



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 5 AND ISSUE 14 OF 2025

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 5 and Issue 14 of 2025 (Access Full Issue on – <https://ijlr.iledu.in/volume-5-and-issue-14-of-2025/>)

Publisher

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NAVIGATING CULTURE, POWER, AND GENDER IN INDIAN FAMILY MEDIATION: A SOCIO-LEGAL INQUIRY INTO STRUCTURAL BARRIERS AND POLICY GAPS

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BEST CITATION – ARJITA DWIVEDI & MAMTA MISHRA, NAVIGATING CULTURE, POWER, AND GENDER IN INDIAN FAMILY MEDIATION: A SOCIO-LEGAL INQUIRY INTO STRUCTURAL BARRIERS AND POLICY GAPS, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (14) OF 2025, PG. 634-640, APIS – 3920 – 0001 & ISSN – 2583-2344.

Abstract

Family mediation in India is shaped not only by statutory frameworks but also by entrenched social, cultural, and gendered norms. While laws such as the Family Courts Act, 1984, and the Mediation Act, 2023, provide legal recognition, enforceability of settlements, and institutional support, the practical functioning of mediation often reveals persistent structural and societal barriers. Cultural expectations around family hierarchy, caste, and gender roles influence the dynamics of negotiation and can limit the agency of women and marginalized members within families. Power asymmetries, driven by socio-economic status, education, and gender, can affect both participation in mediation and the fairness of outcomes. Despite the legal framework emphasizing neutrality, confidentiality, and voluntariness, these social realities challenge the promise of equitable dispute resolution. Mediators themselves must navigate complex interpersonal dynamics, requiring not only legal knowledge but also socio-cultural sensitivity. Policy gaps further exacerbate these issues, including limited gender-sensitive guidelines, insufficient mediator training on coercion or abuse, and lack of mechanisms to protect vulnerable parties. This chapter examines the interplay of culture, power, and gender in family mediation in India, highlighting the ways in which formal legal structures intersect with informal social hierarchies. Through a socio-legal lens, it identifies key obstacles, evaluates institutional practices, and proposes reforms to enhance the fairness, accessibility, and effectiveness of family mediation. By foregrounding both structural barriers and potential policy interventions, the study underscores the need for a mediation framework that is not only legally robust but also socially responsive and transformative in addressing inequality and power imbalances within Indian families.

Introduction

Family mediation in India has evolved through a complex interplay of legal, social, and cultural factors. While statutory frameworks such as the Family Courts Act, 1984, and the Mediation Act, 2023, provide formal recognition and enforceability of mediated agreements, their practical implementation is deeply influenced by societal norms. Historically, Indian society prioritized reconciliation and consensus, as

seen in village panchayats and family councils, which mediated disputes through dialogue rather than adversarial adjudication. These traditional systems emphasized relationship preservation and community cohesion, laying the groundwork for modern family mediation practices¹⁰⁷⁸.

¹⁰⁷⁸ Upendra Baxi, *The Crisis of the Indian Legal System* 1–50 (1982)

Post-independence legal reforms introduced structured mechanisms for mediation, beginning with conciliation provisions in the Industrial Disputes Act, 1947, and later codified in Section 89 of the Civil Procedure Code. Judicial interventions, notably *Salem Advocate Bar Association v. Union of India* and *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.*¹⁰⁷⁹, operationalized these provisions, creating court-annexed mediation centers across High Courts and district courts¹⁰⁸⁰. Family courts, under Section 9 of the Family Courts Act, 1984, were explicitly tasked with facilitating settlement efforts before proceeding with trials, particularly in sensitive cases involving child custody, maintenance, and marital disputes.

Despite these legal instruments, the practice of family mediation is profoundly shaped by cultural norms, social hierarchies, and gendered expectations. Power imbalances, arising from differences in economic status, education, and patriarchal authority, often influence the negotiation process and outcomes¹⁰⁸¹. Women and marginalized members may face constraints in voicing concerns or asserting their rights, even within legally structured mediation. Mediators must therefore navigate not only legal requirements but also socio-cultural sensitivities to ensure equitable and meaningful participation¹⁰⁸².

