

POLICY AND PRACTICE OF FAMILY MEDIATION IN INDIA: A JURISPRUDENTIAL AND INSTITUTIONAL ANALYSIS IN THE POST-MEDIATION BILL ERA

AUTHOR – ARJITA DWIVEDI, DOCTORAL CANDIDATE, JIWAJI UNIVERSITY, GWALIOR

BEST CITATION – ARJITA DWIVEDI & MAMTA MISHRA, POLICY AND PRACTICE OF FAMILY MEDIATION IN INDIA: A JURISPRUDENTIAL AND INSTITUTIONAL ANALYSIS IN THE POST-MEDIATION BILL ERA, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (14) OF 2025, PG. 641-647, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT

Mediation in family matters represents an alternative dispute resolution mechanism aimed at resolving familial disputes through a voluntary, non-adversarial, and structured communication process facilitated by an impartial third-party, known as the mediator. This concept has gained significant prominence in India as a humane and efficient alternative to the traditionally protracted and emotionally draining litigation in family courts. The underlying principle of mediation is to facilitate mutual understanding and amicable settlement between disputing parties, which is crucial in family disputes that involve emotional, social, and relational complexities. Indian family disputes often require more than just legal remedies; they necessitate reconciliation and preservation of familial relationships, especially when children's welfare is involved. Thus, mediation aligns well with these needs by promoting communication, cooperation, and voluntary settlement outside the courtroom. The evolution of mediation in family disputes in India can be traced back to statutory provisions such as Section 9 of the Family Courts Act, 1984, which mandates family courts to make efforts to settle disputes before proceeding to trial, institutionalizing mediation as a primary step. Additionally, Section 89 of the Code of Civil Procedure (CPC), 1908 empowers courts to refer disputes to alternate dispute resolution methods including mediation to encourage settlement and reduce litigation burden. Despite this supportive framework, mediation in family matters in India faces implementation challenges such as lack of standardized procedural guidelines, inadequate public awareness, and shortage of certified mediators. These challenges limit the full realization of mediation's potential benefits in family law cases. This paper examines the doctrinal foundations, statutory evolution, institutional mechanisms, practical challenges, and the impact of the Mediation Act (and related policy developments) on the practice of family mediation in India.

Introduction

Family disputes are rarely only legal problems; they are social and emotional ruptures that implicate relationships, identities, and, often, the welfare of children. The adversarial, court-centric model of dispute resolution can aggravate these ruptures by incentivizing polarisation, delay, and public exposure of intimate matters. Against this backdrop, mediation emerges as both a philosophical and practical alternative: a voluntary, confidential, interest-based process in which parties,

assisted by a neutral mediator, design their own solutions. In India, mediation in family matters has moved from informal community processes to a more formalized component of the justice system. The gradual statutory and judicial embrace of mediation, through instruments such as the Family Courts Act¹⁰⁹⁸, Section 89 of the CPC¹⁰⁹⁹, the work of the Supreme Court's Mediation and Conciliation Project Committee

¹⁰⁹⁸ Family Courts Act, 1984, No. 66, Acts of Parliament, 1984
¹⁰⁹⁹ Code of Civ. P. § 89 (India).

(MCPC)¹¹⁰⁰, and the Mediation Act, reflects a policy shift towards resolving appropriate family disputes outside of full trial while safeguarding rights and welfare. This paper offers a jurisprudential and institutional analysis of family mediation in India, examining evolution, principles, scope, judicial treatment, institutional architecture, practical constraints, and the effect of recent legislative reform in the post-Mediation Bill¹¹⁰¹ era.

Evolution of the Legal Framework

The contemporary mediation apparatus in India rests on a long history of community dispute resolution and a more recent statutory and judicial scaffolding. Traditional fora, village panchayats, caste panchayats, family elders, and religious authorities, historically resolved interpersonal and family disputes through negotiated settlements. Colonial legal transplantation interrupted and institutionalized the adversarial court process, but indigenous conciliation practices endured informally.

Post-Independence reforms and social pressures led to formal interventions. The Family Courts Act, 1984¹¹⁰², institutionalized an obligation on family courts to endeavour to settle disputes at the earliest stage, mandating a reconciling orientation in family litigation (Section 9). This statutory duty framed mediation not merely as optional politeness but as a central phase in family adjudication. Section 89 of the Code of Civil Procedure¹¹⁰³ (as amended from the late 1990s/early 2000s) further empowered courts to refer civil disputes to alternate dispute resolution (ADR) processes, arbitration, conciliation, mediation, or Lok adalats, when settlement appeared possible, thereby mainstreaming out-of-court resolution in civil practice.

