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# Legal Framework for Mediation in Family Disputes in India: Analysis of Statutes, Case Laws, and Mediation Mechanisms

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MR BISHNANAND DUBEY<sup>1</sup> AND DR. LAXMIKANTA DAS<sup>2</sup>

## ABSTRACT

*Mediation has become a crucial method for settling family disputes in India, providing an alternative to confrontational litigation by prioritizing mutual agreement, secrecy, and the preservation of long-term relationships. This article offers an exhaustive examination of the legal framework regulating mediation in family conflicts in India, investigating statutory provisions, pertinent case law, and the operation of mediation procedures across several levels. The legal foundation for mediation in India is established in various statutes, notably Section 89 of the Code of Civil Procedure, 1908, the Family Courts Act, 1984, and the Legal Services Authorities Act, 1987. The Mediation Rules established by numerous High Courts and the Supreme Court have formalized mediation processes throughout the court. The recent enactment of the Mediation Act, 2023, establishes a defined and uniform framework to govern mediation procedures, offering legislative recognition, enforceability of settlement agreements, and clarity regarding mediator qualifications. The document analyses the judicial perspective that has persistently advocated for mediation in familial issues, emphasizing significant rulings such as *K. Srinivas Rao v. D.A. Deepa* and *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.* These rulings demonstrate the courts' dedication to fostering amicable resolutions in divorce, custody, and maintenance conflicts. The study examines the function of court-annexed mediation centers, Lok Adalats, and mediation services in promoting dispute resolution. It examines practical obstacles including insufficient awareness, limited infrastructure, and opposition from legal professionals, while proposing improvements to enhance the mediation culture. This article highlights the transformative potential of mediation in providing accessible, efficient, and humane justice in family conflicts through an analysis of the interplay of laws, precedents, and mediation initiatives. It culminates with suggestions for improving institutional capacity, mediator training, and public awareness to cultivate a strong mediation ecosystem in India.*

**Keywords:** Mediation, ADR, Law, family, CPC

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## I. INTRODUCTION

Mediation is recognised as an important way to resolve disputes outside of court in India, especially for family issues. According to Section 89 of the Code of Civil Procedure, 1908, courts must promote mediation and other alternative dispute resolution methods before going to traditional court cases, highlighting how mediation can provide quick and affordable solutions for family conflicts. Mediation advocacy is essential in preparing all participants, including attorneys, clients, and disputants, for the mediation process, ensuring that they are well-informed and prepared to represent their interests effectively<sup>3</sup>. The mediator's proficiency in facilitating communication and guiding parties toward mutually acceptable resolutions is critical to the process's success.<sup>4</sup> The establishment of specialised family courts in India highlights the recognition of mediation's success, with these courts prioritising mediation and other alternative dispute resolution methods to address the unique complexities of family disputes.<sup>5</sup> Confidentiality is maintained throughout mediation, creating a safe environment in which parties can openly express concerns and explore solutions without fear of future legal repercussions, which is especially important when dealing with family issues, where privacy and solutions everyone can agree on are very important. The assurance of privacy is especially important in family disputes, where maintaining amicable relationships, particularly when children are involved, is crucial.<sup>6</sup> This approach is considered humane because the decision-making authority rests with the parties in dispute, promoting amicable relationships and ensuring fairness through open communication and negotiation, leading to mutually agreeable solutions. The implementation of mediation in divorce cases, including the supporting and inhibiting factors and the system's level of success, has been closely monitored, emphasising the integration of mediation into the court system following Supreme Court regulations.<sup>7</sup> The development of ADR mechanisms comes from the problems with traditional litigation, which can make conflicts worse because it is confrontational, especially in family disputes where emotions and personal issues are involved; so, mediation provides a helpful option by allowing people to work together to solve their problems. Mediation, as a

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<sup>3</sup> Arora, Aayushi. Family Mediation in India: Existing Regulatory Framework. 2022; Jurgilewicz, Marcin, et al. "MEDIATION IN CIVIL MATTERS AS AN EXAMPLE OF THE METHOD USED IN LEGAL SECURITY MANAGEMENT AND OPTIMIZATION OF COSTS OF PROCEEDINGS." *Journal of Security and Sustainability Issues*, Dec. 2019, p. 595, [https://doi.org/10.9770/jssi.2019.9.2\(18\)](https://doi.org/10.9770/jssi.2019.9.2(18)).