This chapter situates family mediation within the broader socio-legal context, emphasizing the interplay of law, culture, and power. It examines structural barriers, gendered dynamics, and institutional practices, highlighting gaps in policy and practice that affect fairness and accessibility. The introduction underscores the need for a mediation framework that integrates statutory rigor with social awareness, ensuring that

mediation functions not merely as a legal formality but as a transformative mechanism for resolving familial conflicts in India.

Cultural Norms and Family Mediation

In India, family mediation cannot be fully understood without considering the pervasive influence of cultural norms on interpersonal relationships and conflict resolution. Traditional dispute resolution mechanisms, such as village panchayats, caste councils, and extended family elders, historically emphasized consensus, social harmony, and preservation of relationships. Decisions were not merely legal pronouncements but socially negotiated settlements guided by communal values, moral reasoning, and collective welfare¹⁰⁸³. Even during colonial rule, while formal courts marginalized these informal mechanisms, the underlying ethos of mediation and reconciliation persisted at the social level, particularly in familial and community contexts.

Cultural norms continue to shape the functioning of contemporary family mediation¹⁰⁸⁴. For instance, notions of family honor, patriarchal authority, and gender roles often influence negotiation dynamics and settlement outcomes¹⁰⁸⁵. Women, children, and other vulnerable members may face indirect pressures to conform to societal expectations, potentially limiting their capacity to negotiate freely. Similarly, hierarchical family structures, caste considerations, and intergenerational expectations can complicate the mediation process, requiring mediators to be culturally sensitive while upholding fairness and equity.

The formal legal framework, including the Family Courts Act, 1984, and the Mediation Act, 2023, attempts to institutionalize mediation while accommodating cultural realities. Court-annexed mediation centers, pre-litigation mediation initiatives, and online platforms

¹⁰⁷⁹ *Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. Ltd.*, (2006) 11 SCC 212

¹⁰⁸⁰ Analysis: Mediation in India, *India Corporate Law Blog*, Oct. 30, 2022

¹⁰⁸¹ Kamakshi Puri, *Mediation in Family Law Disputes in India*, Mapping ADR Project, Jindal Global L. Sch., Apr. 16, 2024

¹⁰⁸² Aditi Vyas, *Evaluating the Effectiveness of Mediation in Resolving Family Disputes*, 12 *Int'l J. of L. Studies & Soc. Sci.* 45, 50-60 (2025)

¹⁰⁸³ Mediation in our Culture & Traditions, *Govilkar Mediation Blog* (Aug. 30, 2021)

¹⁰⁸⁴ Meena Jadhav, *Resolving Cultural Concerns in Family Feuds Through Mediation*, *Bar & Bench* (Feb. 6, 2025)

¹⁰⁸⁵ The Marriage Between Cultural Sensitivity and Mediation, *APFM Network* (Aug. 7, 2017)

provide structured avenues for dispute resolution. However, cultural expectations can sometimes clash with statutory norms. For instance, while the law emphasizes voluntary participation, social pressures may coerce parties into settlements that align with community or familial preferences rather than individual rights¹⁰⁸⁶. Mediators thus occupy a critical position, tasked with balancing respect for cultural traditions with the need to ensure equitable outcomes.

Empirical evidence suggests that culturally informed mediation practices enhance acceptance of agreements and promote sustainable resolutions. Training mediators to recognize the impact of social hierarchies, gendered expectations, and community norms is essential for effective implementation. By acknowledging the role of culture, mediation can move beyond procedural compliance to foster meaningful dialogue, reconciliation, and durable resolutions within Indian families. Ultimately, the intersection of cultural norms and family mediation underscores that law alone is insufficient; socially attuned processes are vital for resolving familial conflicts in ways that respect both legal rights and community values.

Power Dynamics and Negotiation in Family Mediation

Power relations constitute one of the most decisive forces shaping the outcomes of family mediation in India. Unlike commercial or contractual disputes, where parties typically approach negotiation from relatively similar bargaining positions, family conflicts arise within deeply unequal social structures¹⁰⁸⁷. These inequalities are often embedded in gender roles, economic dependency, social hierarchies, and emotional ties that shape how each party negotiates, consents, or resists during mediation. As a result, the mediation table frequently mirrors the power imbalances

present within the home, making the mediator's task far more complex than mere facilitation.

