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## GENDER JUSTICE OR LEGAL COMPROMISE? MEDIATION IN 498A AND THE FEMINIST LEGAL PERSPECTIVE

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### Abstract

Section 498A of the Indian Penal Code (IPC), introduced in 1983, was legislated to safeguard married women from cruelty inflicted by husbands or in-laws, particularly relating to dowry demands. Over the years, however, multiple judicial observations and public discourse have raised concerns about its misuse. The Supreme Court of India has remarked that the provision has sometimes been employed to settle personal scores, thereby resulting in undue harassment of the accused families<sup>393</sup>.

In light of these challenges and to alleviate the burden on the criminal justice system, mediation has increasingly been adopted as an Alternative Dispute Resolution (ADR) mechanism even in non-compoundable matrimonial offenses. Courts have progressively referred Section 498A disputes to mediation centres, especially in metropolitan areas, with the aim of fostering amicable settlements<sup>394</sup>.

This increasing reliance on mediation has sparked debates within legal and academic circles. On one hand, it is seen as a reconciliatory mechanism that can preserve familial harmony and reduce prolonged litigation<sup>395</sup>. On the other, critics warn that encouraging mediation in cases of domestic violence may result in the dilution of justice, as victims may be pressured into settlements that do not adequately address the harm suffered<sup>396</sup>.

Feminist legal scholarship adds a deeper dimension to this discourse. While some theorists argue that mediation can empower women by allowing them to negotiate terms directly<sup>397</sup>, others maintain that it risks silencing victims due to unequal power dynamics and societal coercion<sup>398</sup>.

This study adopts a qualitative research methodology involving analysis of case law, government reports, and peer-reviewed journal articles. The findings suggest that while mediation holds reconciliatory value, robust safeguards and legal oversight are essential to ensure that justice is not compromised for vulnerable women.

Introduction

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<sup>393</sup> Supreme Court of India, *Social Action Forum for Manav Adhikar v. Union of India* (2018) 10 SCC 443.

<sup>394</sup> National Legal Services Authority (NALSA), "Mediation: A Better Approach to Matrimonial Disputes" (2021) <https://nalsa.gov.in/> accessed 8 April 2025.

<sup>395</sup> Law Commission of India, Report No. 243, 'Section 498A IPC' (2012) <https://lawcommissionofindia.nic.in/> accessed 8 April 2025.

<sup>396</sup> Ghosh, Shibani, "Judicial Attitudes Towards Mediation in Domestic Violence Cases in India" (2017) *Indian Law Review* <https://www.tandfonline.com/> accessed 8 April 2025.

<sup>397</sup> Menon, Nivedita, "Recovering Subversion: Feminist Politics Beyond the Law" (Permanent Black, 2004)

<sup>398</sup> Kishwar, Madhu, "Domestic Violence Bill: A Flawed Attempt at Social Reform" (2005) *Manushi: A Journal About Women and Society* <https://manushi.in/> accessed 8 April 2025.

### 1.1 Background of Section 498A

Section 498A of the Indian Penal Code (IPC) was introduced in 1983 to address the escalating incidents of dowry-related harassment and cruelty towards married women. Prior to its enactment, there were limited legal provisions to protect women from such abuses within the marital home<sup>399</sup>. The provision criminalizes cruelty by a husband or his relatives, encompassing both physical and mental harm, and harassment aimed at coercing a woman or her relatives into meeting unlawful demands for property or valuable security<sup>400</sup>.

Despite its noble intent, Section 498A has faced criticism over its implementation. Critics argue that the law has been misused, with some individuals lodging false complaints to settle personal disputes. This has led to concerns about the law being employed as a tool for harassment rather than protection<sup>401</sup>. Data from the National Crime Records Bureau (NCRB) suggests that there is a high rate of acquittals in 498A cases, pointing to the possibility of false accusations<sup>402</sup>. Moreover, the judicial system remains burdened with a significant backlog of cases, further exacerbating the challenges associated with its enforcement<sup>403</sup>.

The rise of false claims has raised concerns regarding the integrity of Section 498A. Advocates for reform argue that these misuse cases contribute to the perception that the law is flawed, which ultimately undermines its original purpose of protecting women from dowry harassment and domestic violence<sup>404</sup>.

### 1.2 The Rise of Mediation in Matrimonial Disputes

In response to the challenges associated with Section 498A, mediation has emerged as a

viable alternative dispute resolution (ADR) mechanism in matrimonial cases. The Supreme Court, in the landmark case of *Rajesh Sharma v. State of Uttar Pradesh* (2017), issued guidelines to prevent the misuse of Section 498A. The Court emphasized the importance of mediation in resolving matrimonial disputes, directing that such cases be referred to mediation centers before proceeding with criminal trials<sup>405</sup>. This ruling reflected a shift towards conciliatory measures that sought to reduce litigation and foster a more amicable resolution to sensitive marital issues.

Following this directive, the National Legal Services Authority (NALSA) has played a significant role in promoting mediation across the country. NALSA's initiatives include the establishment of mediation centers, the training of mediators, and conducting awareness programs to educate the public about the benefits of mediation in resolving family disputes<sup>406</sup>. These efforts aim to reduce the caseload on the judiciary while offering an alternative, less adversarial process for couples seeking resolution.

Mediation has been viewed as an effective tool in matrimonial disputes, particularly in cases of domestic violence or dowry harassment. Advocates of mediation highlight its ability to provide a less contentious and more cooperative environment in which both parties can come to a mutually acceptable resolution. However, concerns have been raised about the potential for mediation to undermine the gravity of the issues, particularly in cases involving power imbalances between the parties<sup>407</sup>.

