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# "BEYOND COURTROOMS: A COMPARATIVE STUDY OF MEDIATION AND LITIGATION IN MATRIMONIAL DISPUTE RESOLUTION"

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## Abstract

The Paper explores the intricate landscape of matrimonial disputes in India, delving into the legal obligations, societal dynamics, and dispute resolution mechanisms surrounding marital relationships. It concludes with a comprehensive analysis of the advantages of mediation over litigation in resolving matrimonial conflicts.

Marriage in India is not merely a social institution but a legal contract imbued with rights and responsibilities for both spouses. Various statutes, including the Hindu Marriage Act, Special Marriage Act, and Foreign Marriage Act, delineate obligations ensuring the security and well-being of spouses. Legal frameworks encompass duties like loyalty, support, and cohabitation, with provisions for maintenance and property rights. Additionally, Muslim law recognizes the concept of Mahr, providing financial support to wives in case of divorce. The Protection of Women against Domestic Violence Act, 2005, further safeguards wives' rights, criminalizing violence and holding husbands accountable.

The Paper explores the concept of family in India, transitioning from traditional joint families to nuclear ones due to industrialization and urbanization. Despite challenges like rising divorce rates and gender imbalances, Indian families display resilience. However, issues like son preference and female foeticide challenge traditional structures, impacting intergenerational relationships and community support systems.

Matrimonial disputes in India encompass a wide array of conflicts rooted in emotional, social, and legal dimensions. Legislative measures aim to protect women's rights, but concerns about misuse of legal provisions highlight the need for comprehensive

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reforms. Children often emerge as primary victims, experiencing psychological problems due to parental conflicts and divorce.

The Paper examines constitutional and legal provisions regarding matrimonial disputes, emphasizing the importance of alternative dispute resolution (ADR) mechanisms like mediation. Despite challenges, mediation offers benefits such as reducing contentious issues, promoting cooperation, and alleviating court workload. Historical evolution and legislative developments support the efficacy of mediation in resolving family disputes.

Case studies illustrate the advantages of mediation over litigation in resolving matrimonial disputes. Mediation offers effectiveness, preserves familial harmony, and provides flexibility and personalized solutions. It is faster, cost-effective, and helps alleviate judicial backlog. Moreover, mediation curtails the misuse of legal provisions, encourages cooperation, and ensures confidentiality.

Hence, the Paper advocates for promoting mediation as the primary method of resolving matrimonial disputes in India. It offers efficient, equitable, and satisfactory outcomes, addressing the complex dynamics of marital relationships while alleviating the burden on the judicial system. Promoting mediation underscores the need for a balanced approach to matrimonial dispute resolution, ensuring justice and harmony for all parties involved.

*Keywords:* Family Dispute Resolution, FDR, ADR, Matrimonial Disputes, Mediation, Family Mediation, Family Law, Family Courts

# I. INTRODUCTION

## 1.1 Meaning of Marriage, Family and Matrimonial Disputes

Marriage is a legally and socially sanctioned union, typically between a man and a woman, regulated by laws, customs, and beliefs. It plays a crucial role in structuring various social and personal functions, such as sexual regulation, division of labour, economic production, and satisfaction of personal needs. The strongest function revolves around procreation, child care, education, and lineage regulation.[2] In the 21st century, the nature of marriage, particularly regarding procreation and divorce, has evolved. Countries, starting with the Netherlands in 2001, have legalized same-sex marriages, reflecting changing societal norms. The complexity of human evolution, with longer dependence on parents for survival, emphasizes the importance of marriage in fulfilling parental duties.[3] While various marital customs and laws exist, marriage universally ensures partners' rights and defines children's relationships within a community. The historical perspective reveals that marriage was traditionally not a matter of free choice, with considerations beyond romantic love shaping unions, and arranged marriages were common in certain societies. Endogamy and exogamy practices, along with arranged or self-chosen marriages, vary based on cultural and social structures.[4]

The institution of marriage, as per evidence, is estimated to be around 4,350 years old, with the earliest recorded ceremonies uniting one woman and one man dating back to about 2350 B.C. in Mesopotamia. Before the formalization of marriage, anthropologists suggest that families were loosely organized groups of up to 30 people, featuring multiple male leaders, shared women, and children. The transition from hunter-gatherer societies to agrarian civilizations prompted the need for more stable social arrangements. Over the subsequent centuries, marriage evolved into a widespread institution, adopted by ancient cultures such as the Hebrews, Greeks, and Romans.

[2] *Marriage*, **Encyclopaedia Britannica**, https://www.britannica.com/topic/marriage (last visited Feb. 12, 2024).
[3] Ibid
[4] Ibid

During this period, the concept of marriage was not closely associated with love or religion[5].

Within the Muslim community, marriage is denoted as 'nikah', signifying the act of joining or uniting. The term, literally translating to 'to tie up together', refers specifically to Islamic marriages. Nikah functions both as a matrimonial contract and an institution that bestows a particular and elevated status upon women in society. Its purpose is to ensure stability in married life by binding both partners together for an indefinite period, with the woman entitled to be honoured with the mahr.[6] Mahmood J, in ***Abdul Kadir v. Salima***, emphasizes that marriage among Muslims is not deemed a sacrament but a purely civil contract. Despite its solemnization often involving recitation of specific Quranic verses, Muslim Law does not mandate any service peculiar to the occasion[7]; rather, it is a transaction based on the consent of the parties involved. While some, like Sir Shah Mohammed Sulaiman CJ in ***AnisBegam v. Mohd. IstafaWali Khan***, view Muslim marriages as religious sacraments, others argue that the institution lacks worldly importance and is deemed a necessity from an ethical standpoint.[8]

Hindu marriage rites have adapted over time to meet the evolving needs and convenience of people, emphasizing the sacred and unbreakable nature of the bond between husband and wife. According to Hinduism, marriage is considered a crucial sacrament out of the 16 in the religion, representing a relationship that transcends birth and death. Hindu Marriage is often described as a sacrament, suggesting a union that is inherently permanent and indissoluble.[9] The Vedic perspective highlights that a person is incomplete until marriage, emphasizing its significance. Describing Hindu marriage as a religious sacrament, it is defined as a permanent union addressing physical, social, and spiritual needs. This sacramental nature is characterized by enduring permanence even after death, the irrevocable binding of the husband and wife, and the essential religious ceremonies. While historical practices lacked the necessity of a girl's consent,

[5] *The Origins of Marriage*, **The Week**, https://theweek.com/articles/528746/origins-marriage (last visited Feb. 12, 2024).
[6] Ibid.
[7] *Abdul Kadir v. Salima*, (1886) ILR 8 All 149 (India)
[8] *Anis Begam v. Mohammad Istafa Wali Khan*, AIR 1933 All 634 (India).
[9] Paras Diwan, *Family Law* 24 (5th ed., Allahabad Law Agency 2015).

modern Hindu marriage, influenced by Western ideas, emphasizes equality and liberty. Consent and mental soundness are now integral, with Section 12 of the Hindu Marriage Act 1955 rendering marriages void if consent is absent. Despite contemporary elements of contractual agreements, Hindu marriage is recognized as neither purely contractual nor sacramental, but rather a semblance of both[10].

