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

VOLUME 6 AND ISSUE 9 OF 2026

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

Published by

Institute of Legal Education

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# RECONCILING RELATIONSHIPS: A CRITICAL APPRAISAL OF MEDIATION AS A TRANSFORMATIVE ALTERNATIVE DISPUTE RESOLUTION MECHANISM IN INDIAN FAMILY LAW

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**BEST CITATION –** MANYATA SINGH & PROF. DR. LAKSHMI PRIYA VINJAMURI**,** RECONCILING RELATIONSHIPS: A CRITICAL APPRAISAL OF MEDIATION AS A TRANSFORMATIVE ALTERNATIVE DISPUTE RESOLUTION MECHANISM IN INDIAN FAMILY LAW, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR),* 6 (9) OF 2026, PG. 08-17, APIS – 3920 – 0001 & ISSN - 2583-2344. DOI - https://doi.org/10.65393/IJLRV6I92

**Abstract**

The adjudicatory model of dispute resolution, deep-rooted in the Indian legal machinery, has been unable to keep up with the finesse and nuances of the emotionally charged nature of family law disputes. As family courts of the nation keep getting clogged with matrimonial cases, child custody disputes, and succession cases, mediation has increasingly become a viable and sensible solution. This chapter takes an intensive doctrinal and socio-legal analysis of mediation as an alternative dispute resolution (ADR) tool in the context of Indian family law. Based on the legislative tools such as the Family Courts Act, 1984, Section 89 of the Code of Civil Procedure, 1908, and the newly introduced Mediation Act, 2023, the chapter traces the formal and informal boundaries of mediation practice in India. It critically discusses landmark judicial pronouncements most notably, *K. Srinivas Rao v. D.A. Deepa, Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.*, and *Salem Advocate Bar Association v. Union of India*, to track the changing support of consensual dispute resolution by the judiciary. The three thematic analytical chapters discuss in turn the legislative framework on which family mediation is based, the jurisprudential history that has influenced its practice, and the institutional obstacles that still limit its efficacy. The chapter concludes that, although mediation has significant transformative potential in humanising the resolution of family disputes, its effectiveness depends on specific institutional changes, such as professionalisation of mediators, establishment of a strong regulatory oversight authority, and incorporation of trauma-informed frameworks into mediation practice. The chapter ends with a set of policy and legislative reform recommendations that will help to solidify the role of mediation as a valid, culturally acceptable, and constitutionally viable component of family justice in India.

**Keywords**

Mediation; Family Law; Alternative Dispute Resolution; Section 89 Code of Civil Procedure; Matrimonial Disputes; Mediation Act 2023

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**Introduction**

The Indian judiciary has to work under the tyranny of pendency. According to the latest estimates, as reported by the National Judicial Data Grid, more than fifty million of all cases await adjudication at any given level of the hierarchical system with family law cases, including divorce, maintenance, child custody, domestic violence, and matrimonial property, representing a disproportionately large portion of the Family Court dockets. The effects of this backlog are not just bureaucratic inconveniences; they amount to deep human costs, the years of emotional suffering, loss of income, and the lifelong separation of family ties, especially of children trapped in a court of law. It is here that the promise of mediation as a structured, voluntary, and interest-based process of facilitated negotiation has gained a new urgency and scholarly interest.

Mediation contrasts with litigation, which is not based on binary principles of winners and losers. It is based on dialogic and not adversarial architecture, directed not at the establishment of rights but at the joint production of mutually acceptable results. The adversarial model is not only inefficient, but in most ways, structurally inadequate, in the area of family law, where conflicts are always intertwined with emotion, history, and relationship complexity. The grammar of pleadings, evidence and cross-examination of the courtroom is not conducive to the grammar of grief, betrayal, and the rewriting of family futures. [8]

The legislative reaction of India to this underperformance has been slow but discernible. One of the earliest recognitions of the need to have a different institutional register to family disputes was the enactment of the Family Courts Act, 1984, which was less formal, more conciliatory, and more mindful of the social aspects of the dispute. The addition of Section 89 to the Code of Civil Procedure, 1908, by the Civil Procedure Code (Amendment) Act, 1999, was a more proactive legislative steer towards ADR, requiring courts to refer disputes to mediation, conciliation, arbitration or Lok Adalat where the constituents of settlement were present. With the adoption of the Mediation Act, 2023, there was a watershed moment - the first standalone law on mediation in India, providing a broad framework on both pre-litigation and court-referred mediation. [9]