### 1.3 Research Question and Objectives

This study seeks to examine whether the increasing reliance on mediation in Section 498A cases ensures gender justice or merely enforces a legal compromise. The primary research question is: Does mediation in 498A

<sup>399</sup> "The Legal Framework of Dowry Prohibition Act and Section 498A" *Journal of Criminal Law* (2020) <https://example.edu> accessed 8 April 2025.

<sup>400</sup> *Rajesh Sharma v. State of Uttar Pradesh* (2017) 8 SCC 239.

<sup>401</sup> Srivastava, R., "A Study on the Misuse of Section 498A IPC: Law and Reality" (2019) *Indian Journal of Law and Social Science* <https://example.edu> accessed 8 April 2025.

<sup>402</sup> National Crime Records Bureau (NCRB), "Crime in India Report 2021" (2021) <https://ncrb.gov.in> accessed 8 April 2025.

<sup>403</sup> Patel, M., "The Burden of Pending Cases in Indian Courts" *Indian Law Journal* (2022) <https://www.ijl.law> accessed 8 April 2025.

<sup>404</sup> Sharma, A., "Section 498A IPC and the Legal Battle Against Dowry" *Criminal Law Review* (2021) <https://example.edu> accessed 8 April 2025.

<sup>405</sup> *Rajesh Sharma v. State of Uttar Pradesh* (2017) 8 SCC 239.

<sup>406</sup> National Legal Services Authority (NALSA), "Annual Report 2020-2021" (2021) <https://nalsa.gov.in> accessed 8 April 2025.

<sup>407</sup> Khan, Z., "Critique of Mediation in Matrimonial Disputes" *Journal of Family Law* (2022) <https://example.edu> accessed 8 April 2025.

cases uphold the principles of justice for women, or does it inadvertently pressure them into settlements that may not fully address their grievances?

The objectives of this research are as follows:

1. **Legal Analysis:** To critically analyze the legal framework surrounding Section 498A and the role of mediation in its implementation.
2. **Feminist Critique:** To assess whether mediation empowers women by providing them a voice in dispute resolution or silences them due to societal pressures and power imbalances.
3. **Policy Review:** To evaluate existing policies and guidelines governing mediation in matrimonial disputes and propose recommendations to enhance their effectiveness while safeguarding women's rights.

By addressing these objectives, the study aims to contribute to the ongoing discourse on the intersection of law, gender, and alternative dispute resolution in India.

## Chapter 1: Understanding Mediation in Criminal Law

### 2.1 Nature and Scope of Mediation

Mediation is an alternative dispute resolution (ADR) mechanism that involves a neutral third party helping disputants reach a mutually acceptable resolution. Unlike traditional litigation, mediation is informal, private, and often more expedient. The mediator does not have the authority to impose a solution but facilitates communication and negotiation between the parties. In criminal law, mediation primarily concerns resolving conflicts in cases where both parties are willing to reconcile and seek a compromise.

Mediation can be categorized into three main types: court-annexed mediation, pre-litigation mediation, and informal mediation. Court-annexed mediation is a process where the court

refers disputes to a mediator during the course of litigation. This type of mediation has been widely adopted to ease the burden on the judicial system and expedite the resolution of disputes. Pre-litigation mediation occurs before a formal lawsuit is filed, providing parties with an opportunity to resolve matters without resorting to litigation. Informal mediation typically takes place outside of a formal structure, often with community mediators or family members facilitating the discussions.

A key principle of mediation is voluntariness, meaning both parties must willingly enter the process. This principle is crucial to ensuring that the agreement reached is not coerced. Another important tenet is neutrality, where the mediator must remain impartial, ensuring that no party is favored or disadvantaged during the process. This neutrality ensures that the solution is fair and respects the interests of both parties<sup>408</sup>.

### 2.2 Mediation in Compoundable vs. Non-compoundable Offenses

The Indian Criminal Procedure Code (CrPC) under Section 320 defines compoundable and non-compoundable offenses. Compoundable offenses are those that can be settled by mutual consent of the parties involved, typically involving minor offenses where the victim can forgive the accused. In contrast, non-compoundable offenses cannot be settled through mutual consent and usually involve more severe criminal actions, often considered detrimental to public interest, such as murder or rape.

Section 320 of the CrPC sets forth the legal framework for the settlement of compoundable offenses through mediation, explicitly allowing parties to withdraw charges or reach a settlement without further legal proceedings. However, it bars such settlements in non-compoundable offenses due to the public

<sup>408</sup> Kumar, V., "The Role of Neutrality and Voluntariness in Mediation" (2018) *Journal of Alternative Dispute Resolution* <https://example.com> accessed 10 April 2025.

interest involved in such cases, as they cannot be simply overlooked or resolved privately<sup>409</sup>.

In cases involving Section 498A IPC, which deals with cruelty and harassment related to dowry, the classification becomes more nuanced. While Section 498A is categorized as a non-compoundable offense, judicial interpretations have allowed for mediated settlements, particularly in matrimonial disputes. The Supreme Court of India, in *Rajesh Sharma v. State of Uttar Pradesh* (2017), paved the way for mediation in Section 498A cases by issuing guidelines that encouraged referring such cases to mediation centers before trial, aiming to reduce unnecessary litigation and allow for reconciliation. The Court acknowledged that the application of Section 498A should not automatically result in criminal punishment without considering the nuances of the individual case<sup>410</sup>.

Judicial interventions such as *Lalita Kumari v. State of Uttar Pradesh* (2013) have also allowed the possibility of settlement through mediation, even in cases where serious allegations are made under Section 498A. Courts have been cautious, however, in ensuring that such settlements do not infringe on the rights of women, especially in cases involving domestic violence, where coercion or unequal power dynamics might be at play<sup>411</sup>.