<sup>4</sup> Gupta, Pallavi, and Ridhi Shinghal. The Effectiveness of Mediation in Resolving Family Disputes: An Indian Legal Perspective. Dec. 2024.

<sup>5</sup> Arora, Aayushi. Family Mediation in India: Existing Regulatory Framework

<sup>6</sup> Gupta, Pallavi, and Ridhi Shinghal. The Effectiveness of Mediation in Resolving Family Disputes: An Indian Legal Perspective. Dec. 2024

<sup>7</sup> Hadiati, Mia, et al. "The Effectiveness of Mediation in Divorce Case in Denpasar District Court." *Proceedings of the Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2019)*, 2020, <https://doi.org/10.2991/assehr.k.200515.084>.

form of consensual conflict settlement, has become increasingly popular for resolving family disputes, indicating a shift toward more amicable and less adversarial methods of conflict resolution.<sup>8</sup>

Mediation offers a platform for constructive dialogue and helps to maintain a cordial and sustainable relationship between the parties, which is especially important when children are directly or indirectly involved.<sup>9</sup> The roots of mediation can be traced back to ancient Indian legal systems, such as the concept of "Shantidoot" and the "Gram Panchayats" and "Nyaya Panchayats", demonstrating the historical prevalence of mediation in Indian culture. Given the changing dynamics of familial relationships, including the increasing acceptance of divorce and separation, mediation offers a supportive approach to resolving disputes while preserving them and minimising the emotional and financial costs associated with litigation. The recognition that the child's voice should take "centre stage" highlights the need to consider the best interests of the child in high-conflict disputes. Alternative Dispute Resolution has emerged as a viable alternative to traditional litigation, presenting a new approach to conflict resolution, particularly in family disputes, with its emphasis on resolving disputes amicably. Mediation is a dynamically structured voluntary dispute resolution process where a neutral third party assists the disputing parties in reaching a mutually acceptable agreement.<sup>10</sup> Mediation differs significantly from arbitration in that it is a non-binding process, empowering the parties to control the outcome and ensuring that any resolution is voluntarily accepted. It is usually characterised as a relatively more expeditious, inexpensive and confidential process compared to adjudication.<sup>11</sup> The increasing recognition of ADR methods in India is reflected in the enactment of the Arbitration and Conciliation Act, 1996, which promotes arbitration, mediation, and conciliation as effective means of dispute resolution.

## **II. FAMILY COURTS ACT, 1984**

The Family Courts Act of 1984 was a pivotal step towards establishing specialised courts to handle family disputes, marking a significant shift in the legal approach to these sensitive issues.<sup>12</sup> These courts were established with the primary goal of promoting reconciliation and

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<sup>8</sup> Arora, Aayushi. Family Mediation in India: Existing Regulatory Framework

<sup>9</sup> Ferrada, Carolina Riveros, and Dagmar Coester-Waltjen. "Alternative Dispute Resolution in Family Disputes in Europe and Chile: Mediation." *Revista Direito GV*, vol. 15, no. 2, Jan. 2019, <https://doi.org/10.1590/2317-6172201914>

<sup>10</sup> Gautam, Ritu, et al. Mediation and Family Dispute Resolution Mechanism: A Case Study On Clinical Legal Education. 2021.

<sup>11</sup> Chakraborty, Anirban, and Shuvro Prosun Sarker. "Resolving Disputes with Healing Effect: The Practice of Mediation in India." *Revista Brasileira de Políticas Públicas*, vol. 13, no. 2, Oct. 2023, <https://doi.org/10.5102/rbpb.v13i2.8706>.