In spite of these legislative developments, mediation has not had an even penetration into the family law practice. The transformative potential of mediation has been circumscribed by cultural resistance, the lack of a proper training infrastructure, gender-power asymmetries, and a lack of strong enforcement mechanisms. This chapter aims to challenge these tensions - between the theoretic potential and the actual practice of mediation - in an integrated doctrinal and empirical perspective. It has four aims: to map the legislative and institutional context of family mediation in India; to analyse the judicial rhetoric on ADR in family disputes; to establish the structural impediments to effective mediation practice; and to suggest specific reforms that would help entrench the role of mediation in the Indian family justice architecture.

**Introduction**

In its simplest form, mediation is a facilitated negotiation where a neutral third party, the mediator, helps in the settlement of disputing parties through a voluntary process that is mutually agreeable[10]. In contrast to arbitration, which results in a binding award, or litigation, which results in a judicial decision, mediation results in a settlement agreement which derives its strength in the consent of the parties. The mediator does not judge; the mediator assists. This difference is not simply a matter of procedure, but rather is philosophically

[8] Andrew Schepard, Children, Courts, and Custody: Interdisciplinary Models for Divorcing Families 45 (2004).

[9] Mediation Act, No. 32 of 2023 (India).

[10] Christopher W. Moore, The Mediation Process: Practical Strategies for Resolving Conflict 8 (4th ed. 2014).

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grounded, and represents a vision of justice as a process, as opposed to a result.[11]

Mediations have philosophical roots in Indian legal theory, in the Gandhian ideal of gram swaraj and the panchayat tradition of community-based conflict resolution. Formal institutionalization of ADR in India, though, is more recent, and has been facilitated by the suggestions of the Law Commission of India, most notably the 129th Report (1988) on urban litigation and the 238th Report (2011) on amendment of Section 89, and by the jurisprudence of the Supreme Court on the right to speedy justice under Article 21 [12]

The Indian family mediation institutional landscape is organised around a number of coordinating pillars. Family Courts Act, 1984 places an obligation on the Family Court judges to support and convince the parties to settle the matter before adjudication, which attributes a conciliatory role to the court itself. The Mediation and Conciliation Project Committee (MCPC) of the Supreme Court founded in 2005 has played a key role in the training of mediators and the development of Mediation Centres within the High Courts and the District Courts. This landscape is further consolidated by the Mediation Act, 2023 which offers statutory definitions, procedural frameworks, and mechanisms of enforceability of the mediated settlement agreements. [13]

The following table (Table 1) cross tabulates the major legislative tools and the individual provisions of family mediation in India to show the cumulative and inter-locking nature of the statutory framework:

| Legislation | Year | Key Provisions | Relevance to Family Mediation |
|---|---|---|---|
| *Family Courts Act* | 1984 | S. 6, 9 | Mandates conciliation efforts; establishes dedicated family courts with a settlement-first mandate |
| *Code of Civil Procedure (Amended)* | 1908/1999 | S.89 | Empowers courts to refer disputes to mediation, conciliation, arbitration, or Lok Adalat |
| *Hindu Marriage Act* | 1955 | S. 23(2) | Imposes duty upon courts to promote reconciliation before granting decree of judicial separation or divorce |
| *Protection of Women from Domestic Violence Act* | 2005 | S. 4(d), 14 | Establishes safety requirements in proceedings; permits counselling in appropriate circumstances; restricts mediation where violence subsists |
| *Mediation Act* | 2023 | S. 6, 7, 27, 30 | India's first standalone mediation statute; provides for pre-litigation mediation, enforceability of settlement |

[11] Lawrence Boulle, Mediation: Principles, Process, Practice 23 (3d ed. 2011).
[12] Law Comm'n of India, Report No. 129, *Urban Litigation — Mediation as Alternative to Adjudication* (1988); Law Comm'n of India, Report No. 238, *Amendment of Section 89 of the Code of Civil Procedure 1908 and Allied Provisions* (2011).
[13] Mediation Act, No. 32 of 2023, S. 3, 27 (India).