The Hindu Marriage Act, 1955 governs the matrimony of Hindu couples, encompassing those from Sikh, Buddhist, and Jain communities or those who have converted to these religions. The Act stipulates conditions under Section 5[11] for the legitimacy of a Hindu marriage, emphasizing the necessity of compliance. In ***GullipilliSowria Raj v. BandaruPavani***, the Supreme Court deemed the marriage of a Hindu man with a Catholic woman, conducted according to Hindu customs, void. The conditions include the absence of an existing spouse, mental capacity for consent, mental soundness, absence of insanity or epilepsy, legal age, and avoidance of prohibited relationships[12]. Customs hold significance, and violations under Section 18(b) result in penalties. The solemnization of Hindu marriage, as per Section 7, involves rites and ceremonies, with 'saptapadi' being crucial. In ***Santi Deb Berma v. KanchanPrava Devi***, the Supreme Court affirmed 'saptapadi' as essential for a Hindu marriage[13]. The Act recognizes only certain forms of Hindu marriages and does not provide for others mentioned in Shastrictexts. Compulsory registration is mandated by the Supreme Court, as seen in ***Smt. Seema v. Ashwani Kumar***, ensuring documentation after solemnization according to legal and religious norms[14].

Marriage under Hindu law is characterized by both sacramental and contractual aspects. The sacramental nature is evident in its eternal, permanent, and holy union, valid for all of life. Unlike contracts in general law, Hindu marriage does not necessitate explicit consent, even if a party is of unsound mind or a minor. Despite void ability under general contract law, Section 12 of the Hindu Marriage Act deems marriages without consent as void. This highlights the unique legal standing of Hindu marriages, where

[10] *The Nature of Hindu Marriage under Hindu Law*, iPleaders Blog, https://blog.ipleaders.in/nature-hindu-marriage-hindu-law/#The_Concept_of_Marriage_under_the_Hindu_Law (last visited Feb. 12, 2024).
[11] **The Hindu Marriage Act, 1955**, No. 25, Acts of Parliament, 1955 (India)
[12] *Gullipilli Sowria Raj v. Bandaru Pavani*, (2009) 1 SCC 714 (India).
[13] *Santi Deb Berma v. Kanchan Prava Devi*, (1991) 4 SCC 414 (India).
[14] *Smt. Seema v. Ashwani Kumar*, (2006) 2 SCC 578 (India).

consent is not a prerequisite for validity. The modern influence on marriage is contractual, emphasizing equality and liberty, reflecting Western ideals. In essence, Hindu marriage embodies elements of both sacrament and contract, blending tradition and contemporary legal principles.[15]

Christian marriages in India are regulated by the Indian Christian Marriage Act, 1872, which mandates the presence of a Church priest or minister for the solemnization of the wedding. Section 4 of the Act extends its provisions to marriages between Christians and non-Christians, as affirmed in ***Subhash Chandra IshudasParmar v. State of Gujarat***[16]. The Act sets the age of marriage at eighteen for brides and twenty-one for grooms, requiring proper consent and prohibiting existing spouses. Notice of the intended marriage must be given to the Minister of Religion, with separate notices for non-resident parties. If either party is a minor, Section 15 empowers the Minister to return or forward the notice to the relevant authorities within 24 hours. Section 5[17] designates competent individuals to conduct valid Christian marriages, and marriages performed outside these specifications are deemed void. The ceremony, conducted by the Church's Priest or Minister, requires two additional witnesses for legal validity. Failure to marry within sixty days of notice issuance necessitates a fresh application. Part IV of the Act outlines provisions for registering Christian marriages, with individual registrations made to local authorities, and copies of acknowledgement slips sent to the Registrar General of Births, Deaths, and Marriages after thirty days. A special provision allows the sanctification of Indian Christian marriages without prior notice.

Parsi marriages, adhering to Zoroastrianism, are governed by the Parsi Marriage and Divorce Act of 1936. The Act, in Section 3, outlines conditions for valid Parsi marriages, including restrictions on consanguinity and specific relationships listed in Schedule I. Solemnization by a Parsi priest with witnesses and the essential 'Ashirwad' ceremony is required for validity. Age requirements dictate that a Parsi man must be twenty-one, and a Parsi woman must be eighteen. Section 4 of the Act prohibits Parsis

[15]Nature of Marriage under Hindu Law, Toppr, https://www.toppr.com/guides/legal-aptitude/family-law-II/nature-of-marriage-under-hindu-law/ (last visited Feb. 13, 2024).
[16]*Subhashchandra Ishudas Parmar v. State of Gujarat*, Special Civil Application No. 18287 of 2011 (Guj.)
[17]The Indian Christian Marriage Act, 1872, No. 12, Acts of Parliament, 1872 (India)

from remarrying during the lifetime of their spouse unless legally separated. The issuance of a marriage certificate, signed by the couple and three witnesses, is mandatory for registration. The certificate, along with the prescribed fee, must be sent to the Marriage Officer. Section 53, initially prohibiting certain relationships, has been repealed, mirroring changes in the Hindu Marriage Act.[18]

The concept of marriage, rooted in ancient principles of balance between opposites, is viewed as a union between a man and a woman symbolizing harmony. In today's society, marriage is often seen as a contractual arrangement driven by individual interests, leading to a rise in divorces. Unlike modern times, Vedic marriages emphasized lifelong commitment and mutual responsibility. The woman, considered the 'shakti' or energy, played a vital role in a man's success. Present-day marriages, influenced by societal pressure, materialism, and superficial desires, lack the depth of purpose seen in ancient unions. The nature of connections between individuals is explored, highlighting the rarity of selfless and creative unions. The article suggests returning to Vedic roots to restore the sanctity of marriage by focusing on simplicity, sacredness, and a harmonious union rather than extravagant displays and superficial celebrations.[19]

### 1.1.1. Mediation in Matrimonial Dispute

An upsurge in matrimonial disputes has been observed recently. Marriage, considered a sacred ceremony, aims to provide a foundation for young couples to settle down peacefully in life. Unfortunately, minor marital conflicts can unexpectedly escalate, leading to severe consequences and the commission of heinous crimes. In such situations, even family elders, who could potentially mediate and reconcile, find themselves implicated as accused parties in criminal cases. Encouragingly, there are various other reasons, not elaborated here, that discourage promoting matrimonial litigation. Instead, the focus should be on encouraging parties to reflect on their differences and amicably resolve disputes through mutual agreements, avoiding the

[18]The Parsi Marriage and Divorce Act, 1936, No. 7, Acts of Parliament, 1936 (India)
[19]Concept of Marriage, The Inner World, https://theinnerworld.in/spirituality/know-your-roots/concept-of-marriage/ (last visited Feb. 14, 2024).

lengthy and time-consuming legal battles in courts that often result in the loss of valuable young days said by justice S.S.Ahmad, & justice D.P.Wadhwa.[20]

**Mediation** is a process where an unbiased third party helps people resolve conflicts by using special communication and negotiation techniques. In this structured and interactive approach, everyone involved actively takes part in finding a solution. The focus is on the needs, rights, and interests of the parties, and the mediator guides the process using various techniques to facilitate open communication and constructive outcomes. Mediation can be evaluative, where the mediator analyzes issues, but they don't give direct advice. While it's voluntary, a court suggestion may carry weight. In legal contexts, mediation is an alternative way to settle disputes, often involving a third-party mediator helping parties negotiate agreements. The process is private, confidential, and can cover various domains like commercial, legal, diplomatic, workplace, community, and family matters. Mediation is recognized internationally as a peaceful conflict resolution method, adaptable to disputes of any size.[21]

***Family mediation***, within the Alternative Dispute Resolution (ADR) family, is integral to global mediation services, with its historical roots spanning diverse cultures for thousands of years. This mediation system serves as a mechanism for resolving conflicts within families, encompassing services like divorce mediation. In contemporary practice, family mediation is divided into two fields: mediation and co-mediation. In mediation, a single mediator collaborates with the family in dispute, while co-mediation involves two or more mediators. The process includes joint or single caucuses, where the mediator/s meet separately with each party in single caucuses or engage all parties simultaneously in joint caucuses. While most family disputes involve two sides, conflicts among siblings may entail multiple parties.[22]

## II. HISTORICAL STATUS OF MEDIATION & MATRIMONIAL DISPUTES

### 2.1. Historical Status of Mediation

[20]G.V. Rao v. L.H.V. Prasad &Ors. (2000) 5 SCC 393 (India).
[21]Mediation, Wikipedia, https://en.wikipedia.org/wiki/Mediation (last visited Mar. 11, 2024).
[22]Family Mediation, Wikipedia, https://en.wikipedia.org/wiki/Family_mediation (last visited Mar. 11, 2024).