<sup>12</sup> Singh, Lovely, and Anku Anand. Mediation: In Divorce & Other Family Matters. 2018

securing speedy settlements in disputes related to marriage and family affairs.<sup>13</sup> The act emphasises the adoption of conciliatory methods and empowers family courts to seek assistance from social welfare agencies and counsellors to facilitate dispute resolution. This reflects a move towards a more holistic and compassionate approach to resolving family disputes, focusing on the well-being of all parties involved, especially children.<sup>14</sup> Despite the Act's intention to expedite resolutions, litigation in metropolitan cities has become increasingly complex, involving high financial stakes and extending beyond the scope of quick settlements or reconciliation. This complexity suggests that there must be a comprehensive approach to family dispute resolution that combines legal expertise with counselling and mediation services. The Family Courts Act 1984 aimed to create family courts to help resolve marriage and family disputes peacefully and quickly, keeping these sensitive matters out of the confrontational setting of regular courts.

The establishment of Family Courts in India under the "Family Courts Act, 1984" is a crucial step that will aid in the ADR settlement of family law issues by forming a well-organised team comprised of trained counsellors, mediators, professionally trained individuals, and specialised family law judges, creating a mechanism and structure for alternative dispute resolution of family law disputes.<sup>15</sup> With the establishment of India's first Family Court in Rajasthan in 1987, a new era of adjudication began, allowing litigants to express their concerns to the judge informally, with the assistance of on-site counsellors in the form of paralegal volunteers, thereby promoting access to justice. The main goal of the family courts is to provide people with speedy and affordable justice; however, the system for settling family disputes in India is still not fully developed but is gradually improving.<sup>16</sup> Mediation's significance as a crucial tool for settling family disputes has gained momentum in India; thus, the Indian judiciary system should adopt mediation as a necessary prerequisite before addressing family law matters in court. By making mediation mandatory, the courts can guarantee that conflicts are handled amicably, protecting family dynamics and fostering understanding between the parties involved.

Section 9 of the Family Courts Act, 1984, mandates that in every family dispute, the Family Court should first attempt to bring about a settlement or reconciliation between the parties. Furthermore, the Act permits family courts to seek assistance from qualified individuals,

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<sup>13</sup> Gupta, Pallavi, and Ridhi Shinghal. The Effectiveness of Mediation in Resolving Family Disputes: An Indian Legal Perspective. Dec. 2024

<sup>14</sup> Singh, Lovely, and Anku Anand. Mediation: In Divorce & Other Family Matters. 2018

<sup>15</sup> Takkar, Paramesh. A RESEARCH ON ARBITRATION IN FAMILY DISPUTES. 2022.

<sup>16</sup> Aggarwala, Rossel. Family Court: Need of the Hour. 11 Oct. 2021

welfare organisations, and other institutions to facilitate reconciliation and amicable settlements. The integration of these support systems underscores the Act's commitment to a holistic and restorative approach to family dispute resolution. The process is more than simply settling legal issues; it is also about repairing relationships and fostering understanding. The experience of family courts in India reveals that, despite the progressive intentions of the Family Courts Act, 1984, the courts are frequently overburdened, and the resolution of family disputes still takes a considerable amount of time. This practical challenge shows that we need to keep improving court processes and use more alternative ways to resolve conflicts, which can help reduce the strain on the court system and ensure family disputes are settled quickly and effectively.