Gender is a primary axis of power in Indian families. Women may enter mediation facing economic precarity, limited independent income, or lack of social support if they challenge marital norms. These structural barriers can influence their willingness to articulate grievances or pursue legally justified claims, such as maintenance, custody, or property rights¹⁰⁸⁸. Although mediation is designed to be voluntary, cultural expectations of female sacrifice, obedience, and family preservation may silently pressure women into settlements that favour the more dominant party. Power is thus exercised not only through overt control but also through internalised norms that shape self-perception and decision-making.

Economic dependence magnifies these inequalities. When one spouse, often the husband, controls financial resources, the ability to negotiate freely becomes constrained. In such cases, "agreement" may reflect submission rather than genuine consensus. Similarly, intergenerational power, exerted by parents or in-laws, may influence mediation, especially in custody disputes or disagreements involving joint family arrangements. Class and caste identities further complicate matters, as individuals from marginalised communities may lack the confidence or social capital to assert their rights within formal dispute-resolution forums.

The legal framework recognises the importance of voluntary and informed consent, but practical safeguards remain uneven. Mediators must therefore adopt trauma-informed, gender-sensitive, and power-aware techniques. Effective screening for domestic violence, coercion, and intimidation is crucial. Judicial guidelines increasingly stress the need for mediators to identify subtle forms of dominance, such as emotional manipulation, economic

¹⁰⁸⁶ Gurpreet Kaur & Saira Rao, *Cultural and Religious Modern Values in the Indian Mediation System*, Indian J. of Cult. Studies, June 2025, at 8–15

¹⁰⁸⁷ Kirti N. Kamath, *Indian Family Systems, Collectivistic Society and Psychotherapy*, 3 Indian J. Psychol. Med. 2 (2011)

¹⁰⁸⁸ Mediation in India: Navigating Family Conflict Resolution and Legal Reforms, Via Mediation Centre (Sep. 2024)

threats, or cultural conditioning, before attempting settlement-building.

Ultimately, power dynamics are not peripheral concerns, they determine the fairness, durability, and legitimacy of mediated outcomes. A socio-legal approach to family mediation requires acknowledging these asymmetries and embedding protective mechanisms so that negotiation becomes a genuinely participatory and rights-affirming process rather than a reproduction of domestic hierarchies.

Gendered Vulnerabilities and Access to Justice in Mediation

Gender operates as a central axis shaping access to justice in Indian family mediation. Although mediation is presented as a participatory, conciliatory, and less adversarial process, women often enter the mediation space already positioned at a structural disadvantage. Their vulnerabilities arise not merely from individual circumstances but from deeply rooted patriarchal norms that influence mobility, decision-making power, economic independence, and social legitimacy. As a result, the very qualities that make mediation appealing, confidentiality, informality, and flexibility, can also expose women to subtle and unarticulated pressures, reducing their ability to negotiate on equal footing¹⁰⁸⁹.

Economic dependency remains one of the most significant factors constraining women's agency in mediation. Many women rely financially on their spouses or marital families, making it difficult to demand fair maintenance, property rights, or child-support arrangements. Post-separation financial insecurity can be an overwhelming deterrent, pushing women toward expedient settlements that prioritise immediate stability over long-term rights. Even when the law guarantees entitlements, women may hesitate to assert them due to fear of retaliation, emotional manipulation, social stigma attached to marital breakdown, or a

desire to minimise conflict for the sake of children¹⁰⁹⁰.

Domestic violence further complicates access to justice. Survivors of abuse may appear cooperative in mediation sessions but may be unable to voice dissent in the presence of their abuser or may fear escalated violence after the session¹⁰⁹¹. Although mediation is inappropriate in cases involving severe abuse, screening mechanisms are inconsistently applied. Many survivors are encouraged, often inadvertently, towards reconciliation, masking coercion as consent. The Mediation Act, while providing structural safeguards, still relies heavily on mediator competence and institutional vigilance to detect these hidden vulnerabilities.

Cultural expectations compound these challenges. Women are often socialised to maintain family unity, avoid public disputes, and prioritise collective honour over individual rights. Such norms translate into a moral burden during mediation, shaping the nature of "compromise" and limiting the expression of their true interests. In contrast, men frequently benefit from social legitimacy and economic autonomy, enabling them to negotiate from positions of strength.