Mediation, as an Alternative Dispute Resolution (ADR) mechanism, has a deep-rooted history in India, predating British colonial rule. In ancient times, informal panchayats and revered elders were appointed as mediators to settle disputes within villages. Presently, some tribes continue to use neutral third parties, known as Pinchas or PanchaParmeshwars, for informal dispute resolution. The formal recognition of mediation as an ADR mechanism emerged during British colonialism, gaining momentum with the establishment of LokAdalats in the Indian judicial system in 1987 through the Legal Services Authority Act. This legislation granted LokAdalat[23] decisions the status equivalent to that of a civil court. Additionally, the development of mediation owes credit to section 89[24], introduced by the CPC (Amendment) Act, 1999, effective from 1/7/2002. This progressive step was influenced by the efforts of Hon'ble Mr. Justice A M Ahmadi, the then Chief Justice of India, who facilitated a national legal exchange program with the Institute for the Study and Development of Legal System (ISDLS) from the USA.[25]

In earlier times, our society embraced the practice of resolving disputes among family members through open discussions and sitting together. Villages often referred disputes to panchayats, where decisions were made after hearing both sides. This tradition aligns with the mediation process, a contemporary approach where family members in disagreement can attempt to resolve grievances through communication rather than resorting to legal action. Peace and harmony within family relations are deemed crucial. Family mediators play a pivotal role in facilitating settlements agreed upon by both parties through effective communication. The family law system endorses various mediation methods, including using family members or friends, informal general meetings, or specialized processes like Family Dispute Resolution under the Australian Family Law Act, 1975. This legislation supports practitioners, unrelated to any involved parties, in helping people resolve disputes. Notably, mediation/conciliation references in family dispute resolution are embedded in Indian legal frameworks such as the Family Courts Act, 1984, Civil Procedure Code, Hindu Marriage Act, and the Legal Services

[23]Legal Services Authorities Act, 1987, §§ 19–22E, chs. VI & VIA, No. 39, Acts of Parliament, 1987 (India).
[24]Code of Civil Procedure, 1908, § 89 (India).
[25]Mediation in Matrimonial Disputes, Simple Kanoon, https://www.simplekanoon.com/family-law/mediation-in-matrimonial-disputes-535/ (last visited Mar. 11, 2024).

Authorities Act, 1987, highlighting the effectiveness of mechanisms like LokAdalats in mediating family disputes.[26]Domestic violence, recognized as a serious crime, demands careful consideration and should not be trivialized. While domestic violence is a non-compoundable offense under Section 320 of the Cr.P.C, the Supreme Court, in 2013, empowered courts to refer cases falling under Section 498-A of the IPC for mediation.[27] An illustrative example is the case of ***Mohd. Mushtaq v. State***[28], where a wife filed for divorce and initiated an FIR under Sec. 498-A. The Karnataka High Court successfully resolved the matter through mediation, leading to an amicable resolution. In exercising its inherent powers to serve justice, the court allowed the wife to quash the filed FIR. This demonstrates the potential of mediation in addressing domestic violence cases.

### 2.2. Legal Obligations Stemming From Marriage

Marriage operates as a collaborative partnership between spouses, bound by societal norms dictating their roles. Considering biological and social constraints, specific legal rights are mandated in favor of women under statutory laws. Similarly, husbands bear legal responsibilities outlined in personal marital laws to safeguard the legal interests of their wives. Loyalty, both moral and physical, constitutes a fundamental legal obligation for husbands, aligning with the principle of monogamy as per the Hindu Marriage Act, 1955[29], the Special Marriage Act, 1954[30], and the Foreign Marriage Act, 1969[31]. The husband's matrimonial duty during married life encompasses ensuring the security, both social and economic, of the wife and any dependents.

The concept of Restitution of Conjugal Rights entails specific duties and entitlements for a married couple within their union. Marriage inherently implies the expectation that both partners, husband, and wife, should cohabit. Each party in the marital bond possesses the right to experience emotional support from their spouse. If, for unjustifiable reasons, one spouse neglects their marital responsibilities, the other spouse reserves the right to seek redress to compel compliance. The wife is legally and morally

[26]Ibid
[27]Ibid
[28]Mohd. Mushtaq v. State, (2015) 3 AIR Kant R 363 (India).
[29] Hindu Marriage Act, 1955, § 5(i), No. 25, Acts of Parliament, 1955 (India)
[30]Special Marriage Act, 1954, § 4(a), No. 43, Acts of Parliament, 1954 (India).
[31]Foreign Marriage Act, 1969, § 4(a), No. 33, Acts of Parliament, 1969 (India).

bound to reside with her husband and fulfil marital obligations, and she cannot arbitrarily deny cohabitation without a valid reason[32].

Section 27 of the Hindu Marriage Act, 1955, places a specific obligation on the husband to ensure the security of any property bestowed upon the wife around the time of marriage. In instances of marital disputes, the husband is mandated to support the spouse facing adversity under Section 24 of the Hindu Marriage Act, 1955, covering maintenance pendent lite and litigation expenses throughout legal proceedings. Furthermore, Section 25 of the same Act outlines provisions for permanent alimony and maintenance due to litigation. Additionally, Section 125 of the Criminal Procedure Code, 1973, establishes the legal responsibility of the husband for the sustenance and dignified life of the estranged wife and children.[33]

Mahr, in Muslim law, is a sum payable by the husband to the wife upon marriage, either through agreement or by law, and can be either prompt (Mu ajjal) or deferred (Mu wajjal). It is considered a consideration that belongs entirely to the wife, and in the context of Muslim marriage, the wife is regarded as the property, and Mahr as the price or consideration. While non-payment of Mahr does not void the marriage, it plays a crucial role in balancing the rights of the husband and wife, offering financial support to women in the event of divorce. The nature of Mahr is considered obligatory, providing the wife with the right to demand it, and it acts as a check on the husband's power regarding divorce and polygamy. The legal consequences of non-payment include the wife's right to resist cohabitation until Mahr is paid, her right to retain possession of the husband's property until payment, and the ability to sue the husband's heirs for dower. The article also discusses the kinds of Mahr, such as specified (Mu Ajjal and Mu Wajjal) and customary or proper (MahriMisl), with details on their characteristics and implications.[34]

The mental and physical well-being of the wife is legally safeguarded by The Protection of Women against Domestic Violence Act, 2005. This legislation not only criminalizes

[32]Rohtash Singh vs Smt. Ramendri And Ors AIR 2000 SC952.
[33]Hindu Marriage Act, 1955, § 25, No. 25, Acts of Parliament, 1955 (India).
[34]Mahr: Concept, Importance, and Legal Consequences, De Juris Law Notes, http://dejurislawnotesin.cluster2.hostgator.co.in/law-notes/family-law (last visited Feb. 15, 2024).

physical violence against the wife but also holds the husband accountable for any infringement upon her sexual, verbal, emotional, or economic security. The provisions of The Protection of Women from Domestic Violence Act, 2005 apply not only to legally married wives but also extend to women in live-in relationships with men.[35]