| | | | |
|---|---|---|---|
| | | | agreements, Mediation Council of India, and online mediation |

***Table 1: Legislative Framework Governing Family Mediation in India***

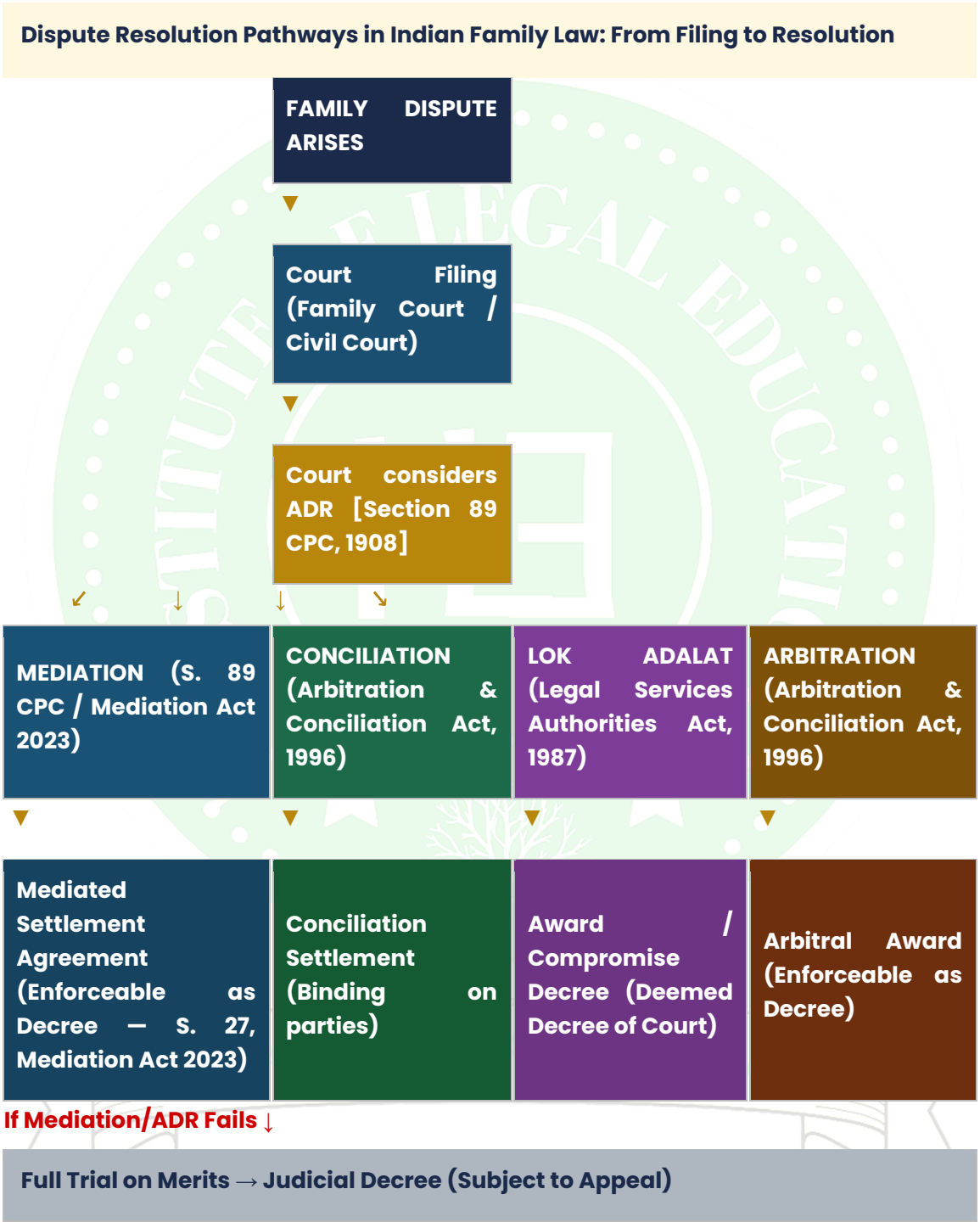


***Figure 1: Dispute Resolution Pathways in Indian Family Law***

**The Legislative Architecture of Family Mediation in India.**

The legal structure of mediation under the Indian family law is a multifaceted structure, built up over a series of decades and through a number of legislative measures. To have a consistent comprehension of this architecture, it is important to note not only the formal texts of the

statutes in question but also the interpretive activity of the courts in making the texts functional in the context of family law. The statutory provisions do not exist in a vacuum; they gain meaning and agencies through the practical, institutional and cultural contexts within which they are invoked.