The judiciary, as well as the legislative assembly, have actively recognised mediation as a means of lowering the rising burden on the courts. Section 89 of the Code of Civil Procedure mandates that courts explore mediation as a viable option for conflict resolution prior to initiating a trial, demonstrating the importance of alternative conflict resolution in resolving family problems quickly and affordably. The process of mediation is a facilitative and participatory negotiation conducted by a neutral third party, which is usually appointed by the parties or the court. The mediator is tasked with assisting parties in coming to a voluntary, mutually agreeable resolution. By helping parties to openly convey their interests, concerns, and viewpoints, the mediator builds a collaborative atmosphere that is conducive to reaching mutually acceptable solutions. The mediator's skill in facilitating communication and guiding parties toward mutually acceptable resolutions is indispensable to the success of the process. Confidentiality is maintained throughout mediation, fostering a secure environment where parties can openly express concerns and explore solutions without fear of future legal repercussions, which is especially important when dealing with family issues, where privacy and solutions everyone can agree on are essential.<sup>17</sup>

To ensure fairness and transparency in complex family disputes, mediation should permit legal counsel. Parties can make well-informed decisions when they are fully aware of their legal rights and obligations because attorneys provide their clients with this knowledge, which helps to level the playing field, particularly in cases where there is an imbalance of power. While mediation should be encouraged early on, courts should be flexible and allow parties to consider it when they are ready, particularly in high-conflict cases where emotional

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<sup>17</sup> Gupta, Pallavi, and Ridhi Shinghal. The Effectiveness of Mediation in Resolving Family Disputes: An Indian Legal Perspective. Dec. 2024

preparation or information gathering is needed.<sup>18</sup>

### **III. CODE OF CIVIL PROCEDURE (CPC)**

The Code of Civil Procedure of 1908 is a procedural law that governs the administration of civil proceedings in India. Section 89 of the Code of Civil Procedure, 1908, requires courts to promote mediation and other ways to settle disputes before going to regular court trials. This provision underscores the judiciary's commitment to promoting mechanisms that offer expeditious and cost-effective solutions to family disputes.<sup>19</sup> Order XXXIIA of the CPC explicitly advocates for mediation, recognising that personal, family, matrimonial, guardianship, custody, and maintenance disputes are most effectively resolved through non-adversarial methods.<sup>20</sup> This emphasis acknowledges the unique emotional and relational dynamics inherent in family disputes, which often necessitate a more empathetic and conciliatory approach. In essence, Order XXXIIA reinforces the legal framework's recognition of mediation's appropriateness for resolving family-related conflicts by emphasising its potential to preserve familial relationships and minimise the adversarial impact of litigation.

Within the framework of Section 89, disputes are referred to various alternative dispute resolution mechanisms, including arbitration, conciliation, judicial settlement (including settlement through Lok Adalat), and mediation.<sup>21</sup> Mediation, as a non-binding process, relies on a neutral third party who facilitates communication between the parties to help them reach a mutually agreeable resolution.

### **IV. SPECIALIZED FAMILY COURTS**

The creation of specialised family courts in India highlights the acknowledgement of how effective mediation can be, as these courts focus on mediation and other ways to resolve issues to deal with the special challenges that come with family disputes. The Family Courts Act, 1984, was created to set up family courts that encourage settling marriage and family disputes quickly and peacefully. Section 9 of the Family Courts Act makes it mandatory for the family court to make efforts for a settlement among the parties. To facilitate the resolution of disputes, the act empowers family courts to seek the assistance of qualified professionals, such as counsellors, psychologists, and social workers to provide support and guidance to the

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<sup>18</sup> Gupta, Pallavi, and Ridhi Shinghal. The Effectiveness of Mediation in Resolving Family Disputes: An Indian Legal Perspective. Dec. 2024

<sup>19</sup> Sengupta, Akashdeep. PRE-INSTITUTION MEDIATION: A RULE OR A LAW? 2023.

<sup>20</sup> Kumar, Rithvik, and Gitartha Deka. MEDIATION: A METHOD OF ALTERNATIVE DISPUTE RESOLUTION. 2022

<sup>21</sup> Kumar, Abhishek. Execution of Mediation in Matrimonial Disputes. 2017.

parties involved. By integrating mediation into their procedures, family courts are able to provide a more supportive and less adversarial environment for resolving disputes, which ultimately contributes to more sustainable and harmonious outcomes for families.<sup>22</sup>