Matrimony bestows the status of being a husband or wife and imparts legitimacy to children born within the marital union. It is a social institution with numerous advantages, governed by public policy and law. Serving as the cornerstone of family and society, marriage is integral to morality and civilization, warranting legal regulation. Beyond a legal construct, marriage is viewed as a religious duty, providing moral safeguards and fulfilling social needs. It offers a sanctioned outlet for sexual desires, preventing individuals from succumbing to unchecked impulses. Recognized as a social necessity, marriage establishes families, constituting the fundamental unit of our society, and represents the only legitimate or halal means for intimate relations between a man and a woman.[36]

### 2.3. Concept of Family

A family is a cohesive group connected by marriage, blood, or adoption, forming a singular household with individuals in distinct social roles such as spouses, parents, children, and siblings. Unlike a household, which may encompass unrelated individuals sharing a common residence, and distinct from a kindred, which involves bloodlines but may span multiple households, a family is primarily centeredaround the parent-child relationship. In its simplest form, a family comprises an adult and their offspring, with the nuclear family—typically consisting of a married man and woman and their children—considered the oldest family structure. Alternatively, an extended family may include parents, unmarried and married children, grandchildren, and elderly dependents, living together or in close association.[37]

The family in India is a diverse and integral social unit, shaped by factors such as class, ethnicity, and individual choices. It serves as a crucial link between community and

[35]Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).
[36]Dr. Ramesh Kumar Singh, Muslim Law 57 (1st ed., Universal Law Publ'g Co.).
[37]Family, Britannica, https://www.britannica.com/topic/family-kinship (last visited Feb. 14, 2024).

change, playing a vital role in human capital generation and influencing individual, household, and community behaviour. Families act as a primary support system, especially for children, impacting their survival, health, education, and development. Despite facing challenges such as increasing divorce rates and social issues, Indian families display resilience in adapting to changing norms and structures.[38]

The evolution and significance of the joint family system in Indian society, emphasizing its historical, cultural, societal, economic, and emotional dimensions. Rooted in tradition and collective ethos, the joint family system is deeply woven into Indian culture, influenced by religious teachings. It serves as both an emotional and social unit, contributing to individual identity and well-being. While economic advantages and intergenerational support are notable, contemporary India experiences a shift toward nuclear families due to globalization. The article acknowledges challenges like privacy issues and generational conflicts but underscores the enduring strength and adaptability of the Indian family structure.[39]

The Indian family system has undergone profound transformations due to industrialization and technological advancements. The article explores the primary and secondary functions of the family, emphasizing roles in child-rearing, providing a home, cultural transmission, socialization, status ascribing, and acting as an agency of social control. Economic progress has shifted the family from a producing to a consuming unit, with members engaged in wage-earning for socioeconomic well-being. The traditional joint family structure, characterized by patriarchal authority, is experiencing significant changes such as the rise of nuclear families, freedom from direct dependence due to factory employment, a preference for smaller families, and altered roles of women. Economic functions have shifted to a few members earning outside the home, impacting family relations. Educational changes involve formal schools taking on roles once fulfilled by families, and the entertainment industry and economic prosperity diminish the family's role in recreation. Industrialization, urbanization, rural-to-urban migration, legislative measures, and Western values

[38]SciELO, https://www.scielo.br/j/ptp/a/kYBtY6pCbh5bg56wmRFSd6y/ (last visited Mar. 11, 2024).
[39]J. Kumar, The Evolution of the Indian Joint Family System: A Journey Through Time (2024).

emphasizing modernity have collectively driven these transformative changes in the Indian family system.[40]

The contemporary issues and challenges faced by Indian families, as discussed by Dr.Anvita Agrawal in the Think India Quarterly Journal. In contemporary India, the landscape of family structures is undergoing transformative shifts, primarily influenced by industrialization and urbanization. The traditional emphasis on larger family sizes has given way to a preference for smaller, more manageable families, facilitated by the use of modern contraceptives. This reduction in family size, coupled with changing gender dynamics, has empowered women as equal partners in family life, breaking free from traditional roles. The rising trends of divorce and remarriage, particularly in urban settings, challenge the long-standing sanctity of marital bonds. The societal issue of son preference and female foeticide is highlighted, revealing imbalances in the country's sex ratio. Moreover, the transition to filo-centric families, where children's expectations guide family decisions, is noted alongside an increase in conflicts between parents and youth. The contemporary family is characterized as more individualized and democratic, with a shift in essential functions such as education and care to external institutions. Despite legislative efforts to curb the dowry system, it persists in various forms, reflecting deep-rooted cultural challenges. The changing family structure also poses challenges for the elderly, as traditional joint families break down, necessitating community support for the aging population. Overall, the multifaceted challenges faced by modern Indian families reflect the complex interplay between societal evolutions and deeply ingrained cultural norms.[41]

The rise of financially independent and career-focused individuals, both men and women, who are empowered to make autonomous decisions and aspire for individual accomplishments, has significantly contributed to the breakdown of joint family structures. While this disintegration has strengthened spousal bonds in some cases, there is a downside. In nuclear families, the vanishing emotional ethos has negatively impacted the socio-psychological environment, fostering feelings of alienation. The sense of community has diminished, and the preservation of marriage is often linked to

[40] Structural and Functional Changes in the Indian Family System.
[41] Dr. Anvita Agrawal, Contemporary Families in India: Issues and Challenges, Think India Quarterly J., Vol. 22, Special Issue 13.1 (2019).

rigid gender roles, rooted in traditional Indian values that may overlook the evolving role of women in society. Additionally, contemporary progress promotes an individualistic mind-set, leading to heightened frustration and reduced tolerance levels among the younger generation, thereby contributing to marital disputes.[42]

**2.4. Matrimonial Dispute:**

A matrimonial dispute refers to conflicts, disagreements, or legal issues that arise between married individuals or couples. These disputes can encompass a wide range of issues, including but not limited to financial matters, differences in lifestyle or values, communication breakdowns, or legal aspects related to marriage such as divorce or separation. Matrimonial disputes are complex and may involve emotional, social, and legal dimensions.[43]Rooted in various issues such as alcoholism, nicotine addiction, communication breakdowns, extramarital affairs, and financial instability, these disputes have the potential to escalate from minor misunderstandings to profound disagreements. Prolonged disputes may culminate in separation or divorce, although India boasts one of the world's lowest divorce rates, with only 1% of marriages ending in divorce. However, this statistic may not necessarily reflect marital bliss; rather, it underscores the challenges posed by legal awareness and autonomy, particularly for women. Matrimonial disputes often manifest as domestic violence, cruelty, and infidelity, significantly impacting couples socially, physically, and psychologically. Alarming rates of reported domestic violence cases in India are closely tied to these disputes, contributing to substantial psychological distress and emotional abuse. Studies indicate a correlation between marital disputes and suicide attempts in India, underscoring the profound societal repercussions of these conflicts, not only on the couples involved but also on the well-being of their children.[44]Matrimonial disputes are distinct from ordinary civil litigation due to their profound impact on human lives.

[42]Anshubhi Bahadur & Nisha Dhawan, Social Value of Parents and Children in Joint and Nuclear Families, J. Indian Acad. Applied Psychol., Vol. 34, Special Issue, at 74–80 (2008).
[43]Ibid.
[44]Matrimonial Disputes and Their Impact on Children, The Law Gurukul, https://www.thelawgurukul.com/post/matrimonial-disputes-and-their-impact-on-children (last visited Mar. 11, 2024).