Addressing gendered vulnerabilities requires more than procedural fairness. It demands mediators trained in gender sensitivity, systematic screening for coercion, access to legal counsel during negotiation, and integration of state support mechanisms for economically or socially vulnerable women. Only by acknowledging and mitigating these layered gendered harms can mediation function as a genuine pathway to justice rather than a forum that reinforces patriarchal expectations¹⁰⁹².

¹⁰⁸⁹ Carishma Singh, *A Study of Gender Dynamics in Family Dispute Mediation in India*, 7 Int'l J. Creative Rsch. Thoughts 1725, 1728–30 (2024)

¹⁰⁹⁰ Gender Justice and Power Imbalance in Mediation, 6 Int'l J. Rsch. & Rev. 1, 5–8 (2024),

¹⁰⁹¹ Aditi Vyas, *Evaluating the Effectiveness of Mediation in Resolving Family Disputes in India*, 12 Int'l J.L. Stud. & Soc. Sci. 45, 52–55 (2025)

¹⁰⁹² Vansh Aggarwal, *Gender Disparities in ADR: Participation and Outcomes*, USLLS ADR Blog (Apr. 16, 2024),

Structural and Institutional Barriers in the Mediation Framework

While legislation and judicial initiatives have significantly strengthened the architecture of family mediation in India, several structural and institutional barriers continue to undermine its effectiveness. These barriers operate at multiple levels, legal, administrative, professional, and socio-economic, creating an uneven landscape where access to mediation and the quality of outcomes vary widely across regions and communities. Despite the promise of the Family Courts Act, Section 89 CPC¹⁰⁹³, and the recent Mediation Act, systemic weaknesses hinder mediation from functioning as an equitable mechanism for resolving familial disputes.

One major structural barrier is the uneven institutional capacity across states. Court-annexed mediation centres differ in quality, infrastructure, staffing, and training standards. While metropolitan High Courts host well-resourced centres with trained mediators and monitoring systems established by the Mediation and Conciliation Project Committee (MPC), many district courts operate with limited facilities, minimal funding, and inadequate administrative support. These disparities create inconsistent experiences for parties and raise concerns about the reliability of mediated outcomes.

Mediator training and accreditation also remain inconsistent. Although the Mediation Act aims to standardize qualifications and ethical conduct, implementation is still in progress. Many mediators lack specialised training in family dynamics, psychology, trauma-informed practice, or gender-sensitive negotiation. The absence of mandatory continuing education means that even competent mediators may not be equipped to identify coercion, navigate complex emotional interactions, or address structural inequalities embedded within familial conflicts. As a result, mediation sometimes becomes a procedural formality rather than a substantive justice-oriented process.

Another institutional challenge arises from inadequate legal aid integration. Many parties, especially women, economically weaker individuals, or persons from rural areas, attend mediation without proper legal advice. This deprivation weakens informed consent and reinforces existing power imbalances. Legal Services Authorities have attempted to provide support, but gaps persist due to staffing shortages, low awareness, and uneven outreach.

Procedural ambiguities also create friction. Questions surrounding enforceability, confidentiality breaches, validity of mediated settlements, and the interface between mediation and judicial oversight often lead to confusion or litigation post-settlement. The Mediation Act seeks to clarify these areas but has yet to be uniformly applied.

Ultimately, structural and institutional barriers reveal that mediation's success depends not only on statutory recognition but on consistent implementation, robust professional standards, and sustained state investment. Without addressing these systemic weaknesses, mediation risks becoming symbolic rather than transformative in addressing family disputes.

Policy Gaps and Future Directions for Reform

Despite the considerable progress achieved through judicial initiatives, statutory reforms, and institutional developments, the mediation ecosystem in India continues to suffer from pronounced policy gaps. These gaps not only weaken the protective framework for vulnerable parties but also prevent mediation from fully realizing its potential as a rights-affirming and socially responsive mechanism for resolving family disputes. Addressing these deficits requires a shift from procedural formalism to a holistic, policy-grounded vision that harmonizes cultural realities, gender equity, and legal standards¹⁰⁹⁴.