## **V. MEDIATION**

Before the judge makes a decision in a divorce case, mediation must take place, as any decision made without mediation is deemed void. Mediation is a discretionary process of resolution of disputes whereby another independent third party assists the parties to the dispute to reach a settlement. This process is considered a positive form of conciliation in which the third party recommends solutions which both sides willingly accept or reject. The mediator, by remaining neutral and impartial, facilitates open communication between the parties, fostering an environment of trust and understanding.<sup>23</sup> Many countries' legal systems have placed mediation under the spotlight due to its ability to resolve conflicts between parties, reduce court caseloads, and reduce overall legal costs.<sup>24</sup> It can be an aid only when the parties are ready and able to participate in mediation.<sup>25</sup>

Mediation is a flexible process that can be tailored to each case's needs. Part of that flexibility includes innovation. The parties' requirements, the nature of the dispute, and the cultural background of the participants are considered. It is crucial to have open communication, neutrality, voluntariness, and confidentiality to maintain mediation's integrity and increase its efficacy in settling family disputes. The mediator's responsibility is to foster a welcoming environment where all parties can engage in candid dialogue. The mediator will help them to identify their possible differences and suggest they come to acceptable terms.<sup>26</sup> Furthermore, parties can simultaneously seek the assistance of marriage consultants or therapists through counselling sessions.<sup>27</sup>

## **VI. SPECIFIC FAMILY LAWS AND MEDIATION**

Mediation plays a crucial role in resolving disputes under various family laws in India,

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<sup>22</sup> Ferrada, Carolina Riveros, and Dagmar Coester-Waltjen. "Alternative Dispute Resolution in Family Disputes in Europe and Chile: Mediation." *Revista Direito GV*, vol. 15, no. 2, Jan. 2019, <https://doi.org/10.1590/2317-6172201914>

<sup>23</sup> Singh, Lovely, and Anku Anand. *Mediation: In Divorce & Other Family Matters*. 2018

<sup>24</sup> Rahmat, Nur Ezan, et al. "Certification and Mediation Training for the Mediators in Malaysia." *Malaysian Journal of Social Sciences and Humanities (MJSSH)*, vol. 7, no. 11, Nov. 2022, <https://doi.org/10.47405/mjssh.v7i11.1945>.

<sup>25</sup> Sheremet, Anzhelika, et al. "Mediation Principles in the Civil Society and Features of Their Application in the Educational Environment of Ukraine." *Journal of Education Culture and Society*, vol. 13, no. 2, Sept. 2022, p. 231, <https://doi.org/10.15503/jecs2022.2.231.250>.

<sup>26</sup> Saluja, Sakchie. *Role of Mediation in Family and Matrimonial, Labour and Industrial Disputes*. 2022.

<sup>27</sup> Maryam, Rini, and Sulistyowati Irianto. *Exploring Efficacy: A Study of Simple and Complex Approaches to Divorce Mediation*. 2023.



including the Hindu Marriage Act, the Muslim Women Act, and the Special Marriage Act. Section 23 of the Hindu Marriage Act of 1955 places a statutory obligation on the court to try to reconcile the parties involved in a matrimonial dispute before granting any relief under the act.<sup>28</sup> Family law aims to restore broken family relationships. However, when family members cannot reconcile their differences, the law acknowledges the necessity of legal separation. However, when family members cannot reconcile their differences, the law recognises the need for legal separation.<sup>29</sup> Litigation is far more expensive, takes a lot longer, and involves a great deal more emotional turmoil for the spouses than mediation does.<sup>30</sup> Mediation is now a popular approach because it handles these issues with compassion and understanding.