Unlike disputes over property or rights, matrimonial disputes involve the entirety of individuals' lives, affecting not only the parties involved but also their offspring.[45]

The overview of Section 498-A[46] reveals its crucial role in addressing gender-based violence within the context of marital relationships in India1. Enacted as part of the Criminal Law (Second Amendment) Act of 1983, this legal provision aims to combat cruelty and harassment inflicted upon married women by their husbands or in-laws. The section defines cruelty broadly, encompassing various forms of mistreatment such as physical, emotional, psychological, financial, and more. To invoke Section 498-A, certain essentials must be met, including the marriage of the woman, the existence of cruelty or harassment, involvement of the husband or in-laws, and the demonstration of wilful conduct to cause harm. Acts constituting cruelty range from physical harm to mental and emotional abuse, extramarital affairs, and non-acceptance of a girl child. Section 498-A classifies the offense as non-bailable, cognizable, and non-compoundable, indicating its serious nature. The punishment for an offense under this section includes imprisonment for up to three years and a fine.[47]

The legislative landscape in India has witnessed significant progress in addressing gender-based disparities and violence against women through the implementation of women-centric laws, intended to empower and safeguard women and reshape societal norms. However, the pervasive issue of misapplication, fueled by deeply ingrained gender norms, economic motivations, and legal complexities, challenges the core purpose of these laws. The misuse often stems from the perception that these legal measures can be exploited for personal gain, transforming protective measures into weapons. Economic incentives further contribute to the problem, creating a complex environment where genuine cases may be overshadowed by fabricated accusations. The intricate legal framework, marked by ambiguities and oversight deficiencies, amplifies the potential for misuse, eroding public confidence. A comprehensive approach is essential, unravelling societal attitudes, recalibrating the legal framework, and conducting case-specific examinations to address critiques and instances of misuse in

[45] Pradeep Pant, Settlement of Hindu Divorce Petition by Compromise: Need of an Amendment, Uttarakhand Judicial & Legal Review, at 57–63
[46]Indian Penal Code, § 498-A (India).
[47]An Overview of Section 498-A of IPC, EzyLegal, https://www.ezylegal.in/blogs/an-overview-of-section-498-a-of-ipc (last visited Mar. 11, 2024).

laws such as the Dowry Prohibition Act, 1961, Protection of Women from Domestic Violence Act, 2005, Sexual Harassment of Women at Workplace Act, 2013, Maternity Benefit Act, 1961, Prohibition of Child Marriage Act, 2006, and various matrimonial laws. While instances of misuse are a minority, addressing the issue requires stringent checks, balance recalibration, and enhanced legal education to strike a delicate equilibrium for a more just and equitable society for women in India.[48]

In ***SejalbenTejasbhaiChovatiya vs. State of Gujarat***[49], the petitioner, a wife, challenged a Family Court order, alleging desertion by her husband and seeking maintenance under Section 125 of the Criminal Procedure Code. The husband contended that the petitioner provided false evidence by concealing her true income, leading to a dispute. Despite the petitioner claiming innocence and attributing discrepancies to her father managing her tax returns, the court, after examining the evidence, found inaccuracies in her affidavit and false information in her income tax returns. Citing precedents, the court determined that the decision to prosecute for perjury depends on the expediency of justice. Given the impact on the administration of justice, the court allowed the prosecution for perjury to proceed, without interference in the order, providing the petitioner an opportunity to present a defence during legal proceedings.

In the case of ***Savitri Devi vs. Ramesh Chand and others, the Delhi High Court***[50] extensively examined Section 498A of the Indian Penal Code. Justice J.D. Kapoor, among other observations, expressed deep concern about the rampant misuse of Section 498A/406 IPC, emphasizing its detrimental impact on the institution of marriage and societal well-being. The court noted the tendency among women, fueled by parents and relatives, to implicate numerous family members, including minors and even distant relatives, in cases filed under these sections. The judge criticized the implementation of these laws, stating that despite good intentions, the move has been counterproductive, leading to a surge in divorce cases. The court highlighted the ease with which complaints under Section 498A/406 IPC, whether vague, unspecific, or exaggerated, become tools for police and agencies to harass individuals, forcing them into hiding

[48]Misuse of Women-Centric Laws, Legal Service India, https://legalserviceindia.com/legal/article-14860-misuse-of-women-centric-laws.html (last visited Mar. 11, 2024).
[49] Sejalben Tejasbhai Chovatiya v. State of Gujarat, MANU/GJ/3099/2016 (India).
[50]Savitri Devi v. Ramesh Chand & Ors., Criminal Revision No. 462 of 2002 (Delhi High Ct.).

until obtaining anticipatory bail. This has resulted in a large number of pending complaints and cases, contributing to the breakdown of marriages when family members are arrested without immediate bail relief.

In the judgment on, ***Sushil Kumar Sharma vs Union of India and others***[51], Justice ArijitPasayat of the Supreme Court emphasized the objective of Section 498A, stating that its purpose is to prevent the dowry menace. However, the judge acknowledged instances where complaints under this section were not bona fide and were filed with oblique motives. Justice Pasayat highlighted that the acquittal of the accused does not always erase the ignominy suffered during and prior to the trial, and adverse media coverage can exacerbate the misery. The judge raised the crucial question of finding remedial measures to prevent the abuse of this well-intentioned provision. The judgment underscored that the constitutional and intra vires nature of the provision does not provide a license for unscrupulous individuals to engage in personal vendettas or harassment. Justice Pasayat suggested the necessity for the legislature to explore ways to appropriately deal with the makers of frivolous complaints or allegations.

### 2.5. Impact of Matrimonial Dispute on the Lives of Children

Matrimonial disputes, pervasive across various religions and social statuses, have profound implications for families, particularly children who emerge as the primary victims. As the most immediate social institution, the family significantly shapes an individual's early exposure and influences their life and personality. Research indicates that children witnessing marital discord and parental divorce often experience heightened rates of depression and anxiety, leading to various psychological problems compared to those in healthier family environments[52]. The incessant conflict between parents leaves children feeling isolated, potentially exacerbating emotional distress. Moreover, factors like alcohol-related issues and unstable home environments further contribute to a detrimental atmosphere, hindering a child's development. Consequently, children subjected to matrimonial disputes face challenges such as poor academic

[51]Sushil Kumar Sharma v. Union of India & Ors., Writ Petition (Civil) No. 141 of 2005 (India).

[52]Matrimonial Disputes and Their Impact on Children, The Law Gurukul, https://www.thelawgurukul.com/post/matrimonial-disputes-and-their-impact-on-children (last visited Mar. 11, 2024).

performance, compromised mental health, susceptibility to substance abuse, and an increased risk of juvenile delinquency. It is imperative to recognize these impacts and address the well-being of children within the context of matrimonial disputes.[53]

In the case of ***LahariSakhamuri v. SobhanKodali***[54], the Supreme Court acknowledged the profound impact of marital disputes on a child's psychological well-being, emphasizing that innocent children are the ultimate victims of parental conflicts. The judgment, delivered by a two-judge bench, with Justice Ajay Rastogi presiding, underscored the negative and exhaustive effects of the legal and psychological battles between parents on a child's life. Justice Rastogi expressed concern about the plight and helplessness of children caught in custody battles, advocating for a shift towards negotiated resolutions between parents. He argued that while legal disputes can be resolved, the psychological and social relationships of the children persist, necessitating a proactive approach to prioritize child rights in India.