Family Courts Act, 1984, holds an architectural position. The Act was passed in the context of increasing case backlog and perceived ineffectiveness of ordinary civil courts when dealing with matters of matrimonial sensitivity, and introduced Special Family Courts in cities with over one million inhabitants, and later by State governments in smaller jurisdictions. Section 9 of the Act places an obligation on all Family Court judges to endeavor to settle before trial, and Section 6 to assist a person skilled in the process of reconciliation. When combined, these clauses are an indication that the law at that time favored consensual resolution over adversarial adjudication within the family law arena, a preference that upon the enactment of the Act was more of a hope than a reality, with no special mediation infrastructure in place.

Section 89 of the Code of Civil Procedure, 1908 - by the Civil Procedure Code (Amendment) Act, 1999, effective as of July 1, 2002, is a more categorical intervention by legislation. Section 89(1) states that where it seems to the court that there are elements of a settlement that could be acceptable to the parties, the court will develop the terms of the settlement and send the dispute to one of four ADR mechanisms namely arbitration, conciliation, judicial settlement including settlement through Lok Adalat, and mediation. The legislative purpose of Section 89, as explained by the Law Commission of India in its 238th Report, was to transform ADR referral into a standard judicial reaction to civil litigation and not an extraordinary one - a litigation-first to a resolution-first model of court administration.

Notably, the Hindu Marriage Act, 1955, Section 23(2), on its own, places a responsibility on the court in any action under the Act, where it can so do, to reconcile the parties. This pre-Section 89 CPC provision is indicative of the intuition of the legislature of the time that matrimonial disputes are in a separate category, a category in which the maintenance of the marital relationship or, at least, the avoidance of relational harm, should be given priority over the establishment of legal rights. Courts have construed the provision to imply a real, ongoing attempt at conciliation and not a superficial inquiry, and the fact that it has been invoked many times by the Supreme Court in the course of matrimonial appeals speaks of its enduring doctrinal relevance. [14]

The latest and, perhaps, the most radical change in legislation has been the Mediation Act, 2023 - the first statute in India to specifically regulate the field of mediation as a dispute resolution method. The Act broadly defines the term mediation to include both facilitative and evaluative versions of the process, establishes the Mediation Council of India as a statutory regulator of the process, and, most importantly to the analysis at hand, requires pre-litigation mediation to all civil disputes which are not within the exclusions described in the First Schedule. Section 7 of the Act authorizes parties to consent to mediate at any point of a dispute, even before filing a suit, and Section 27 states that mediated settlement agreements will be final, binding, and enforceable as a decree of a court of competent jurisdiction. Section 30 specifically considers online mediation as a valid procedure mode and is indicative of the awareness of the legislature of the transformative nature of digital technology in increasing access to mediation services in the vast and infrastructurally uneven geography of India.

However, institutional change is not achieved through legislative approval only. The Mediation Act, 2023 also fails to address several key questions: what content and how long should mediator training be to qualify as accredited by the Mediation Council of India, whether

[14] *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 S.C.C. 226, ¶¶ 20–27 (India).

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vulnerable parties (especially women and children) in family mediation processes have procedural protections, and how mediation settlement agreements and the parens patriae jurisdiction of the court interact in child custody cases. In particular, the Act fails to express how a mediated custody arrangement, which is agreed upon between the parents and which may be unfavorable to the welfare of the child, should be handled by a court that has a supervisory jurisdiction over the same under the Guardianship and Wards Act, 1890. These gaps imply that the legislative structure, though good in its overall design, lacks the structural completeness in its functional detailing - a vacuum that the judicial interpretation and delegated legislation will be asked to fill over the next few years.