## **VII. CASE LAWS AND JUDICIAL PRONOUNCEMENTS ON MEDIATION IN FAMILY LAW**

In a plethora of cases, the Indian judiciary has actively promoted mediation as a viable means of resolving family disputes, underscoring its efficacy and importance in achieving amicable settlements. The Supreme Court of India has consistently stressed the need for courts to explore mediation as a primary means of resolving family disputes, recognising its potential to foster reconciliation and preserve familial relationships. In the case of *K. Srinivas Rao v. D.A. Deepa*, the Supreme Court explored the concept of pre-litigation mediation in the context of family issues.<sup>31</sup> The Supreme Court mandated that all courts handling matrimonial disputes should initially attempt to resolve the issues via mediation.<sup>32</sup> *Gaurav Nagpal v. Sumedha Nagpal*. The Supreme Court noted that the Hindu Marriage Act stipulates circumstances under which a divorce decision may be sought. When resolving disagreements, the courts should make every effort to settle any differences between the parties concerned. The emphasis should be on preserving marriage rather than dissolving it, and the courts should aim to bring about settlement unless the outcome is unavoidable.<sup>33</sup>

## **VIII. THE ROLE OF NATIONAL LEGAL SERVICES AUTHORITY (NALSA)**

The National Legal Services Authority plays a pivotal role in promoting and implementing mediation as a preferred mode of dispute resolution, particularly in family disputes, through various initiatives and programs across the country. NALSA promotes mediation through

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<sup>28</sup>Prakash, G. R. Arun, and Shruthy Kesavan. *Mediation in Family and Matrimonial Disputes*. 2022

<sup>29</sup> Jie, Christopher Lie Ken, et al. "Children and Divorce: A Rapid Review Targeting Cognitive Dissonance, in the Context of Narrative Therapy." *Clinical Child Psychology and Psychiatry*, SAGE Publishing, 13 Jan. 2025, <https://doi.org/10.1177/13591045251314908>.

<sup>30</sup> Prabakar, Rufus Chrisen, and Kripa Somi John. *MEDIATION IN FAMILY DISPUTE*. 2022

<sup>31</sup> Arora, Aayushi. *Family Mediation in India: Existing Regulatory Framework*. 2022.

<sup>32</sup> Prakash, G. R. Arun, and Shruthy Kesavan. *Mediation in Family and Matrimonial Disputes*. 2022

<sup>33</sup> Arora, Aayushi. *Family Mediation in India: Existing Regulatory Framework*. 2022

various means, including awareness campaigns, training programs for mediators, and the establishment of mediation centres across the country. NALSA collaborates with state legal service authorities and other stakeholders to organise Lok Adalats, which provide a platform for resolving disputes through mediation and conciliation. NALSA also conducts training programs for mediators to enhance their skills and expertise in facilitating successful mediation outcomes. The effectiveness of mediation in family disputes depends on various factors, including the willingness of the parties to participate in the process, the skills and expertise of the mediator, and the availability of adequate support services.

The judiciary recognises that disputes involving families should be handled differently from regular civil disputes and resolved through arbitration before going to trial. Mediation is one of the alternate dispute resolution methods that is becoming increasingly popular in family law cases. Mediation before trial has become more commonplace now. One of the goals of the Family Courts Act of 1984 is to establish family courts that can mediate and settle conflicts involving marriages, families, and other connected issues in a timely manner. Furthermore, Lok Adalats are conducted in accordance with the Legal Services Authorities Act of 1987, which encourages the use of arbitration, mediation, conciliation, and agreement to resolve conflicts.<sup>34</sup>

## **IX. MEDIATION AND CONCILIATION PROJECT COMMITTEE (MCPC)**

The Mediation and Conciliation Project Committee of the Supreme Court of India plays a crucial role in promoting and monitoring the effective implementation of mediation across the country, including in family disputes, through various initiatives and programs.<sup>35</sup> The MCPC conducts training programs for mediators, judges, and lawyers to enhance their understanding of mediation techniques and best practices.<sup>36</sup> The MCPC also promotes awareness about mediation among the public through various outreach programs and campaigns.<sup>37</sup> The MCPC establishes guidelines and standards for mediation centres and mediators to ensure the quality and effectiveness of mediation services. The vision statement adopted jointly by the government and judiciary in 2009 emphasised introducing steps to promote court settlements

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<sup>34</sup> Prakash, G. R. Arun, and Shruthy Kesavan. *Mediation in Family and Matrimonial Disputes*. 2022

<sup>35</sup> 4. Chakraborty, Anirban, and Shuvro Prosun Sarker. "Resolving Disputes with Healing Effect: The Practice of Mediation in India." *Revista Brasileira de Políticas Públicas*, vol. 13, no. 2, Oct. 2023, <https://doi.org/10.5102/rbpp.v13i2.8706>.