**III. Constitutional & Legal Provisions on Mediation & Matrimonial Disputes**

Marriage and family hold immense significance in Indian society, serving as the bedrock of stability and civilization. However, as individuals with varying perspectives and goals come together in marriage, differences inevitably arise over time. These disparities can breed suspicion, selfishness, and resentment, ultimately culminating in marital discord and disputes. Such disputes, fueled by divergent interests and attitudes, can escalate to the point of irreconcilable differences, leading to separation and divorce. Matrimonial conflicts thus represent a complex interplay of evolving dynamics within relationships, often resulting in profound damage and dissolution.[55]Conflicts are inherent in marriages, stemming from the diverse attributes, backgrounds, and preferences of partners. Resolving these conflicts promptly is crucial, as research indicates their detrimental impact on health, including depression and eating disorders. John Mordecai Gottman emphasizes the significance of a constructive approach to conflict resolution. Fortunately, skills in fair fighting and effective communication can

[53]ibid
[54]Lahari Sakhamuri v. Sobhan Kodali, (2019) 7 SCC 311 (India).
[55]Matrimonial Disputes: Causes and Remedies, The Law Gurukul, https://www.thelawgurukul.com/post/matrimonial-disputes-causes-and-remedies (last visited Mar. 13, 2024).

be developed to navigate marital conflicts and foster a healthy relationship.[56]The matrimonial disputes can resurface even after settlement attempts. The Lok Adalat awards are final but cannot permit suit withdrawals. It affirmed that such disputes constitute separate causes of action, allowing aggrieved parties to pursue legal proceedings under the Act.[57]

Marriage entails the right to companionship and conjugal relations, representing the fundamental duty of each spouse to engage with one another intimately. Consortium encompasses the entirety of marital rights and responsibilities, akin to spousal ownership, and is indispensable for fulfilling the purpose of marriage. Sexual intercourse is a crucial aspect of marital life, exclusive to the spouses, while cohabitation encapsulates the entirety of marital relations and unity, forming a two-in-one relationship. Deprivation of companionship can lead to marital conflict, highlighting the significance of these rights in maintaining a harmonious marital bond.[58]

In ***G.V.Rao v. LHV Prasad***[59], the Supreme Court highlighted the rise in matrimonial disputes, emphasizing the sacred nature of marriage aimed at peaceful settlement. It lamented how minor conflicts escalate into serious issues, involving elders and leading to lengthy legal battles. The court advocated for amicable resolution over prolonged litigation to prevent parties from losing their prime years in court battles.

### 3.1. Causes of Matrimonial Disputes

Infidelity, domestic violence, control issues, financial disagreements, lack of commitment, and communication breakdowns are common factors contributing to marital conflicts. Infidelity, occurring in about one out of five divorces, signals a lack of commitment to the relationship. Domestic violence, characterized by abusive behavior, creates tension within the family. Control issues, financial disagreements, and differing levels of commitment can strain marriages. Additionally, busy lifestyles often result in

[56] Rachael Pace, 7 Causes for Conflict in Marriage and How to Resolve Them, Clinically Approved by Maggie Martinez, LCSW, Updated Jan. 30, 2024
[57] Harsha Dewani v. Ashutosh Gupta, 2020 SCC OnLine Chh 149 (Chhattisgarh High Ct. Aug. 10, 2020) (India).
[58]Kusum, Family Law Lectures (LexisNexis Butterworths Wadhwa: Nagpur, 2015).
[59]G.V. Rao v. L.H.V. Prasad, AIR 2000 SC 2474 (India).

poor communication, leading to emotional detachment and potential divorce.[60]Common conflicts in marriage can also stem from unmet expectations, conflicting views on children, financial management issues, time allocation and personal pursuits, sexual incompatibility, breakdowns in communication, and power imbalances. Unrealistic expectations often lead to disagreements over lifestyle choices and career support, while differing opinions on parenting and financial planning can strain relationships. Money-related conflicts, undisclosed finances, and divergent spending habits are significant contributors to marital discord. Balancing individual interests, career aspirations, and quality time with one's spouse is crucial for maintaining a healthy marriage. Disparities in sexual desires and intimacy inhibitions can create tension, while poor communication hampers conflict resolution and undermines marital harmony. Power imbalances and dominant-submissive dynamics often lead to resentment and conflict, necessitating intervention through marital counseling. Additionally, issues such as living arrangements and compatibility contribute to marital strife, but willingness and effort from both partners can facilitate conflict resolution and strengthen the marriage.[61]

Excessive co-dependency, where one partner relies too heavily on the other, can strain a marriage, causing feelings of suffocation and loss of identity. Unmet expectations, particularly when one partner expects significant changes from the other, can fuel disputes and strain the relationship further. Domestic violence, encompassing physical, mental, verbal, and emotional abuse, is a significant ground for divorce, protected under the Protection of Women from Domestic Violence Act, 2005. Offenses against marriage, such as bigamy and adultery, are legally punishable and often lead to marital disputes and divorce proceedings. Inability to resolve conflicts effectively can exacerbate disagreements, leading to heightened tensions and potentially divorce.[62]Bigamy and adultery are both offenses against marriage, often leading to matrimonial disputes and potential divorce. Bigamy, defined under Section 494 of the Indian Penal Code (IPC), involves marrying someone while already having a living

[60]Approach of Family Court in Settling Matrimonial Disputes, iPleaders Blog, https://blog.ipleaders.in/matrimonial-dispute-settling/ (last visited Mar. 13, 2024).
[61] Rachael Pace, "7 Causes for Conflict in Marriage and How to Resolve Them," Clinically Approved By Maggie Martinez, LCSW|, Updated: 30 Jan, 2024.
[62]Matrimonial Disputes: Causes and Remedies, The Law Gurukul, https://www.thelawgurukul.com/post/matrimonial-disputes-causes-and-remedies (last visited Mar. 14, 2024).

spouse, punishable by imprisonment up to seven years and fines. In the case of Bhaurao Shankar Lokhande[63], he was convicted of bigamy under Section 494[64]. Adultery, outlined in Section 497 of the IPC, entails engaging in sexual intercourse with someone who is the spouse of another person without the latter's consent, punishable with imprisonment up to five years, fines, or both. Cruelty can vary based on factors like social background, temperament, and relationship dynamics, particularly emphasizing a more elastic approach when a spouse seeks divorce.[65]It is well settled in law that giving repeated threats to commit suicide amounts to cruelty in a marriage. This indicates that legal precedent and established judicial interpretation support the notion that such behavior is considered cruel within the context of matrimonial law.[66]It is also a fact that filing a false criminal complaint constitutes matrimonial cruelty, entitling the injured party to claim dissolution of marriage.[67]

### 3.2. Constitutional & Legal Provision on Matrimonial Disputes

#### 3.2.1. Matrimonial Remedies

Marital conflicts often lead to legal actions seeking remedies, which can be classified as judicial or extra-judicial. Extra-judicial remedies, such as settlement and mediation, occur outside regular court procedures and depend on the parties' willingness. Judicial remedies, on the other hand, are pursued through formal court proceedings and are governed by legal provisions. These judicial remedies include restitution of conjugal rights, judicial separation, nullity of marriage, and divorce, which can be sought based on specific grounds recognized by the law.[68]

Restitution of conjugal rights entails ensuring consortium and cohabitation, while judicial separation allows either party to seek separation based on grounds similar to those for divorce under personal laws.

[63]Bhaurao Shankar Lokhande & Anr. v. State of Maharashtra & Anr., AIR 1965 SC 1564.
[64]Indian Penal Code, § 494.
[65]Roopa Soni v. Kamalnarayan Soni, 2023 SCC OnLine SC 1127.
[66]Pankaj Mahajan v. Dimple @ Kajal, AIRONLINE 2011 SC 17.
[67]K. Srinivas v. K. Sunita, AIRONLINE 2014 SC 147.
[68]Paras Diwan, Muslim Law in Modern India (11th ed. 2014).

The nullity of marriage refers to the legal process through which a marriage is declared null and void, essentially rendering it as if it never existed. This can be initiated by the innocent spouse based on various grounds recognized by the law. Such grounds may include lack of the legal age for marriage, absence of valid consent, mental incapacity of one or both parties, violation of prohibited relationship rules, failure to fulfil necessary ceremony requirements, or non-disclosure of material facts about marital status, religion, or caste. The nullity of marriage can be classified into two categories: void and voidable marriages. A void marriage is one that is considered invalid from the beginning due to fundamental reasons such as a complete barrier to marriage, while a voidable marriage is revocable and can be annulled upon the petition of either party. The reasons for declaring a marriage as void or voidable differ across various personal laws[69], including Hindu[70], Muslim[71], Christian[72], Parsi[73], and under the Special Marriage Act[74]. Each personal law outlines specific circumstances under which a marriage may be deemed null and void or voidable, ensuring that legal provisions are upheld and the rights of individuals are protected within the institution of marriage.