**Judicial Pronouncements and the Evolving Role of Courts in Promoting Family Mediation**

The Indian judiciary has been determinative in sketching the outlines of the family mediation practice, sometimes going much further than the text of the statutes concerned. A review of the judicial rhetoric of family mediation demonstrates a movement toward a more wary acceptance to active institutional promotion - a movement that is also indicative of the larger changes in the conception of the Supreme Court about access to justice as a right in Article 21 of the Constitution of India.

The case of Salem Advocate Bar Association v. Union of India[15] by the Supreme Court is an important milestone in this judicial path. The Court did not reject the constitutional validity of Section 89 of the Code of Civil Procedure, 1908, based on an objection that the provision was procedurally ambiguous and hard to interpret. The Court accepted some textual inaccuracies in the provision, but ordered the formulation of the rules to operationalise its mandatory reference mechanism, and gave unreserved approval to ADR as a necessary complement to the adjudicatory system. The approval of the Court of Section 89 essentially converted the ADR referral into a discretionary judicial practice into a quasi-compulsory institutional practice - a move that would have a consequential effect on the further evolution of family mediation.

This interpretive refinement of Section 89 was achieved a few years later, with the decision of the Supreme Court in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co*. [16]The court identified certain types of cases that are best suited to ADR referral, including matrimonial cases (with the exception of those involving divorce by mutual consent, which are already consensual in nature), maintenance disputes, and child custody cases, as The Court also stipulated the way the referral is to proceed under Section 89 to clear up the unclear connection between the role of the court in developing settlement terms and the role it plays as a neutral supervisory presence. The Court has successfully incorporated mediation as a structural element of family law practice not as a procedural supplement by placing family disputes at the heart of its Section 89 jurisprudence.

The most impactful judicial pronouncement of the mediation in matrimonial disputes was the ruling of the Supreme Court in the case of K. Srinivas Rao v. D.A. Deepa. In this instance, where a long and bitter matrimonial litigation had been fought through a series of courts over a period of years, the Court determined that mediation of matrimonial cases is not just a form of procedure but a grave judicial duty. The Court instructed all Family Courts and District Courts to undertake good faith efforts at mediation in all matrimonial disputes noting that in a case of this kind the court has a responsibility to undertake an endeavour towards reconciliation. The Court also ordered that Mediation Centres be established at each district level which would be manned by trained mediators and it was also suggested that all matrimonial issues should be first mediated and then no substantive hearing

[15] *Salem Advocate Bar Ass'n v. Union of India*, (2005) 6 S.C.C. 344 (India).

[16] *Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co.*, (2010) 8 S.C.C. 24 (India).

should be held. This ruling, which was made in the exercise of the plenary powers of the Court under Article 142 of the Constitution, in effect made mediation a quasi-binding preliminary measure in matrimonial litigation throughout India.

The rationale which the Court adopted in K. Srinivas Rao is just as educative of its sensitiveness to the human aspect of family conflicts as it is of its procedural guidelines. Understanding that matrimonial litigation was often a war of attrition that exhausted parties emotionally and financially and at the same time fixed positions and hostilities, the Court expressed a vision of judicial duty extending beyond effective disposition of cases to the rebuilding of family relationships where feasible. This is a vision that is both pragmatic and humanistic; a great step forward in the purely adversarial stance that had been the hallmark of earlier judicial treatment of matrimonial disputes.

In *Smruti Parekh v. Manoj Parekh*, the Supreme Court reaffirmed the idea that, in matrimonial cases, the court at all levels has a duty to consider mediation before going to trial. The Court noted that the adversarial system when used in cases that inherently have a relational nature is more likely to escalate the conflict instead of addressing it. The Court showed its desire to break the adversarial process at any stage where mediation could produce a more fulfilling and long-lasting result to the parties and, most importantly, of any children whose welfare was at stake in the case when it ordered the parties to a professional mediator, despite the advanced stages of the litigation.[17]

The constitutional aspect of family mediation was further expounded in *B.S. Krishnamurthy v. B.S. Nagaraj*, [18] when the Supreme Court ruled that the right to fair and expeditious settlement of family disputes was a part of the right to life and personal liberty under Article 21 of the Constitution. The Court observed that it was a kind of structural injustice that the State had to address by institutional reform, such as by systematising the expansion of mediation infrastructure and professionalising the practice of mediation throughout the Family Courts in India.

