mediation"* before proceeding. The Delhi High Court in numerous cases has lauded successful mediation settlements and incorporated them into divorce decrees. In one case, the Karnataka High Court quashed a pending 498A FIR after the husband and wife settled all their disputes through mediation during the pendency of a divorce petition. The couple had agreed on divorce, the husband paid a settlement amount, and the wife agreed to withdraw the criminal case - the High Court noted this mediated compromise and quashed the criminal proceeding to complete the suite of settlements. In another Karnataka High Court decision in 2014, the court even allowed compounding of a non-compoundable offense at the wife's request after a mediated divorce settlement, explicitly relying on Supreme Court precedents endorsing settlement of matrimonial disputes. These examples show the

judiciary's flexible, welfare-oriented approach. Courts are not viewing matrimonial cases through a strictly punitive lens; instead, the overarching goal is seen as resolving the conflict in a way that *minimizes harm and maximizes harmony*. If that can be achieved by a settlement - even in a criminal case - the courts are willing to facilitate it.

Moreover, judges often play a proactive role during court hearings to nudge parties towards mediation. It is not uncommon for a judge in chambers to informally advise a bitter couple: *"Why don't you take the help of a mediator? You might find a better solution yourselves than what a court can impose."* Especially in disputes over child custody, judges strongly encourage parents to mediate by focusing on the child's welfare rather than parental rights. The Supreme Court in Sachin Gupta v. Renu Gupta (2013) (to cite one of several such cases) appreciated a parenting plan worked out in mediation and made it a court order, noting that mediation can produce creative solutions in custody sharing which a court might not have devised under the binary win/lose paradigms.

IV

Challenges and Considerations in Matrimonial Mediation

While the trajectory of Indian family law shows an increasingly positive inclination towards mediation, there are several challenges and caveats to consider. Mediation, after all, is not a panacea for all matrimonial conflicts. The effectiveness of mediation in family disputes depends on the nature of the dispute and the dynamics between the parties.

One major concern often raised is the suitability of mediation in cases involving domestic violence or serious power imbalances. Critics argue that where one spouse (typically the wife) has faced violence or severe intimidation, mediation might not be appropriate because it could pressure the victim into a compromise, thus undermining justice and accountability. Domestic violence is also a criminal offence (under IPC or the Domestic Violence Act 2005) which raises the question: should a victim be asked to "negotiate" with her abuser? A segment of experts and activists firmly believe that *"cases related to domestic violence should never be dealt with through mediation"* because it *"involves a criminal act and the accused should not be let off without paying for his deeds."* There is a fear that pushing such cases into mediation might trivialize the seriousness of abuse and deny the victim her day in court, as well as dilute the deterrent effect of criminal law. As one author put it, there are two interests at play: the interest of protecting the family and giving it a chance (the "first interest"), versus the interest of penalizing wrongdoing and

deterring abuse (the "second interest"). The mediator and the judge must carefully navigate these in each case.[17]

Another challenge is ensuring the quality and training of mediators who handle matrimonial cases. Mediation in family matters requires a delicate blend of legal knowledge, psychological insight, and communication skills. Unlike a business dispute, emotions run high, and parties may not communicate rationally due to hurt and anger. A mediator in such cases often needs to play the role of a counsellor or therapeutic facilitator, without losing neutrality. In India, while many mediation centers have experienced lawyers or retired judges as mediators, not all are specifically trained in family counselling. Justice Nagarathna flagged the *"lack of trained… counsellors and mediators"* as one of the issues plaguing Family Courts. Indeed, there is a need for more specialised training programs focusing on family dispute mediation - for example, dealing with emotional outbursts, recognising signs of abuse, handling parties who are not on equal footing, etc. The new Mediation Council of India could play a role in setting standards and certifications to ensure mediators in family courts are up to the task. Additionally, infrastructure can be an issue - busy family court mediation centres sometimes handle a huge volume of cases with limited staff, resulting in less time per case. For mediation to truly succeed, parties must feel they have had enough time and a patient hearing. Expanding infrastructure and human resources for mediation is thus a pressing need.

One practical consideration post-settlement is the enforcement of mediated agreements. Earlier, a common worry was - what if one party reneges after mediation? For example, a husband agrees in mediation to pay a lump sum alimony in exchange for the wife withdrawing cases, but later he delays or refuses payment. The wife would then have to go back to court, defeating the purpose of mediation. However, as noted, Indian law addresses this by making mediated settlements legally binding once adopted by the court. Under the new Mediation Act, a settlement agreement can be directly enforced like a court decree. Even prior to the Act, typically the family court would record the settlement terms in its final order (such as a mutual consent divorce decree incorporating the alimony and custody terms). That order is enforceable by execution proceedings if necessary. Therefore, parties should be reassured that a genuine settlement will have teeth under the law. The challenge is more about ensuring compliance in spirit - for

[17] Sandeep Bhalothia, "Mediation in Domestic Violence Cases: Whether to Use or Not?" - (2019). Discusses the debate over mediating domestic violence disputes. Describes the *"first interest"* of protecting family relationships and children via mediation versus the *"second interest"* of ensuring abusers are held accountable and that mediation is not used to let them escape liability. Notes a Karnataka High Court case where a 498A and Dowry Act prosecution was quashed after the couple's dispute was settled through mediation, illustrating courts' willingness to accept mediated compromises in such cases.