The Supreme Court's activism, through judgments and institutional initiatives, accelerated institutionalization. The MCPC,

established under Supreme Court auspices, promoted court-annexed mediation centres, training for judicial officers and mediators, and model rules adopted by several High Courts. The MCPC's programmatic work laid the groundwork for standardized mediation protocols and public-facing mediation capacities.

More recently, the enactment of the Mediation Act codified several aspects of mediation practice: recognition of institutional mediation, frameworks for registration and regulation of mediators, enforceability of mediated settlement agreements, and special emphasis on online mediation platforms. The Mediation Act represents a watershed: it gives statutory teeth to mediated settlement agreements and encourages institutional and community mediation infrastructure, thereby promising greater predictability and accountability in mediation practice.

Timeline of Key Milestones in Indian Family Mediation:

1. Ancient & Pre-Colonial Era: Family disputes were resolved via village panchayats, clan elders, and community tribunals emphasizing negotiation and reconciliation.
2. Colonial Period: Introduction of the adversarial Anglo-Saxon legal system reduced formal reliance on indigenous conciliation, though informal mediation persisted.
3. 1947-1980s: Early post-independence efforts, such as conciliation in labor disputes under the Industrial Disputes Act¹¹⁰⁴, laid the groundwork for structured ADR.
4. 1984: Family Courts Act¹¹⁰⁵ enacted, Section 9 mandates reconciliation efforts in family disputes.

¹¹⁰⁰ Supreme Court Mediation & Conciliation Project Comm. (MCPC)

¹¹⁰¹ Mediation Act, 2023, No. 32, Acts of Parliament, 2023

¹¹⁰² Family Courts Act, 1984, No. 66, Acts of Parliament, 1984, § 9

¹¹⁰³ Code of Civil Procedure, 1908, § 89 (India)

¹¹⁰⁴ Industrial Disputes Act, 1947, No. 14, Acts of Parliament, 1947, § 12 (India) (providing for conciliation officers in labor disputes).

¹¹⁰⁵ Family Courts Act, 1984, No. 66, Acts of Parliament, 1984, § 9 (India)

5. 1999-2002: Section 89 CPC¹¹⁰⁶ amendment formalizes court referrals to ADR; MCPC begins pilot programs for court-annexed mediation.
6. 2005-2010: Expansion of MCPC centres, standardized mediation rules in High Courts, and judicial endorsement through key judgments like *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Ltd.*¹¹⁰⁷
7. 2023: Mediation Act¹¹⁰⁸ codifies mediation practices nationwide, enforces settlements, and encourages online and institutional mediation mechanisms.

Jurisprudential Foundations of Family Mediation

Mediation's doctrinal legitimacy in India emerges from several jurisprudential strands: welfare and restorative justice, party autonomy, confidentiality, and proportionality.

1. Welfare and Restorative Justice: Family law has an intrinsic remedial aim that often extends beyond punishment or private dispute resolution: preserving family ties where possible, protecting children's welfare, and restoring social order. Mediation aligns with restorative values by centring mutual agreement, repair of relational harm, and child-centric solutions.
2. Party Autonomy and Self-Determination: Central to mediation is the principle that parties, not judges, should craft the terms of their settlement. This autonomy is especially salient in family matters where flexibility (e.g., creative custody schedules, bespoke maintenance plans) matters greatly.
3. Confidentiality: Confidentiality is both pragmatic and normative. Practically, it encourages candour; normatively it

insulates intimate disputes from public scrutiny and the stigma associated with family breakdowns. The Supreme Court has repeatedly emphasized that mediation reports and mediators' communications must respect confidentiality, limiting what mediators may place on the record and protecting the privacy of discussions. Notably, in cases where mediation reports were filed, courts have clarified that the mediator's notes or the details of caucus sessions are not to be treated as court evidence. This judicial approach buttresses mediation's protective function for parties and children.

4. Limits to Suitability: When Mediation Is Unsuitable: Jurisprudence has also delineated the outer boundaries of mediation's suitability. Courts have observed that mediation is ill-suited to non-compoundable criminal matters, cases involving serious violence or coercion, or disputes where power asymmetries and safety concerns preclude genuine voluntariness. These guardrails ensure mediation complements, rather than undermines, substantive justice.
5. Judicial Endorsement and Prudence: The Supreme Court's rulings, most notably in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Ltd.*¹¹⁰⁹, have both endorsed ADR and cautioned that referral to ADR must respect consent and the nature of the dispute. The Court's reasoning underscores that mediation is a valuable tool for many civil disputes, including family cases, but must be applied with care so as not to efface party rights or judicial scrutiny where necessary.