<sup>36</sup> Pandya, Ayushi. *GRASSROOT GOVERNANCE AND ITS ROLE IN MEDIATION: THE ROLE AND CONTRIBUTION OF PANCHAYAT RAJ IN AMPLIFICATION OF ALTERNATIVE DISPUTE RESOLUTION IN INDIA*. 2022

<sup>37</sup> Ahmad, Sa'odah, et al. "Knowledge, Attitude and Practice of Community Mediators in Malaysia." *Kajian Malaysia*, vol. 40, no. 2, Oct. 2022, p. 45, <https://doi.org/10.21315/km2022.40.2.3>.

and ADR methods.<sup>38</sup> The MCPC monitors the progress of mediation in various courts and tribunals across the country and identifies areas for improvement.

Section 89 of the Code of Civil Procedure requires that courts look into alternative dispute resolution methods, like mediation, before starting trials, highlighting the law's goal to promote friendly settlements. Specialist family courts in India prioritise mediation and other alternative dispute resolution methods to address the unique complexities inherent in family disputes.<sup>39</sup> Confidentiality is maintained throughout mediation, fostering a secure environment where parties can openly express concerns and explore solutions without fear of future legal repercussions, which is especially important when dealing with family issues, where privacy and solutions everyone can agree on are very important. The assurance of privacy is particularly crucial in family disputes, where maintaining amicable relationships is paramount. In this context, the establishment of specialised family courts in India underscores the recognition of mediation's success, with these courts prioritising mediation and alternative dispute resolution methods to address the unique complexities inherent in family disputes.

## **X. HIGH COURT MEDIATION RULES**

Several High Courts across the country have enacted rules for mediation, framing a comprehensive set of principles for undertaking mediation, demonstrating a commitment to institutionalising mediation as a viable dispute resolution mechanism. These rules typically cover various aspects of the mediation process, including the qualifications and appointment of mediators, the procedure for conducting mediation sessions, and the confidentiality of mediation proceedings. For example, the Delhi High Court drafted the Mediation and Conciliation Rules in 2004, which became effective in 2005, though their implementation has faced challenges due to lack of data and poorly drafted rules. Similarly, other High Courts have also framed their mediation rules to suit the specific needs and circumstances of their respective jurisdictions. The mediation rules framed by the High Courts often draw inspiration from international best practices and guidelines, such as those promulgated by the United Nations Commission on International Trade Law. The Supreme Court has also affirmed that cases relating to trade, commerce, contracts, consumer disputes, and even tortious liability

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<sup>38</sup> Chakraborty, Anirban, and Shuvro Prosun Sarker. "Resolving Disputes with Healing Effect: The Practice of Mediation in India." *Revista Brasileira de Políticas Públicas*, vol. 13, no. 2, Oct. 2023, <https://doi.org/10.5102/rbpp.v13i2.8706>.

<sup>39</sup> Chakraborty, Anirban, and Shuvro Prosun Sarker. "Resolving Disputes with Healing Effect: The Practice of Mediation in India." *Revista Brasileira de Políticas Públicas*, vol. 13, no. 2, Oct. 2023, <https://doi.org/10.5102/rbpp.v13i2.8706>.

could normally be mediated.<sup>40</sup>

Mediation offers a cost-effective and time-efficient alternative to traditional litigation, reducing the financial burden and time investment for parties involved in family disputes. Mediation is especially successful in reducing the emotional strain on parties, particularly in situations involving child custody, by enabling parents to devise cooperative parenting strategies instead of engaging in adversarial battles for sole custody. Mediation encourages open communication between parties, allowing them to express their needs and concerns in a safe and structured environment, facilitated by a neutral mediator who guides the conversation towards constructive solutions.<sup>41</sup> Mediators are also now able to help people understand their own biases and those of other parties involved to reach a resolution. Mediation promotes creative problem-solving, empowering parties to explore a wide range of options and solutions that may not be available in a courtroom setting, leading to outcomes that are more tailored to their specific needs and circumstances.