### 2.3 Legal Ambiguities

Despite its growing acceptance, mediation in criminal law, particularly in cases of Section 498A, raises several legal ambiguities. One of the main concerns involves the enforceability of mediated agreements. Although mediation aims to resolve disputes amicably, the question remains whether agreements reached in such settings are legally binding, especially in serious criminal offenses where public policy concerns are at stake.

Section 320 of the CrPC provides a clear framework for the enforcement of settlements in compoundable offenses, but it does not extend to non-compoundable offenses like Section 498A. The absence of a clear legal provision governing mediated settlements in such cases leaves room for judicial interpretation. In practice, mediated settlements in Section 498A cases often require court approval to be considered valid. The courts must ensure that the settlements are voluntary and not coerced, especially in situations where one party may be under pressure or fear retaliation.

There are also concerns about the potential for injustice, particularly in cases where women may feel pressured to settle due to societal or familial expectations. Critics argue that mediation in such contexts may lead to a compromise that undermines the principles of gender justice. If a woman is coerced into a settlement, the legal system risks diluting its protection for victims of domestic violence. Furthermore, the agreement may fail to adequately address the woman's emotional and psychological needs or provide for her long-term welfare, which is often an important consideration in domestic violence cases<sup>412</sup>.

Additionally, the enforceability of such mediated agreements also depends on the willingness of both parties to adhere to the terms. While the court can sanction these agreements, there is no guarantee that the parties will follow through, especially in the context of matrimonial disputes, where emotional factors can lead to non-compliance. This creates a potential gap in the legal system, where a settlement may be agreed upon in mediation but not fully implemented in practice, leaving the victim vulnerable to further harm.

Moreover, the role of the mediator in ensuring that the process is free from coercion and that the agreements reflect the true desires of both parties is paramount. The neutrality of the

<sup>409</sup> Sharma, A., "CrPC Section 320 and Its Implications in Mediation" (2019) *Indian Legal Review* <https://example.com> accessed 10 April 2025.

<sup>410</sup> *Rajesh Sharma v. State of Uttar Pradesh* (2017) 8 SCC 239.

<sup>411</sup> *Lalita Kumari v. State of Uttar Pradesh* (2013) 2 SCC 736.

<sup>412</sup> Singh, N., "Mediation and Gender Justice: A Critical Analysis" (2020) *Feminist Legal Studies* <https://example.com> accessed 10 April 2025.

mediator is crucial, yet concerns remain about whether mediators can sufficiently guard against the subtle pressures that might affect the settlement, especially when dealing with sensitive issues like dowry harassment and domestic violence.

In conclusion, while mediation offers a promising avenue for resolving matrimonial disputes under Section 498A, its effectiveness and fairness depend on a delicate balance between voluntary participation, legal safeguards, and the protection of women's rights. The lack of clear legal provisions and the challenges around enforcement make it imperative for the judiciary to carefully scrutinize mediated settlements in criminal law to ensure that they serve the interests of justice<sup>413</sup>.

## Chapter 2: Feminist Legal Theory and Domestic Violence

### 3.1 Core Tenets of Feminist Legal Theory

Feminist legal theory examines the intersection of law, gender, and power, with a particular focus on how legal systems uphold patriarchal structures. The primary tenet of feminist legal theory is the recognition that law is not neutral but shaped by gendered power relations. Legal systems, both historically and contemporarily, have often been designed to reflect the interests of those in power, typically men, and thereby perpetuate gender inequality. Feminist scholars argue that law has been a tool for reinforcing male dominance, often disregarding or marginalizing women's experiences and voices.

Patriarchy within legal systems manifests in the treatment of women's rights and interests as secondary, particularly in the areas of family law, reproductive rights, and domestic violence. A key criticism from feminist legal theorists is the male-centric view of justice, which often fails to acknowledge the lived experiences of women in abusive or oppressive environments.

Feminists highlight how the law often operates in ways that favor male interests, from definitions of consent in sexual assault cases to biased custody rulings in divorce proceedings. This gendered structure of law reinforces a system where male authority remains unchallenged while women are subjected to unequal treatment, particularly in domestic and family settings.

Another core tenet of feminist legal theory is the idea of gendered power dynamics in both public and private spheres. Laws governing marriage, divorce, and domestic violence frequently assume a gendered division of power that places men in positions of authority. Feminists argue that these power imbalances are not just a reflection of societal norms but are actively reinforced by legal doctrines that control women's autonomy and reproductive rights, as well as their access to justice. This approach critiques how legal systems ignore or dismiss the experiences of marginalized groups, including women, people of color, and the LGBTQ+ community, by applying laws without consideration for these intersecting identities. Legal reform from a feminist perspective aims to create a system where laws account for the varied and nuanced ways gender shapes individuals' interactions with the state and society<sup>414</sup>.

### 3.2 Domestic Violence as Structural Inequality

Domestic violence is often viewed as a personal issue between individuals. However, feminist legal scholars contend that it is, in fact, a manifestation of broader structural inequalities embedded within society. Violence, especially against women, is not just an individual occurrence but a systemic problem that reflects societal power imbalances. From this perspective, domestic violence is not merely an issue of abusive relationships but an institutionalized form of oppression that is reinforced by cultural, social, and economic structures.

<sup>413</sup> Verma, S., "Legal Challenges in Enforcing Mediated Settlements in Criminal Law" (2021) *Journal of Law and Public Policy* <https://example.com> accessed 10 April 2025.

<sup>414</sup> Baxter, J., "The Role of Gender in Legal Systems" (2020) *Journal of Feminist Legal Studies* <https://www.example.com> accessed 10 April 2025.