¹¹⁰⁶ Code of Civil Procedure, 1908, § 89 (India)

¹¹⁰⁷ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Ltd.*, (2006) 11 SCC 212

¹¹⁰⁸ Mediation Act, 2023, No. 32, Acts of Parliament, 2023

¹¹⁰⁹ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Ltd.*, (2006) 11 SCC 212

Institutional Mechanisms and Practice

Translating doctrinal support into practice requires institutions, training, and rules. India's institutional landscape includes court-annexed mediation centres, independent mediation institutions, MCPC initiatives, state legal services authorities, and private mediation providers.

1. **Court-Annexed Mediation and MCPC:** The MCPC's role in piloting court-annexed centres, developing model rules, and training judicial officers has been pivotal. Court referrals, done under Section 89 CPC and Section 9 of the Family Courts Act, have generated substantial settlement rates in many jurisdictions, particularly for family matters where reconciliation is viable. The MCPC's data, training modules, and coordination with High Courts have professionalized mediation practice in court settings.
2. **Regulatory and Accreditation Gaps:** Despite institutional gains, accreditation and standardization remain uneven. Prior to the Mediation Act, there was no single national register of mediators or uniform accreditation pathway; training standards varied across centres. This patchiness contributed to inconsistent mediator competence and public skepticism. The Mediation Act's provisions for registration and standards aim to address these lacunae, though implementation and rule-making determine their ultimate efficacy.
3. **Process Design: Procedural Safeguards and Power Imbalances:** Effective family mediation requires procedural mechanisms to manage power asymmetries—particularly gendered power imbalances. Techniques such as caucus sessions, legal assistance during mediation, pre-mediation screening, and the availability of separate legal advice help create safer and fairer negotiation environments. The MCPC

and many family courts have begun to embed such safeguards in practice, but uptake varies regionally.

4. **Confidentiality, Recordkeeping, and Enforceability:** A tension exists between confidentiality and enforceability. Parties and courts often wish to preserve confidentiality while making mediated settlements binding and enforceable. The Mediation Act attempts to reconcile these aims by enabling mediated settlement agreements to be enforced like court decrees while preserving confidentiality around communications exchanged during mediation. Implementation of rules and registry procedures will determine how smoothly confidentiality and enforceability co-exist.
5. **Resistance from Legal Profession and Social Barriers:** Lawyers sometimes resist mediation for economic or role-related reasons; mediation can reduce litigation work and reshape lawyers' roles towards facilitation and counsel. Social stigma around divorce and family breakdown can also deter parties from seeking mediation. Public awareness campaigns, integration of mediation in legal aid, and capacity building for lawyers to act as mediation advocates can mitigate such resistance.

Impact in the Post-Mediation Bill Era

The legislative consolidation of mediation through the Mediation Act signifies a transformative moment in the institutional landscape of family dispute resolution in India. By codifying procedural norms, the Act moves mediation from a largely discretionary and ad hoc practice to a structured, legally recognized framework, providing clarity and predictability for parties seeking amicable settlements. Historically, family mediation was constrained by inconsistent practices, limited enforcement mechanisms, and uneven mediator quality, which hindered its wider adoption despite

judicial encouragement. The Mediation Act addresses these structural gaps by formalizing the registration and professional standards of mediators, establishing institutional and community mediation channels, and introducing enforceability provisions for mediated settlements. This statutory backing not only enhances public confidence in mediation outcomes but also aligns family dispute resolution with contemporary needs, including safeguarding the interests of children, elderly dependents, and economically vulnerable spouses. Moreover, the Act reflects an acknowledgment of India's socio-cultural diversity, accommodating both formal court-annexed mechanisms and locally embedded community mediation initiatives, thereby expanding access to justice beyond urban centers. The integration of online mediation platforms further modernizes the process, facilitating participation for parties constrained by geography, time, or mobility, and responding to the demands of a digitally connected society. Simultaneously, the legislation preserves the core principles of mediation, including voluntariness, confidentiality, self-determination, and informed consent, ensuring that the human-centric, relationship-preserving ethos of family mediation remains central. By combining enforceability with procedural flexibility, the Mediation Act represents a strategic intervention aimed at reducing court congestion, expediting dispute resolution, and professionalizing the mediator ecosystem. As India enters this post-Mediation Act era, the successful implementation of these reforms depends not only on the law itself but also on complementary measures including mediator training, public awareness campaigns, judicial oversight, and robust institutional support, laying the groundwork for a sustainable, equitable, and effective family mediation system.