instance, ensuring that a parent who agreed to visitation doesn't later create hurdles, or that maintenance payments arrive on time. These issues exist with court judgments as well; mediation per se doesn't eliminate them, but it often fosters better post-dispute behaviour because the agreement was voluntary.[18]

Finally, one must acknowledge that mediation is not always successful. There will always be cases where one or both parties prefer a judicial determination, either due to principled stands, ego, or simply because one wants their "day in court." Sometimes, mediation fails because one spouse sees it as a chance to reconcile, but the other is adamant on divorce (or vice versa). In other instances, the issues are too complex - e.g. allegations of serious misconduct - to find a middle ground. Mediation is a tool, not an absolute solution. The legal system retains the adjudicatory process as a backstop. The encouraging part is that even if a full settlement doesn't occur, mediation can help narrow the issues or improve communication. For example, a couple might not agree on alimony, but through mediation, they at least agree on child custody arrangements - that partial settlement is still valuable and can be recorded by the court, leaving only the money issue for trial. So, while not every mediated case ends with hugs and handshakes, it can still reduce the scope of conflict.

In summary, the Indian experience with mediation in matrimonial conflicts highlights both promise and prudence. The promise lies in numerous success stories where families have been saved or parted peacefully due to mediation - sparing themselves and the system from acrimony. The prudence lies in recognising its limits: ensuring that mediation is used appropriately, safeguarding vulnerable parties, and continuing to refine the system (through better training, possibly making certain mediations mandatory, etc.). The direction of law and policy is firmly toward expanding mediation, but always with the caveat that it serves as a facilitator of justice, not an escape route from it.

Conclusion

The resolution of matrimonial conflicts through mediation under Indian family law has evolved from a peripheral experiment to a central pillar of the family justice system. The research shows that India's legal framework - both statutory and judicial - strongly endorses mediation as an effective means to resolve marriage-related disputes. From the duty cast by Section 9 of the Family Courts Act on judges to attempt settlements, to the proactive judgments of the Supreme

[18] The Mediation Act, 2023 (No. 32 of 2023) - Newly enacted Indian legislation. Establishes mediation as a preferred dispute resolution mechanism for civil and family disputes. Mandates pre-institution mediation - parties must attempt mediation before filing court cases, with exceptions for urgent or emergency matters. Ensures confidentiality (Section 22) and provides that mediated settlements are enforceable as the equivalent of arbitral awards/decrees. Creates the Mediation Council of India for regulation and training.

Court making mediation almost a default first step in divorce and cruelty cases, the trajectory is unmistakable. Mediation aligns with the fundamental ethos of family law: to protect the institution of family and promote amicable solutions wherever possible, rather than deepening the fissures through adversarial litigation. In many ways, this reflects a humane approach - recognising that when a marriage falters, it is not just a legal problem but a human problem requiring healing and communication.

The enactment of the Mediation Act, 2023, marks a watershed moment, underscoring the institutional commitment to ADR. By making pre-litigation mediation compulsory in many cases (with sensible exceptions) and by giving legal teeth to mediated agreements, the Act is expected to further bolster the use of mediation in family disputes. It effectively sends a message: litigation should be the last resort, not the first instinct, when marriages break down. In the coming years, we can expect that before any divorce petition or domestic relations case is fully adjudicated, multiple rounds of mediation (informal and formal) will be the norm. Indeed, one can envision a future where every Family Court has a permanent mediation clinic, and perhaps even mediation is attempted *before* any formal case filing - aligning with Justice Nagarathna's vision of disputes being resolved in the living room or mediator's office, rather than spilling into the courtroom.

That said, mediation is not a magic wand, and the legal system must remain vigilant in ensuring justice is not sacrificed at the altar of settlement. The rights and safety of vulnerable spouses (usually wives in the Indian context) must be guarded. Mediation should empower them, not pressure them into unfair compromises. The court's oversight in reviewing mediated settlements before making them orders is a crucial checkpoint to ensure equity and voluntariness. If a settlement is manifestly unfair or obtained under duress, judges do refuse to accept it - as they should. Thus, the mediation movement in family law works in tandem with the protective features of family law: *the ultimate goal is a fair and peaceful resolution*, not just any resolution.

In conclusion, resolving matrimonial conflicts through mediation in India has proven to be a practical, compassionate, and jurisprudentially sound approach. It represents the legal system's attempt to humanise the handling of family disputes. Real people make mistakes and relationships sometimes fail - but the manner in which those failures are handled can make the difference between an amicable parting of ways and a protracted nightmare. Mediation provides a pathway to handle these difficult situations with empathy and dialogue. Indian courts, legislators, and society at large are increasingly embracing this path. With continuous improvements in mediator training, awareness, and perhaps a gradual change in societal mindset where seeking mediation is seen as wise rather than weak, mediation could become the default mode of resolving marital discord. This

would ensure that litigation is truly the last resort, used only when mediation does not work or injustice cannot otherwise be avoided. Given India's deep-rooted cultural emphasis on family and harmony, the success of mediation in family law resonates with our social values as well. As the famous saying quoted by Justice Nagarathna goes, *"A family can weather all storms... at the end of the day, a loving family should find everything forgivable."* While not every family dispute will end in forgiveness or reunion, mediation strives towards that ideal of reconciliation and mutual respect. In doing so, it underscores that the law is not just about rights and liabilities, but also about healing and humanity in the realm of family.