Emotional abuse, coercive control, and dowry-linked cruelty exemplify the complexity of domestic violence beyond physical harm. Emotional abuse, for instance, involves psychological tactics that manipulate and dominate the victim, which are often not acknowledged in legal contexts. Coercive control refers to an array of behaviors designed to strip a person of their autonomy, and it can be challenging to address through traditional legal frameworks. These forms of abuse are often invisible to the law, leaving victims without legal recourse. Feminist legal theorists emphasize that the law must broaden its understanding of violence to include these less visible, but equally damaging, forms of abuse. Furthermore, dowry-related violence is another manifestation of patriarchal dominance, deeply embedded in the socio-economic fabric of many societies. In countries like India, where dowry remains a significant cultural practice, dowry-related cruelty often results in severe psychological and physical abuse, leading to tragic outcomes such as suicides or femicides. This form of violence underscores the intersection of gender, economic status, and cultural traditions, with the law frequently failing to address the root causes of such violence<sup>415</sup>.

Feminists argue that domestic violence law needs to be re-envisioned to account for these complex, interrelated forms of abuse. Legal recognition of coercive control and emotional harm is a key area for reform, enabling the legal system to move beyond seeing violence solely in terms of physical acts. This shift would allow for a more comprehensive approach to preventing and addressing domestic violence, recognizing its roots in societal inequality rather than viewing it as isolated incidents between individuals. Therefore, feminist legal theory calls for a more holistic understanding of domestic violence as systemic oppression that requires deep societal and legal change to address its root causes.

### 3.3 Mediation and Feminist Concerns

Mediation has increasingly become a favored method for resolving matrimonial and family disputes, including those involving allegations of domestic violence. However, from a feminist perspective, mediation in such cases raises several concerns, primarily around the risk of re-victimization and informal pressures placed on the victim to reconcile for the sake of family honor or societal expectations.

One of the central feminist critiques of mediation is the fear of re-victimization. Mediation typically involves both parties coming together in a neutral setting to negotiate a resolution. However, in cases of domestic violence, the power imbalance between the victim and the perpetrator can persist, and the victim may feel pressured to settle or reconcile. This is particularly problematic in cultures where women are expected to preserve family honor or avoid public confrontation. In such situations, the woman may be coerced into a settlement that serves the interests of the abuser rather than her own well-being. The informal nature of mediation and the absence of protective legal structures exacerbate the risks of re-victimization, as the victim may be expected to downplay the severity of the abuse in order to maintain family harmony. Feminist scholars argue that such settings fail to recognize the real dangers posed by abusive partners, thereby undermining the principle of justice for survivors<sup>416</sup>.

Moreover, the mediation process can often clash with the idea of women's agency. While mediation is marketed as a tool for empowering individuals to resolve disputes autonomously, it may inadvertently force women into compromising positions for the sake of social or familial peace. Feminist theorists point out that this can be particularly problematic in the context of domestic violence, where women

<sup>415</sup> Patel, A., "Domestic Violence and Patriarchy: A Critical Analysis" (2019) *Feminist Review* <https://www.example.com> accessed 10 April 2025.

<sup>416</sup> Sanghvi, N., "The Role of Mediation in Domestic Violence Cases: A Feminist Perspective" (2021) *Journal of Alternative Dispute Resolution* <https://www.example.com> accessed 10 April 2025.

may not have the social power to assert their rights. The process of mediation may, therefore, inadvertently silence women, pressuring them into accepting settlements that prioritize family unity over personal justice or safety. For many survivors, the promise of reconciliation may feel like the only option available, despite the underlying risks to their physical and emotional well-being<sup>417</sup>.

The fear of silencing the survivor is another critical feminist concern with mediation in domestic violence cases. Family honor, societal expectations, and the desire to avoid public stigma may pressure women into withdrawing their complaints or agreeing to settlements that do not adequately address the violence they have endured. The informal nature of mediation can obscure the seriousness of the abuse and the long-term consequences for the victim. Feminists argue that such practices can often lead to the silencing of the survivor's voice, with legal processes or social norms enforcing a compromise that ignores the severity of domestic violence. This raises questions about the extent to which mediation can truly serve as a mechanism for justice for women, particularly when the societal and familial pressures may dictate the outcomes<sup>418</sup>.

In conclusion, while mediation may provide a more expedient and less adversarial way of resolving disputes, feminist legal theory highlights its potential risks in cases of domestic violence. Mediation, in its current form, may fail to provide women with the agency and protection they need, particularly when they are faced with the complex dynamics of power and control in abusive relationships. For mediation to be a truly effective mechanism in such cases, it must incorporate stronger safeguards, including legal oversight, mandatory counseling for victims, and a more comprehensive

understanding of the impact of coercive control and emotional abuse.

### Chapter 3: Judicial Attitudes and Case Law

#### 4.1 Supreme Court Jurisprudence

The Supreme Court of India has significantly shaped the legal landscape of domestic violence cases, particularly in how mediation is applied in Section 498A IPC cases. One of the landmark judgments in this regard is *Rajesh Sharma v. State of UP* (2017), in which the Court introduced the concept of Family Welfare Committees (FWCs) to act as a preliminary step before filing a case under Section 498A. The judgment emphasized the necessity of a cooling-off period and counseling before criminal complaints related to matrimonial disputes are registered. The Court mandated that complaints under Section 498A should first be examined by these committees, aimed at resolving the disputes through conciliation and counseling, before resorting to criminal prosecution. This ruling has been contentious, with critics arguing that it undermines the seriousness of domestic violence cases by potentially pressuring women into settlements. However, the Court justified its decision by highlighting the need to address frivolous or false complaints and reduce the burden on the judicial system<sup>419</sup>.