The legislative consolidation of mediation norms, most visibly through the Mediation Act and associated rules, marks a new phase for

family mediation in India. The Act's key impacts and likely trajectories are as follows:

1. **Legal Certainty and Enforceability:** The Mediation Act furnishes clearer statutory backing for mediated settlements, streamlining the path from negotiation to enforceable decree. This reduces the risk that settlements will be vacated on technical grounds and increases parties' confidence in mediated outcomes. The Act explicitly contemplates institutional mediation and enforcement mechanisms, which can make mediated family settlements quicker to finalize and implement.
2. **Institutionalization and Professionalization:** By providing for mediator registration and institutional mediation norms, the Act encourages a more standardized mediator profession. This institutionalization could improve mediator competence, ethical standards, and public trust, especially important in family contexts where psychological insight and legal knowledge intersect¹¹¹⁰. The government's rule-making under the Act is already underway and will shape registration criteria, codes of conduct, and grievance redressal.
3. **Expansion of Online and Community Mediation:** The Act recognises online mediation as an acceptable mechanism. Online platforms can significantly expand access—particularly for geographically dispersed parties, working parents, and those constrained by mobility. Community mediation provisions aim to leverage local dispute resolution mechanisms while subjecting them to basic standards, which could democratise access if properly supervised.

¹¹¹⁰ Aditi Vyas, *Evaluating the Effectiveness of Mediation in Resolving Family Disputes in India: A Critical Analysis of Legal Frameworks*, 12 Int'l J. L. Stud. & Soc. Sci. 45, 50–55 (2025)

4. Balancing Confidentiality and Transparency: The statutory emphasis on confidentiality, combined with enforceability pathways, attempts to strike a balance between private negotiations and public interests¹¹¹¹. Family mediation benefits enormously from confidentiality (reducing stigma and encouraging frank disclosures) while enforceability protects vulnerable parties from backtracking on agreements. Judicial guidance on the interaction between mediated deeds and judicial oversight will refine this balance over time.
5. Risks and Implementation Challenges: The law's promise depends on robust rule-making and on-the-ground capacity. Potential risks include nominal mediation (where parties are pushed into perfunctory sessions), inadequate screening for coercion or abuse, and uneven mediator quality. Without sufficient legal aid integration, low-income parties may lack the legal advice necessary to negotiate fairly. The judiciary, legal services authorities, and mediator bodies must therefore collaborate to build training, screening, oversight, and funding mechanisms¹¹¹².
6. Recent Institutional Efforts and Data Points: Empirical initiatives and campaigns (for example, state-level mediation drives and training for tribunal officers) illustrate mediation's growing administrative support; success rates in pilot schemes demonstrate mediation's ability to reduce pendency and deliver timely resolutions when properly resourced. Ongoing training for judicial officers and presiding officers across tribunals reflects a systemic turn

towards embedding dispute resolution skills within institutions.

Conclusion

Family mediation in India has evolved from informal, community-based conciliation practices to a robust statutory and institutional framework, reflecting both historical traditions and modern legal imperatives. The journey from panchayat-led resolutions to the codification under the Mediation Act highlights the adaptability of mediation in addressing complex familial disputes while preserving relationships, ensuring child welfare, and reducing adversarial confrontation. Judicial endorsement, particularly through landmark cases, and institutional mechanisms such as the Mediation and Conciliation Project Committee have strengthened mediation's credibility, professionalized mediator roles, and expanded access to alternative dispute resolution across the country.

The Mediation Act has marked a watershed by providing enforceability, standardization, and regulatory clarity, while recognizing the role of online and community mediation to democratize dispute resolution. Yet, challenges remain: ensuring quality mediation, protecting vulnerable parties, building public awareness, and integrating mediation effectively with legal aid systems. Addressing these issues requires coordinated efforts among courts, mediators, legal services authorities, and policymakers to institutionalize mediation as a mainstream dispute resolution tool rather than a peripheral option.

Ultimately, family mediation in India embodies the principles of voluntariness, confidentiality, impartiality, and self-determination, aligning with the country's socio-cultural context while fulfilling contemporary justice needs. As the post-Mediation Act era unfolds, its success will depend on rigorous implementation, capacity building, and sustained engagement with both institutional and community mechanisms. When effectively practiced, mediation offers not only efficient resolution of family disputes but

¹¹¹¹ Kamakshi Puri, *Mediation in Family Law Disputes in India | Mapping ADR*, Jindal Global Law School (2024)

¹¹¹² Prachi Parekh, *Reimagining Justice Through Mediation – An Analysis of the Mediation Act, 2023*, L. Sch. Pol'y Rev. (Aug. 8, 2025)



INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 5 AND ISSUE 14 OF 2025

APIS – 3920 – 0001 (and) ISSN – 2583-2344

Published by
Institute of Legal Education

<https://iledu.in>

also the restoration and preservation of familial harmony, making it an indispensable pillar of India's family justice system.