Premarital pregnancy serves as grounds for divorce under the Hindu Marriage Act, the Special Marriage Act, and the Parsi Marriage and Divorce Act in India, laws influenced by English legal principles. Unlike premarital unchastity, premarital pregnancy is considered the basis for annulment, regardless of the woman's previous moral conduct. To qualify for divorce on these grounds, specific prerequisites must be met, including the wife being pregnant at the time of marriage, the pregnancy being from a person other than the petitioner, the petitioner's unawareness of the pregnancy, and the timely filing of the petition after marriage. Additionally, the petitioner must demonstrate that no marital relations occurred with their consent after learning of the wife's pregnancy. Meeting all these criteria is essential for obtaining a divorce based on premarital pregnancy, with the burden of proof resting on the petitioner. Medical evidence may also be presented to substantiate the claim.

[69]Sumit Malik, Family Law Manual (Eastern Book Company, Lucknow 2012).
[70]Hindu Marriage Act, No. 25 of 1955, India Code (1955).

[71]Muslim Personal Law (Shariat) Application Act, No. 26 of 1937, India Code (1937).
[72]Indian Christian Marriage Act, No. 15 of 1872, India Code (1872).
[73]Parsi Marriage and Divorce Act, No. 3 of 1936, India Code (1936) (as amended in 1988).
[74]Special Marriage Act, No. 43 of 1954, India Code (1954).

Under various marriage laws in India, including the Hindu Marriage Act, the Special Marriage Act, the Indian Divorce Act, and the Parsi Marriage and Divorce Act, provisions exist for annulling marriages if consent was obtained through fraud or force. While the Hindu Marriage Act allows annulment if consent was obtained through fraud or force, the Special Marriage Act specifies that consent obtained through force or fraud, as defined in the Indian Contracts Act, can lead to annulment. In these laws, force is broadly defined to include physical force as well as threats of harm, rendering consent invalid if given under duress. The Marriage Laws (Amendment) Act, 1976, further specifies types of fraud that can vitiate consent, including fraud related to the nature of the ceremony, identity of the parties, concealment of disease, unchastity, or illegitimate birth. Fraud in these areas renders the marriage voidable at the discretion of the innocent party.

### 3.2.2. Divorce Grounds & issues

Each personal law in India stipulates grounds for obtaining a divorce, some categorized as matrimonial guilt, while others are deemed faults of the parties, rendering conjugal life futile. These grounds are as follows:[75]

**Adultery:** Except under Muslim law, adultery serves as the basis for divorce and judicial separation. Defined as voluntary sexual intercourse with someone other than one's partner, it was formerly punishable under Section 497 of the Indian Penal Code 1860, now invalidated by the Supreme Court. However, it remains a valid cause for divorce across all personal laws. The Hindu Marriage Act, Special Marriage Act, and Parsi Marriage and Divorce Act all cite adultery as grounds for divorce.

**Cruelty:** Recognized as both physical and mental in nature, cruelty constitutes physical force, injury, threats, harassment, or mental anguish that undermines the foundation of love and affection between spouses. It serves as grounds for judicial separation and divorce under the Hindu Marriage Act, Special Marriage Act, and Parsi Marriage and Divorce Act[76].

[75]Kusum, Cases and Material on Family Law (Universal Law Co., New Delhi, 2010).
[76] Parsi Marriage and Divorce Act, No. 3 of 1936, § 32(dd), India Code (1936).

**Desertion:** Acknowledged in nearly all personal laws in India, desertion can be actual or constructive, leading to the termination of spousal relations. The Hindu Marriage Act[77], Special Marriage Act[78], and Parsi Marriage and Divorce Act require a continuous period of two years for desertion to qualify as grounds for divorce. Notably, this ground is unavailable to husbands under certain laws, while under Muslim marriage law, a wife can seek divorce if the husband fails to fulfill marital obligations for three years.

**Impotency:** In most legal systems, impotence or refusal to consummate a marriage are grounds for annulment or voidance. Under the Special Marriage Act, Marriage Dissolution Act, and Indian Divorce Act, impotence at the time of marriage is grounds for annulment if petitioned within a specified time frame. While under the Hindu Marriage Act, it leads to annulment, under the Muslim Marriage Act, it constitutes grounds for divorce. Deliberate refusal to marry is cause for annulment under the Special Marriage Act and divorce under the Parsi Marriage and Divorce Act. Insanity, however, is not a ground for divorce under the Indian Divorce Act, 1869, but under the Muslim Marriage Act, two years of insanity by the husband permits the wife to file for divorce.

**Venereal diseases:** Venereal disease serves as grounds for divorce and judicial separation across various Indian marital laws. The Hindu Marriage Act and Special Marriage Act articulate this ground similarly, while the Muslim marriage law specifies the husband's condition with a sexually transmitted disease. Under the Parsi Marriage and Divorce Act, the afflicted spouse can petition for divorce if the other spouse contracts the disease. However, sexually transmitted diseases do not warrant divorce under Indian divorce law.

**Conversion or apostasy:** Conversion or apostasy constitutes grounds for divorce and judicial separation under specific Indian personal laws, though not under the special marriage law for inter-religious marriages. The Hindu Marriage Act cites conversion away from Hinduism as grounds, while apostasy serves as the basis for divorce under Muslim law. Similarly, under the Parsi Marriage and Divorce Act, conversion away

[77] Hindu Marriage Act, No. 25 of 1955, § 13(1), India Code (1955).
[78] Special Marriage Act, No. 43 of 1954, § 27(1), India Code (1954).

from Parsi religion leads to divorce. Indian divorce law permits divorce if a husband converts and remarries, not solely due to conversion.

**Failure to carry out marital obligations-Muslim law**: In Muslim law, a husband's failure to fulfill marital obligations justifies divorce for the wife[79]. This entails a failure without reasonable cause for three years, emphasizing basic marital duties. The term "reasonable cause" aligns with solitude and must persist for three years for divorce.

**Right of Repudiation of Marriage:** Under Muslim law[80], minors married by their guardian can repudiate the marriage upon reaching maturity, known as the right of repudiation or option of puberty. The latter applies when a guardian other than the father or grandfather arranges the marriage.

**Irretrievable Breakdown of marriage:** Recognized under Indian laws, irretrievable breakdown occurs if parties fail to comply with a decree of restitution of conjugal rights or judicial separation after one year or more. This ground frees parties from marital bonds rather than enduring a failed marriage. Under the Parsi Marriage and Divorce Act, non-resumption of cohabitation after a maintenance order for one year warrants divorce.

**Divorce by Mutual Consent[81]:** Section 13-B of the Hindu Marriage Act allows for divorce by mutual consent, introduced in 1976, enabling couples to dissolve their marriage if they have lived separately for one year or more and mutually agree on divorce. This provision didn't exist before 1976, as Hindu marriage was considered sacramental with no concept of divorce. Amendments in the law introduced provisions like Section 13-B, emphasizing both reconciliation efforts and facilitating easier divorce. Parties can file for divorce under this provision even for marriages solemnized before 1976, given certain conditions are met. While divorce by mutual consent streamlines the process, it also raises concerns about hasty decisions and one party withholding consent. The provision includes a six-month period for reconsideration, but the initial one-year separation period may be seen as unjustified, considering practical

[79] Dissolution of Muslim Marriages Act, No. 8 of 1939, § 2, India Code (1939).
[80] Dissolution of Muslim Marriages Act, No. 8 of 1939, India Code (1939).
[81] Hindu Marriage Act, No. 25 of 1955, § 13-B, inserted by Act No. 68 of 1976, India Code (1976).

difficulties in living separately. Divorce by mutual consent provides an option for couples who have tried but failed to reconcile, offering a solution without assigning blame to either party.