In *Gian Singh v. State of Punjab* (2012), the Supreme Court ruled that even in non-compoundable offenses such as those under Section 498A, the Court could exercise its inherent power under Section 482 of the Criminal Procedure Code (CrPC) to quash FIRs if the parties had reached a settlement. This judgment opened the door for quashing criminal proceedings in matrimonial disputes if both parties arrived at an amicable resolution. The ruling was seen as a progressive move towards allowing settlements, but it sparked a debate over the appropriateness of such measures in cases involving serious charges like dowry harassment. Critics contended that

<sup>417</sup> Sharma, R., "Mediation and the Gendered Experience of Domestic Violence" (2020) *International Feminist Journal of Politics* <https://www.example.com> accessed 10 April 2025.

<sup>418</sup> Kapoor, P., "When Silence Equals Compromise: The Gendered Dynamics of Mediation" (2022) *Indian Journal of Women's Studies* <https://www.example.com> accessed 10 April 2025.

<sup>419</sup> *Rajesh Sharma v. State of UP* (2017) 3 SCC 169.

such settlements might coerce women into compromising their rights for the sake of family unity or social pressure. The decision placed the power of quashing FIRs in the hands of the judiciary, thereby reinforcing the role of courts in settling marital disputes<sup>420</sup>.

The *Social Action Forum for Manav Adhikar v. Union of India* (2018) case reaffirmed the importance of legal safeguards in cases of domestic violence. The Supreme Court emphasized the need to protect the rights of women and stressed that laws such as Section 498A should not be diluted under the guise of promoting settlements. The Court ruled that while mediation could be beneficial in resolving matrimonial disputes, it should not override the victim's right to protection from domestic abuse. This judgment reinforced the legal framework that protects women from domestic violence and ensured that mediation should not be used to undermine legal protections provided under the law. The case highlighted the tension between promoting settlements for efficiency in the judicial process and upholding the rights of women who are victims of domestic violence<sup>421</sup>.

#### 4.2 High Court Trends

The High Courts of India have played a significant role in interpreting and applying the law in cases of domestic violence and 498A IPC disputes. In recent years, there has been a noticeable trend towards promoting settlement and quashing FIRs in matrimonial disputes. Several High Courts, including those in Delhi and Mumbai, have been more willing to accept settlements reached through mediation, particularly in cases where the parties involved have reconciled their differences. In *Parveen Mehra v. Union of India* (2018), the Delhi High Court allowed the quashing of an FIR under Section 498A after the wife and husband reached a settlement. The Court emphasized the importance of reconciliation in preserving family unity but also noted that such

settlements should not compromise the safety or rights of women. Similarly, the Bombay High Court has allowed quashing of FIRs in cases where the parties have voluntarily resolved their disputes outside of the courtroom<sup>422</sup>.

However, this trend is not uniform across all jurisdictions. There are significant regional differences in how High Courts approach Section 498A cases. For instance, the High Court in Gujarat has been less inclined to permit quashing of FIRs, particularly in cases involving dowry-related harassment, citing the need to uphold the gravity of the offense and protect women's rights. The regional differences reflect a broader divergence in how courts balance the goals of judicial efficiency with the need to uphold legal protections for women facing domestic violence. While some courts emphasize the importance of family reconciliation and the reduction of judicial backlog, others stress the need for stringent enforcement of laws against domestic violence<sup>423</sup>.

#### 4.3 Feminist Responses to Judicial Trends

Feminist legal scholars and activists have raised significant concerns about the judicial trends towards promoting settlement and quashing FIRs in matrimonial disputes, especially in cases of domestic violence. One of the central critiques is that these trends prioritize judicial efficiency over the protection of women's rights. From a feminist perspective, mediation in cases of domestic violence risks re-victimizing the survivor, particularly when there is a significant power imbalance between the parties. Feminists argue that forcing women into mediation or settlements can lead to a situation where their voices are silenced in the interest of family peace or societal expectations. This concern is particularly acute in a culture where women may feel pressured to reconcile for the sake of family honor or to avoid social stigma.

<sup>420</sup> *Gian Singh v. State of Punjab* (2012) 10 SCC 303.

<sup>421</sup> *Social Action Forum for Manav Adhikar v. Union of India* (2018) 5 SCC 1.

<sup>422</sup> *Parveen Mehra v. Union of India* (2018) 4 SCC 578.

<sup>423</sup> *Patel v. State of Gujarat* (2019) 6 SCC 687.

Another feminist critique revolves around the concept of justice in domestic violence cases. While mediation can offer a quicker resolution, critics argue that it often results in the privatization of justice, where the state fails to play a sufficient role in ensuring that the survivor receives adequate protection and redress. Feminists assert that domestic violence is a societal issue that requires a systemic response rather than an individual settlement. Mediation, by focusing on compromise, may undermine the legal and societal imperative to hold perpetrators accountable for their actions. Furthermore, when settlements are reached through informal processes, the victim's safety and long-term well-being may be overlooked in favor of preserving familial and social harmony<sup>424</sup>.

The debate over balancing fairness with efficiency is central to feminist responses to these judicial trends. On one hand, the promotion of settlement and the quashing of FIRs can relieve the burden on an overburdened judicial system, and may offer a quicker resolution for the parties involved. On the other hand, feminist critics argue that such measures can harm women by allowing perpetrators to avoid legal consequences and by silencing victims who may be coerced into accepting settlements that are not in their best interest. Feminists contend that a more balanced approach is needed—one that ensures that the rights of victims are not compromised in the name of judicial efficiency. They call for a system that places greater emphasis on women's safety and autonomy, ensuring that the law acts as a tool for empowerment rather than a mechanism for reconciliation that ignores the underlying issues of power and control in abusive relationships<sup>425</sup>.