The High Courts of India too have made their contribution to the jurisprudence of family mediation besides the Supreme Court. In *Jayashree Ramesh Londhe v. Ramesh Bhikaji Londhe*[19], the Bombay High Court said that courts should not simply refer the dispute to the mediation as a matter of form but actively supervise the quality of the mediation process, such as the competence of the mediator, and the voluntariness of the resultant mediation. This insistence of the court on substantive judicial regulation of the mediation process, rather than procedural referral, is indicative of a recognition that the informality of mediation may, in some situations, conceal power disparities and generate an agreement process which is formally consensual, but in fact coercive.

The jurisprudential history of family mediation has not, however, been even-temperedly progressive. A number of High Court cases have shown a propensity to use the mediation as a caseload management tool as opposed to an actual transformative dispute resolution tool. In domestic violence scenarios, where the Protection of Women from Domestic Violence Act, 2005, offers numerous civil remedies, such as protection orders, residence orders and financial compensation, some courts have ordered the parties to mediate in situations where the power imbalance between the parties makes true voluntariness impractical. This judicial trend poses deep questions regarding the misuse of mediation in situations where it can be used to perpetuate as opposed to correcting structural inequality - a question that has been vociferously expressed by scholars operating at the crossroads of a feminist legal theory and ADR practice.

[17] *Smruti Parekh v. Manoj Parekh*, (2007) 4 S.C.C. 511 (India).
[18] *B.S. Krishnamurthy v. B.S. Nagaraj*, (2011) 2 S.C.C. 783 (India).
[19] *Jayashree Ramesh Londhe v. Ramesh Bhikaji Londhe*, A.I.R. 1984 Bom. 302 (India).

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Another area of doctrinal complexity is the interface between mediation and the best interest principle of the child, which is a pillar of Indian child law, enshrined in the Guardianship and Wards Act, 1890, and strengthened by the Indian ratification of the United Nations Convention on the Rights of the Child. In the landmark case of *Rosy Jacob v. Jacob A.* Chakramakkal, [20]the Supreme Court confirmed that in any case of custody the best interests of the child is the most effective factor that supersedes the will of either party. Although mediation based custody arrangements are a parental consensus, they do not necessarily meet the best interest of the child, especially when the parental voice of the child has not been represented in an independent manner during the mediation process. The lack of legal guidelines regarding the requirement to have a child welfare representative or a guardian ad litem in family mediation cases is a major loophole in the present Indian legal system, and one that should be addressed as soon as possible.

The revolutionary decision of *Shayara Bani v. Union of India*[21] -when the Supreme Court ruled that the practice of instant triple talaq was unconstitutional - further complicated the Muslim matrimonial mediation terrain. The ruling fundamentally redefined the legal landscape on which Muslim marriage cases are settled and mediators working in this field must be equipped with not only the general skills of dispute resolution but also the advanced understanding of the constitutional law, the Islamic laws and the developing personal law provisions of Muslim marriages in India.

**The Systemic Barriers and the difficulty of fair mediation in Indian Family Law.**

Despite the legislative and judicial framework created on the basis of family mediation, its practical efficiency is limited by a set of structural barriers that act at the institutional, social, and cultural levels. An honest evaluation of these obstacles is critical to any reform agenda that seeks to institutionalize the role of mediation into the Indian family justice system since only by coming to an honest confrontation with the disjuncture between the ideal and the actual can reform be achieved.

The initial and possibly the most fundamental obstacle is the lack of mediator training and accreditation infrastructure. The quality of mediation cannot be discussed outside of the quality of the mediator and the current training ecosystem in India is a disjointed array of programmes provided by High Court Mediation Centres, bar associations, law schools and individual institutions, which is not standardised to achieve uniform quality across jurisdictions. As noted by academics like Nadja Alexander, the professionalisation of mediation is one of the issues that have marked the development of ADR in Asian jurisdiction whose cultural and institutional conditions of sustainable mediation practice are by far not the same as those that were achieved in common law jurisdictions where mediation initially emerged as a professional discipline. Although the Mediation Act, 2023, puts in place the Mediation Council of India, a regulatory body, which has the power to set training standards, it has not yet issued the implementing rules, which would operationalise the power of the regulatory body. The high level of disparity in the mediator competence of the Indian courts and Mediation Centres is a systemic risk to the fairness and effectiveness of the family mediation practice.