## **XI. NOTABLE LEGAL AMENDMENTS INFLUENCING FAMILY MEDIATION**

The Arbitration and Conciliation Act of 1996, amended in 2015, reinforces India's commitment to alternative dispute resolution by establishing a structured legal framework for arbitration and conciliation, thereby indirectly promoting mediation as a viable option for resolving family disputes. The Code of Civil Procedure's Section 89, amended in 2002, allows for the transfer of all pending court matters to mediation, encouraging courts to actively promote mediation as a means of resolving disputes, including those within family law. The Family Courts Act of 1984 was a pivotal step towards promoting reconciliation in family disputes, advocating for specialised family courts that prioritise mediation and counselling services to resolve conflicts amicably. The Consumer Protection Act of 2019 includes a chapter for dispute settlement through mediation before approaching consumer redress agencies, expanding the scope of mediation to consumer-related family disputes.<sup>42</sup> Many statutes, such as the Industrial Disputes Act, 1947; the Hindu Marriage Act, 1955; and the Legal Services Authorities Act, 1987, encourage or mandate conciliation or mediation in specific types of cases, further solidifying the legal foundation for mediation in India. The Supreme Court's directive in the Salem Advocate Bar Association case in 2003 led to the establishment of mediation centres attached to courts, giving impetus to the

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<sup>40</sup> CHATTERJEE, Payel, and Sahil KANUGA. *MEDIATION: THE GO-TO DISPUTE RESOLUTION MECHANISM IN INDIA!* 2021.

<sup>41</sup> Gupta, Pallavi, and Ridhi Shinghal. *The Effectiveness of Mediation in Resolving Family Disputes: An Indian Legal Perspective*. Dec. 2024

<sup>42</sup> Negi, Sonali, and Arpita Chauhan. *Need for Mediation Laws in India*. 2022.

institutionalisation of mediation.

The growing acceptance of mediation is evident in the increasing number of cases being referred to mediation centres and the successful resolution of disputes through this method. Mediation's voluntary and non-adversarial nature, coupled with the flexibility and confidentiality of the process, contributes to its effectiveness in resolving family disputes. The mediator acts as a neutral third party, facilitating communication between the parties and helping them to identify common ground and explore mutually acceptable solutions. The success of mediation in family disputes hinges on the willingness of the parties to engage in open and honest communication, to compromise, and to work towards a resolution that meets the needs of all involved, especially children. Mediation in family disputes helps reduce the case burden on courts.<sup>43</sup>

## **XII. CONCLUSION**

In conclusion, mediation stands out as a potent method for resolving disputes, especially within the realm of family law in India. The legal framework, including amendments to the Arbitration and Conciliation Act, the Code of Civil Procedure, and the Family Courts Act, increasingly supports the use of mediation to resolve conflicts amicably. High Courts across India have also institutionalised mediation through comprehensive rules.

Mediation offers numerous benefits, including cost-effectiveness, time efficiency, and reduced emotional strain on the parties involved. It promotes open communication, creative problem-solving, and mutually agreeable solutions, particularly benefiting children in custody disputes.

The growing acceptance of mediation is evident in the rising number of cases referred to mediation centres and the successful resolution of disputes through this method. Mediation's voluntary, non-adversarial nature, along with its flexibility and confidentiality, makes it an effective approach for resolving family disputes, reducing the burden on courts and fostering amicable relationships.

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<sup>43</sup> Prakash, G. R. Arun, and Shruthy Kesavan. Mediation in Family and Matrimonial Disputes. 2022

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