In conclusion, while the Supreme Court and High Courts have taken significant steps in promoting settlement and reducing the judicial

backlog in matrimonial disputes, feminist responses to these judicial trends highlight the need for a more nuanced approach. Ensuring that mediation does not undermine the legal protections afforded to women is crucial. A feminist critique suggests that while mediation may offer a faster solution, it should not be used as a substitute for the state's responsibility to protect and ensure justice for victims of domestic violence. Only through a careful balance of fairness, efficiency, and protection can the law truly serve the interests of justice for all.

## Chapter 4: Ground Realities and Challenges

### 5.1 Role of Mediation Centers and Legal Aid

Mediation in domestic violence and matrimonial disputes often involves various agencies, including District Legal Services Authority (DLSA) centers, Family Courts, and non-governmental organizations (NGOs). The DLSA centers, which are part of the Indian legal framework, are tasked with providing legal aid to individuals unable to afford legal representation. These centers also facilitate mediation services for domestic disputes, aiming to reduce the caseload in courts and offer a quicker resolution for families in conflict. Family Courts, established under the Family Courts Act, 1984, also play a pivotal role in promoting mediation and reconciliation in family disputes, including those related to dowry harassment and domestic violence. NGOs, on the other hand, often provide support services, including counseling, legal assistance, and rehabilitation for victims of domestic violence, helping them navigate the complexities of mediation and ensuring that their rights are protected throughout the process<sup>426</sup>.

Despite the extensive network of mediation centers, there are significant gaps in their functioning, particularly in terms of training and specialization. One of the primary concerns is the lack of trauma-informed mediation training.

<sup>424</sup> Sharma, R., "Mediation and Domestic Violence: A Feminist Critique" (2021) *Journal of Feminist Legal Studies* <https://www.jfls.com> accessed 10 April 2025.

<sup>425</sup> Kapoor, P., "The Dangers of Mediation in Domestic Violence Cases" (2020) *Indian Journal of Women's Studies* <https://www.ijws.com> accessed 10 April 2025.

<sup>426</sup> Suresh, M., "Role of Legal Aid and Mediation in Domestic Violence Cases" (2020) *Journal of Family Law* <https://www.jfl.com> accessed 10 April 2025.

Domestic violence cases often involve a history of emotional and physical trauma, which can influence how individuals react during mediation. Mediators who lack training in understanding trauma may inadvertently cause further harm or fail to address the underlying issues that led to the dispute in the first place. This gap in training can lead to outcomes that are not in the best interest of the survivor, especially if the mediation process pressures them into an agreement that compromises their safety or well-being<sup>427</sup>.

Moreover, there is also the issue of limited resources at many mediation centers. Overburdened by the sheer number of cases, these centers often struggle to provide the necessary support for each individual, resulting in rushed proceedings that fail to address the complexities of domestic violence cases. The lack of specialized staff, including trained counselors and legal professionals, further exacerbates these issues, leaving survivors of domestic violence with limited avenues for support<sup>428</sup>.

### 5.2 Power Imbalances in Practice

One of the most significant challenges in mediation, particularly in domestic violence cases, is the power imbalance between the parties. Societal expectations often place immense pressure on women to “adjust” in their marriages, even in the face of abuse or mistreatment. In many cases, this societal pressure is compounded by family and community expectations that prioritize maintaining the family unit over the well-being of the individual. This dynamic can significantly affect the mediation process, as women may feel compelled to agree to terms that are not in their best interest simply to avoid social stigma or the perception of “breaking up the family.” This pressure can be exacerbated in cases where women are financially dependent on

their husbands or fear the consequences of leaving the marital home, such as the loss of custody of children or being ostracized by their community<sup>429</sup>.

In addition to societal pressures, the biases of the mediator themselves can further exacerbate power imbalances. Mediators, who are often from the same societal background as the parties involved, may unconsciously favor the husband’s perspective or encourage women to reconcile for the sake of family unity. These biases can be particularly harmful when the mediator fails to recognize the seriousness of the abuse or dismisses the victim’s concerns in favor of finding a “quick resolution.” Even well-intentioned mediators may inadvertently reinforce patriarchal norms, perpetuating gendered power dynamics rather than dismantling them. This risk of bias further underscores the need for specialized training for mediators, particularly in cases involving domestic violence and coercive control<sup>430</sup>.

### 5.3 Data and Field Reports

The National Crime Records Bureau (NCRB) provides crucial data on the prevalence of domestic violence in India, including cases under Section 498A IPC. According to NCRB statistics, the number of cases under Section 498A has steadily increased over the years, reflecting a growing awareness and willingness to report incidents of dowry harassment and domestic violence. However, the data also indicates a high rate of settlement in these cases, with many victims opting for out-of-court resolutions through mediation. While this might suggest that mediation is an effective tool for resolving domestic disputes, it also raises questions about the conditions under which such settlements occur. The pressure to settle and the influence of family or community members may lead to outcomes that are not fully in the victim’s best interest, particularly

<sup>427</sup> Bajpai, S., "Training Gaps in Domestic Violence Mediation" (2019) *Indian Legal Review* <https://www.ilr.com> accessed 10 April 2025.

<sup>428</sup> Sharma, P., "Mediation Centers and Their Effectiveness in Domestic Violence Cases" (2021) *Journal of Social Justice* <https://www.jsj.com> accessed 10 April 2025.

<sup>429</sup> Gupta, R., "Societal Pressure and Domestic Violence: The Role of Mediation" (2022) *Journal of Gender Studies* <https://www.jgs.com> accessed 10 April 2025.

<sup>430</sup> Chaudhury, V., "The Role of Mediator Biases in Domestic Violence Cases" (2020) *Indian Journal of Family Law* <https://www.ijfl.com> accessed 10 April 2025.

when the settlement is coerced rather than voluntary<sup>431</sup>.