¹⁰⁹³ Family Courts Act, 1984, No. 66, Acts of Parliament

¹⁰⁹⁴ Family Mediation in India: Existing Regulatory Framework, IJLLR (July 4, 2022)

One major policy gap concerns the absence of a comprehensive national framework for mediator specialisation in family disputes. While the Mediation Act introduces registration norms, it does not sufficiently differentiate between commercial and family mediators. Family disputes require familiarity with child psychology, domestic violence screening, negotiation ethics, and socio-cultural sensitivities. Without mandatory specialization modules, mediators may inadvertently reinforce power imbalances instead of mitigating them. Similarly, the current policy framework lacks mandatory trauma-informed and gender-sensitivity training, despite evidence showing that these skills significantly improve outcomes in vulnerable cases.

Another policy void lies in the limited integration between mediation and social welfare systems. Mediation often takes place in isolation from counselling services, women's support shelters, child protection authorities, and mental-health professionals. This siloed framework restricts the mediator's ability to identify risk factors, such as abuse, coercive control, or emotional instability, and to refer parties for appropriate assistance. Policies mandating coordinated service provision, multi-disciplinary support units at court mediation centres, and structured referral pathways could significantly enhance procedural fairness and safeguard vulnerable parties.

Legal aid services also remain insufficiently embedded within mediation policy. Without access to competent legal advice during negotiation, economically weaker parties struggle to understand their rights or assess settlement viability. A robust policy linking mediation to pre-mediation legal counselling would strengthen informed consent and protect against exploitative agreements¹⁰⁹⁵.

Finally, policy reform must address the digital divide inherent in online mediation. While the

Mediation Act's¹⁰⁹⁶ recognition of online processes expands access, it risks excluding those without digital literacy, stable connectivity, or private spaces, particularly women in joint families, rural households, or economically distressed settings.

Future policy development must adopt a relational approach, viewing mediation not merely as a legal alternative but as a socio-legal intervention requiring safeguards, interdisciplinary support, and inclusive access. Reform will be meaningful only when it bridges gaps between law, culture, gender, and lived realities.

Conclusion

Family mediation in India exists at the intersection of law, culture, power, and gender, making it a uniquely complex arena within the broader dispute-resolution landscape. While the state has increasingly embraced mediation, through the Family Courts Act, Section 89 CPC, MCPC guidelines, and the recent Mediation Act, the practical functioning of mediation continues to be shaped by longstanding social structures that mediate behaviour, expectations, and bargaining power within families. This dual influence of statutory reform and cultural norms means that mediation's promise depends not only on legal design but also on how effectively institutional mechanisms address entrenched inequalities¹⁰⁹⁷.

The socio-legal inquiry demonstrates that gendered vulnerabilities, economic dependencies, and patriarchal pressures often influence negotiation dynamics in ways that formal legal safeguards alone cannot remedy. Mediators must therefore navigate not merely interpersonal disputes but deeply rooted structural asymmetries that shape consent and compromise. Likewise, institutional deficits, ranging from uneven mediator training to inadequate integration with legal aid and social welfare frameworks, continue to limit the

¹⁰⁹⁵ Fixing Family Feuds: Evaluating Mediation in Matrimonial Disputes in India, LHSS Collective (Apr. 2, 2025)

¹⁰⁹⁶ Mediation Act, 2023, No. 32, Acts of Parliament, 2023, §§ 28–30 (India)

¹⁰⁹⁷ Recent Developments in Mediation: A Transformative Year 2025 for India, TrackSecond (Sep. 20, 2025)



transformative potential of mediation, particularly for women and other vulnerable groups.

Yet, mediation remains a valuable mechanism for promoting dialogue, reducing adversarial conflict, and achieving sustainable family settlements. Its success, however, depends on embedding gender-sensitive, culturally aware, and rights-oriented practices within the process. Strengthening policy frameworks, professional training, and support systems will be essential to ensuring that mediation evolves from a procedural alternative to a genuinely empowering pathway to justice. Ultimately, meaningful reform must bridge the gap between legal ideals and lived realities, enabling mediation to function as both a humane and equitable forum for resolving family disputes.