The second structural barrier is the interplay of gender, power, and mediation in the Indian family law. The bargaining power of parties relative to each other, which in turn is a product of economic resources, social support, educational attainment and cultural expectations about gender roles, has long been recognised by family mediation scholars as a major determinant of negotiated settlements in family disputes, following the founding work of Mnookin and Kornhauser. The circumstances under which a truly voluntary and fair mediation

[20] *Rosy Jacob v. Jacob A. Chakramakkal*, (1973) 1 S.C.C. 840 (India).

[21] *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1 (India).

can be achieved are often not met, in the Indian context where patriarchal family set-ups and discriminatory customary practices are still very common in most societies. Women who are victims of marital violence or economic dependency or social isolation might be structurally unable to effectively advocate their interests in a mediation context, even though the process may be formally voluntary.

The work of Trina Grillo, whose article The Mediation Alternative: Process Dangers to Women is an influential and well-known example of how the informality, focus on preserving relationships, and compromise inherent in the concept of mediation can be used to silence or disadvantage party members, who are usually women, who have been socialized in a patriarchal society to prioritize the interests of their partners above their own, .is specifically relevant to the Indian context. The principle in Section 4(d) of the Protection of Women from Domestic Violence Act, 2005, that a court making an application relating to domestic violence must ensure that the aggrieved woman is safe at every stage of the proceedings, must necessarily apply to the process of mediation, although the lack of any explicit statutory guidance on the matter leaves much scope to inconsistent and even damaging practice.

The third barrier is connected to the cultural heterogeneity of the Indian society and the consequences that it has on the design of the culturally competent mediation processes. The family law system of India is itself a composite of individual laws - the Hindu Marriage Act, 1955; the Muslim Personal Law (Shariat) Application Act, 1937; the Indian Christian Marriage Act, 1872; the Special Marriage Act, 1954; and the Parsi Marriage and Divorce Act, 1936 - based on the constitutional provisions of religious and cultural [22] What works well in a certain community as a mediation process might not fit other communities. The talaq practice of the Muslim personal law such as the institution of iddat, the concept of meher (dower) and the institution of khula (divorce at the initiative of wife) has its doctrinal implications, such as the mediators must have not only general skills in dispute resolution but also have specific competence in the particular personal law tradition. [23] The cultural aspect of mediation competence has been understudied in Indian training systems, which have created a group of mediators who perhaps excel in terms of technical aspects of facilitation methodology, but are ill-equipped to negotiate the doctrinal and cultural peculiarities of the conflicts they are called upon to resolve.

A fourth, and more and more important, structural challenge is the role of digital technology in family mediation. The COVID-19 pandemic has hastened the use of online dispute resolution (ODR) in the Indian courts and Mediation Centres, and some High Courts have created virtual mediation platforms as emergency responses, and which have since become permanent infrastructure. Online mediation is specifically considered as a valid form of carrying out proceedings in the Mediation Act, 2023, which explicitly reflects the acknowledgment of the legislature to the transformative possibilities of digital technology to increase access to mediation services in a geographically diverse and infrastructurally uneven country (Section 30). Nonetheless, the digital divide - the disparity between the accessibility of reliable internet access, digital literacy, and the right technology device between urban and rural and socioeconomic lines in India is a grave equity issue. The family conflict that occurs in rural and semi-urban areas, where technology is not as accessible and legal literacy is low, can be disadvantaged systematically in an online mediation context, which implicitly assumes a level of digital competence, which is in reality unevenly distributed.

[22] Hindu Marriage Act, No. 25 of 1955 (India); Muslim Personal Law (Shariat) Application Act, No. 26 of 1937 (India); Indian Christian Marriage Act, No. 15 of 1872 (India); Special Marriage Act, No. 43 of 1954 (India).

[23] Tahir Mahmood, Muslim Law in India and Abroad 87 (2d ed. 2012).