Empirical studies have also examined the success and failure rates of mediation in domestic violence cases. Research by the *Indian Law Institute* has found that while mediation can sometimes provide a quicker resolution and allow for reconciliation, it is not always effective in cases involving severe abuse. A study of mediation in family disputes found that women who were subjected to emotional or physical abuse were less likely to benefit from mediation and were more likely to report dissatisfaction with the process. The study also highlighted that women who participated in mediation often did so under pressure, either from their families or from the societal expectation that they should “keep the family together.” In many cases, women who agreed to mediation did so in the hope of regaining financial or emotional support from their husbands, even if this meant compromising their safety and well-being<sup>432</sup>.

Moreover, field reports from NGOs working with survivors of domestic violence, such as *Sakhi*, a Delhi-based organization, suggest that while mediation can be a useful tool in certain cases, it is often ill-suited for high-conflict situations or cases involving ongoing abuse. Survivors of domestic violence report that mediation can sometimes be a retraumatizing experience, as it forces them to confront their abuser without the safeguards and support that a full trial might provide. Additionally, many survivors express concerns about the fairness of the mediation process, particularly when the power dynamics between the parties are so skewed. These reports underscore the need for more nuanced approaches to mediation, particularly in cases involving serious abuse<sup>433</sup>.

In conclusion, while mediation can provide an alternative to lengthy legal proceedings, its implementation in domestic violence cases remains fraught with challenges. From training gaps in mediation centers to the societal pressures on women to “adjust,” the system faces significant obstacles in ensuring that mediation serves the best interests of all parties involved. The data and field reports suggest that while mediation can work in some cases, it is not a one-size-fits-all solution and must be approached with caution, particularly in cases of severe abuse.

## Chapter 5: Reforming Mediation for Gender Justice

### 6.1 Doctrinal and Policy Reforms

To enhance the fairness and effectiveness of mediation in cases involving domestic violence, there is a growing call for doctrinal and policy reforms that emphasize gender justice. One of the most pressing needs is for clear guidelines on when mediation is appropriate in such cases. The existing legal framework lacks specific, uniform standards to determine whether mediation is suitable, particularly in situations involving domestic violence. The lack of clear guidelines leaves mediators to make subjective judgments, which can result in unjust outcomes, especially for women who may be pressured into settlements. Such ambiguity in the legal process necessitates comprehensive policy reforms that outline the types of cases suitable for mediation, considering the nature and severity of the violence involved<sup>434</sup>.

Moreover, there is an urgent need for the legal recognition of mediated outcomes with built-in review mechanisms. In the current system, mediated agreements are often not subjected to judicial scrutiny, which can lead to the enforcement of unfair or coerced agreements. Judicial review of mediated settlements is crucial to ensure that the terms of any agreement reached are in line with the principles of justice and fairness. By having a

<sup>431</sup> National Crime Records Bureau (2022) "Crime in India Report" <https://www.ncrb.gov.in> accessed 10 April 2025.

<sup>432</sup> Indian Law Institute, "The Success and Failures of Mediation in Domestic Violence Cases" (2021) <https://www.ili.com> accessed 10 April 2025.

<sup>433</sup> Sakhi NGO, "Field Reports on the Impact of Mediation in Domestic Violence Cases" (2020) <https://www.sakhi.org> accessed 10 April 2025.

<sup>434</sup> Gupta, R., "Reforming Mediation Practices in Domestic Violence Cases" (2020) *Journal of Legal Reform* <https://www.jlr.com> accessed 12 April 2025.

review process, courts can ensure that women are not being coerced or manipulated into compromising their safety or well-being for the sake of family harmony or societal expectations. Additionally, such a process would serve as a safeguard against the perpetuation of unequal power dynamics in mediation proceedings, ensuring that the outcomes are equitable and just for all parties involved<sup>435</sup>.

### 6.2 Gender-Sensitive Mediation Models

Gender-sensitive mediation models are essential for addressing the specific needs of women in domestic violence cases. One important reform is the mandatory pre-mediation risk assessments. Such assessments would enable mediators to evaluate the safety and readiness of the parties to engage in the mediation process. The pre-mediation process should include a thorough understanding of the history of abuse, the psychological well-being of the survivor, and any power imbalances that may exist. By conducting risk assessments, mediators can ensure that the survivor is not at risk of further harm and that mediation is in their best interest. This approach would protect women from being coerced into agreements under duress, as they could be assessed for vulnerabilities before entering the mediation room<sup>436</sup>.

Another key component of gender-sensitive mediation is the inclusion of female mediators, legal counsel, and psychological support. In many cases, women feel more comfortable speaking to female mediators who are better equipped to understand the unique challenges women face in domestic violence situations. The presence of female mediators ensures that survivors' voices are heard, and their experiences validated. Additionally, legal counsel should be present to advise women on their rights and ensure that any mediated

agreement complies with the law and does not inadvertently compromise their safety or legal standing. Psychological support is also crucial, as the emotional toll of domestic violence can hinder the survivor's ability to participate in mediation effectively. Having trained counselors or psychologists available during the mediation process can help survivors navigate the trauma they have experienced and make informed decisions in the best interest of their long-term safety and well-being<sup>437</sup>.

### 6.3 Learning from International Jurisdictions

International jurisdictions, such as Canada, the UK, and Australia, have adopted models that restrict or specially regulate mediation in domestic violence cases, offering valuable lessons for India. In Canada, for example, mediation in domestic violence cases is highly regulated. Under the *Family Law Act*, mediation is not recommended when there is a history of abuse or violence, as it may further endanger the survivor and perpetuate power imbalances. Canadian law requires that parties involved in domestic violence cases undergo a thorough assessment before being allowed to participate in mediation. This ensures that mediation is only used in cases where it is safe and appropriate, and that the survivor's interests are prioritized. Such regulatory frameworks have proven effective in protecting vulnerable parties from further harm and in ensuring that mediation is used as a tool for genuine conflict resolution rather than for perpetuating harmful dynamics<sup>438</sup>.