The overall impact of these structural impediments is a trend of mediation practice which is both inspiring in its visions and lopsided in its performance. The statistics on the mediation successes in Indian Family Courts, though not complete due to the lack of a nationally-based reporting system, indicate that there is a huge disparity between the number of cases that are referred to mediation and the number of cases where a settlement is actually reached. According to state-based Mediation Centres, settlement rates in family mediation are estimated to be between about 20 and 45 percent, but with significant differences in various jurisdictions and case types. Although these are relatively good numbers in comparison with the results which can be achieved on a long-term adversarial litigation, the numbers also reveal that a significant proportion of mediated family cases do not reach an agreement- a fact which requires serious consideration on the quality, suitability and cultural sensitivity of the mediation as it is being currently done in the Indian courts.

**Findings and Suggestions**

The above discussion provides some significant conclusions that cumulatively shed more light on the situation of family mediation in India and its future. The initial and most obvious point is that mediation has become formally legitimate, through the Indian legal system - it is now a part of the law, approved by the Supreme Court, and supported through an institutional network of court-annexed Mediation Centres. The implementation of the Mediation Act, 2023, marks the end of a long history of legislative and judicial construction, and its terms, especially those concerning the enforceability of mediated settlement agreements under Section 27 and the requirement of pre-litigation mediation under Section 6, can profoundly transform the practice of dispute resolution throughout the family law field.

But formal legitimacy does not necessarily equate to substantive effectiveness. In the analysis of the chapter, the gaps in the regulatory system and the training ecosystem, the protections of vulnerable parties, and the cultural competence of mediation practitioners persist. Unless these gaps are addressed, they threaten to turn mediation into a mere proceduralism - a compulsory referral that creates an illusion of ADR without its reality. Based on such findings, the following reform recommendations are furthered.

First, the Mediation Council of India, once constituted and operationalised must formulate and implement national standards of family mediator training and accreditation, with specific and compulsory courses on gender sensitivity, trauma-informed practice, child welfare, and cultural competence in the setting of diverse personal law traditions in India. The training period of family mediators must be significantly longer than that of commercial mediators, as the complexity, emotional nature, and protective needs of family conflicts are more complex than those of commercial disputes. A graded system of accreditation - between general and specialist family mediators - would offer a system of professional development and would allow the courts and parties to recognize the presence of a mediator with specific expertise to undertake a particular type of family dispute.

Second, the legislature ought to revise the Mediation Act, 2023, to provide specific statutory provisions outlawing the referral of domestic violence cases to mediation unless the safety and the true voluntariness of the aggrieved party can be established beyond reasonable doubt - a standard that follows international best practice, including that expressed by the International Mediation Institute and the Standards of Conduct of Mediators of the American Bar Association The fact that the present legislation does not address this important issue, but rather this is just an oversight, is also a structural weakness, which can lead to harmful effects on the most susceptible members of the family mediation process.

Third, in child custody and parental responsibility cases, the mediation model must include a legislative mandate of the independent representation of the child interest by a guardian ad litem, child welfare officer or specialist child psychologist. This reform would be consistent with the principles of the United Nations Convention on the Rights of the Child to which India is a signatory, and would put into effect the ultimate principle of welfare as expressed by the Supreme Court in Rosy Jacob v. Jacob A. Chakramakkal in the special context of family mediation.

Fourth, a nationally required data collection and reporting system of family mediation outcomes must be implemented, which will be administered by the Mediation Council of India in cooperation with the High Courts at the state level. The accessibility of sound, disaggregated data on referral rates, settlement rates, type of cases, demographic of parties, and profiles of the mediators would permit evidence-based policy formulation and would allow finding out the systemic flaws in mediation practice before they become institutional dysfunction.

Lastly, the chapter proposes a cultural change in the orientation of legal education and the legal practice to mediation- a change where mediation is not a secondary process or supplementary process but a primary, principled and professionally challenging discipline in its own right. This would create a generation of legal practitioners who are prepared to practise, counsel and constructively involve themselves with mediation in all areas of law, including family law, by incorporating the mediation theory, training in practical skills and ethical frameworks into the compulsory curriculum of Indian law schools, as advised by the Legal Education Committee of the Bar Council of India. India is at a crossroad of developing the family justice system; the instruments of change are law, judicial, and institutional in nature. Now there is required the political will and institutional determination to apply those tools with the rigour, equity and compassion that the resolution of family disputes requires.