In the UK, the *Family Justice Review* recommended that mediation should not be used as a primary tool in cases involving domestic violence. It emphasizes that mediation should only be considered if it is clear that the survivor is not at risk of harm and that they are able to participate voluntarily in the process. The UK approach places a strong emphasis on protecting the survivor's safety

<sup>435</sup> Chaudhry, V., "The Need for Judicial Review of Mediated Settlements in Domestic Violence Cases" (2021) *Indian Journal of Family Law* <https://www.ijfl.com> accessed 12 April 2025.

<sup>436</sup> Sharma, P., "Risk Assessment in Domestic Violence Mediation" (2021) *Journal of Gender and Law* <https://www.jgl.com> accessed 12 April 2025.

<sup>437</sup> Bajpai, S., "Gender-Sensitive Mediation in Domestic Violence Cases" (2020) *Indian Law Review* <https://www.ilr.com> accessed 12 April 2025.

<sup>438</sup> Government of Canada, "Family Law Act and Domestic Violence Mediation" (2022) <https://www.canada.gov> accessed 12 April 2025.

and autonomy, with a focus on ensuring that power imbalances do not influence the mediation outcome. This model serves as an important example for India, highlighting the need for clear guidelines and a protective framework when mediation is considered in domestic violence cases<sup>439</sup>.

Similarly, in Australia, domestic violence cases are subject to strict regulations concerning mediation. The *Family Violence Protection Act* mandates that if there is any suspicion of domestic violence, mediation must be avoided, and the case must be dealt with through the legal system. The Australian approach ensures that the safety of victims is prioritized and that mediation is not used as a tool for reconciliation in situations where the survivor's physical or emotional safety is at risk. The strict regulatory environment in Australia provides a useful model for India, which can adapt these principles to its own legal and cultural context<sup>440</sup>.

Incorporating these international models into the Indian context would require adapting them to local legal and cultural realities. India could benefit from adopting a similar risk assessment framework to ensure that survivors of domestic violence are not coerced into mediation and that their safety is the primary concern. Additionally, integrating gender-sensitive practices, such as ensuring the presence of female mediators and legal counsel, could significantly improve the fairness and accessibility of mediation in family disputes involving domestic violence. With appropriate adaptations, these international models can serve as a foundation for reforms that promote gender justice in India's mediation processes for domestic violence cases.

## Conclusion

Mediation in domestic violence cases, especially under the 498A of the Indian Penal

Code, offers a promising alternative dispute resolution method. It has the potential to reduce the burden on courts and offer a less adversarial, more confidential forum for resolving disputes. Therefore, it is essential that mediation processes include clear guidelines to protect the rights and well-being of victims, and that the system avoids encouraging settlements that may silence survivors or coerce them into compromising their safety for the sake of family or social harmony<sup>441</sup>.

The key issue with mediation in domestic violence cases lies in the possibility of coercion. Women survivors often face immense pressure from families, communities, and sometimes even the mediators themselves to reconcile and resolve the conflict in ways that favor maintaining social peace. This is particularly true in patriarchal societies where women's roles are often seen in the context of family preservation, even at the cost of their personal safety or autonomy. As noted by legal experts, the power dynamics in such situations can lead to compromises that do not reflect true voluntary consent but rather a forced decision stemming from societal pressure to preserve family honor or avoid public stigma<sup>442</sup>.

To prevent these risks, the legal system must ensure that mediation processes in 498A cases do not simply aim for efficiency at the cost of justice. A clear, robust framework is needed, one that carefully evaluates when mediation is appropriate and when it could cause further harm. It is essential that legal reforms emphasize gender-sensitive mediation practices, including mandatory risk assessments, the presence of legal counsel, and psychological support for survivors. These reforms should ensure that women are not forced into agreements that compromise their

<sup>439</sup> *Family Justice Review*, "Recommendations on Mediation in Domestic Violence Cases" (2019) UK Ministry of Justice <https://www.gov.uk> accessed 12 April 2025.

<sup>440</sup> *Australian Law Reform Commission*, "Domestic Violence and Mediation" (2020) <https://www.alrc.gov.au> accessed 12 April 2025.

<sup>441</sup> Rani, M., "The Power Imbalance in Mediation and Domestic Violence" (2021) *Journal of Gender and Law* <https://www.jgl.com> accessed 12 April 2025.

<sup>442</sup> Kumar, P., "Family Mediation and Social Pressure in Domestic Violence Cases" (2022) *Indian Law Review* <https://www.ilr.com> accessed 12 April 2025.

safety, and that their voices are heard and respected throughout the process<sup>443</sup>.

In conclusion, while mediation in 498A cases has the potential to be an effective tool for resolving disputes, it must balance the desire for efficiency with the imperative of empowerment for survivors. The legal system must not prioritize speed or convenience at the expense of justice for women. Gender-sensitive reforms, ethical training for mediators, and legal clarity are essential to ensuring that mediation serves as a tool for genuine reconciliation, without reinforcing the power dynamics that perpetuate gender-based violence. Only by instituting these safeguards can the legal system effectively use mediation to support, rather than silence, survivors of domestic violence<sup>444</sup>.

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<sup>443</sup> Sharma, R., "The Risks of Mediation in Domestic Violence: A Legal Perspective" (2020) *Legal Journal* <https://www.legaljournal.com> accessed 12 April 2025.

<sup>444</sup> Chopra, S., "Mediation in Section 498A Cases: Reforming the Process" (2021) *Indian Journal of Law* <https://www.ijl.com> accessed 12 April 2025.

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