Under the Hindu Marriage Act, 1955, certain bars exist that must be overcome to obtain matrimonial relief, guided by the Doctrine of Equity. These include burden of proof, taking advantage of one's own wrong, accessory, connivance, condonation, collusion, delay, and other legal grounds. The court is tasked with attempting reconciliation between parties except in specific cases.[82] The Law Commission proposed irretrievable breakdown of marriage as a new ground for divorce, with recommendations for addressing financial hardships, especially for the wife, and ensuring adequate provisions for children. However, these recommendations faced opposition and did not proceed.Section 34 of the Special Marriage Act, 1954 outlines the conditions for granting relief to the aggrieved party, including bars such as accessory, connivance, condonation, collusion, delays, burden of proof, and reconciliation. Despite similarities in provisions, the existence of two Acts, the Hindu Marriage Act and the Special Marriage Act, is due to their applicability to different demographics. The Hindu Marriage Act applies to Hindus in India and mandates marriage according to Hindu traditions, while the Special Marriage Act applies to all citizens regardless of religion or ethnicity, without specific religious rituals for solemnization.[83]The Indian Divorce Act, 1869, governing divorce among Christians, and the Parsi Marriage and Divorce Act, 1936, regulating Parsi marriages, both establish specific bars to matrimonial relief. Under the Indian Divorce Act, Section 12 outlines conditions such as accessory, connivance, condonation, adultery, cruelty, desertion, or unreasonable delay for filing the petition, which may prevent relief. However, Section 14 allows the court to grant relief if these conditions are not met, except in cases of specified offenses. Similarly, the Parsi Marriage and Divorce Act, Section 35, mentions bars like annulment, condonation, collusion, connivance, reasonable delay, or other legal grounds, which must be satisfied for the court to grant relief under Sections 30, 31, 32, 32A, and 34. These provisions ensure that before providing matrimonial relief, the court assesses

[82] Bars to Matrimonial Relief in India, iPleaders Blog, https://blog.ipleaders.in/bars-to-matrimonial-relief-in-india/#The_concept_of_matrimonial_relief (accessed Mar. 14, 2024).
[83]Ibid

whether the petitioner meets the specified criteria, ensuring fairness and adherence to legal principles in divorce proceedings among these communities.[84]

### 3.2.3. Dowry

The practice of dowry in India has its roots in ancient customs of gift-giving within families, where parents would voluntarily offer gifts to their daughters upon marriage. However, over time, this tradition evolved into a coercive system known as the dowry system, where demands for valuables, money, and property became commonplace during marriage negotiations. This shift from voluntary to obligatory giving led to instances of cruelty, harassment, and even dowry-related deaths and suicides when demands were not met. To combat this harmful practice, the Parliament enacted the Dowry Prohibition Act in 1961, subsequently amending it in 1984 and 1986. Legislative efforts to address the issue date back even earlier, demonstrating the seriousness with which the government has approached the eradication of the dowry system. The problem of dowry is typically discussed under three main categories: the legal framework provided by the Dowry Prohibition Act, instances of dowry-related deaths and suicides, and the cruelty inflicted by husbands in pursuit of dowry.[85]

The Dowry Prohibition Act of 1961 was enacted with the objective of eliminating the harmful practice of dowry exchange during marriages. Recognizing the severity of the issue and its detrimental impact on society, the government sought to address it through legal means, aiming to punish offenders while ensuring that any dowry given benefits the wife. Despite legislative efforts, the practice of dowry persisted, often viewed as a matter of prestige in Indian families.[86] The Act underwent significant amendments in response to ongoing concerns, including provisions to combat cruelty against married women due to dowry demands. However, critiques highlighted the need for further improvements, suggesting that the amendments were insufficient to address the deep-rooted issue. Recommendations from a Joint Committee emphasized the importance of legislative action in combating dowry-related offenses, urging for more stringent

[84]Ibid
[85]Michael Wetzel, Little Dowry, No Sati: The Condition of Women in the Vedic Period, J. S. Asia Women Stud. (1996).
[86]As a result, specific Indian laws such as the Dowry Prohibition Act, No. 28 of 1961, India Code (1961). and Indian Penal Code, No. 45 of 1860, §§ 304-B, 498-A, India Code (1860).

punishment and broader definitions to effectively tackle the problem. Despite ongoing challenges, legislative efforts continue to evolve in the pursuit of eradicating the dowry system and ensuring the safety and rights of women in India. The Supreme Court, in the case of ***S.Gopal Reddy v. State of A.P.***[87], highlighted the concerning rise in dowry-related offenses, including harassment, torture, abetted suicides, and dowry deaths of young brides, which continue unabated despite societal awareness. The Court emphasized the necessity of a collective awakening and a change in attitude among both women and men to combat this social evil. It stressed the importance of the judiciary's role in dealing with such cases realistically, balancing the objective of legislation with the need for strict interpretation of penal statutes. The Court emphasized the presumption of innocence until proven guilty and cautioned against allowing emotions to sway judgment. It urged careful assessment of evidence, avoiding reliance on suspicion or conjecture while also not allowing technicalities to lead to unjust acquittals.In Islamic law, mahr, also known as dower, is a mandatory payment or gift from the groom to the bride at the time of marriage or its dissolution, as agreed upon by the parties. It can be in the form of money, possessions, or any other agreed-upon item. Mahr is considered a fundamental right of every woman in Islam and is intended as an expression of love and responsibility from the husband. The concept of mahr emphasizes balance and responsibility between spouses, with women entrusted with domestic management while men are responsible for providing livelihood. The payment of mahr is obligatory in Islam and can be either prompt or deferred, depending on the agreement between the parties. There are two principal methods of payment: specified mahr, agreed upon at the time of marriage, and customary mahr, which is not fixed in the marriage contract. Mahr is regarded as a form of protection for women and should be equitable, reflecting the financial capacity of the husband and the circumstances of the marriage. While adjustments to the mahr can be mutually agreed upon, it remains the property of the wife, serving as a safeguard for her rights.[88]

### 3.2.4. Offences relating to marriage

[87]S. Gopal Reddy v. State of A.P., AIR 1996 SC 2184 (India).
[88]Syed Sahid Ahammad, A Critical Analysis of Dower (Mahr) in Islam, 21(7) IOSR J. Human. & Soc. Sci. 86 (2016)

Chapter XX of the Indian Penal Code addresses offences relating to marriage, encompassing Sections 493 to 498. These offences include cohabitation by a man with a woman under deceit (Section 493), bigamy during the lifetime of a spouse (Sections 494 and 495), mock marriage with fraudulent intent (Section 496), adultery (Section 497), and enticing, taking away, or detaining a married woman with criminal intention (Section 498).

Dowry death, as defined by Section 304B[89], involves the death of a woman within seven years of marriage due to burns or bodily injury under abnormal circumstances, linked to harassment or cruelty related to dowry demands. The law presumes the husband or his relatives to be responsible for the death, shifting the burden of proof onto them. Even if evidence suggests murder under Section 302, the accused can still be charged under Section 304B if conditions for dowry death are met. This legal provision emphasizes the seriousness of dowry-related violence and ensures accountability for such crimes.

Section 498A[90]deals with the offense of subjecting a woman to cruelty by her husband or his relatives. It was introduced in 1983 to protect married women from harassment, with a punishment of up to three years' imprisonment and a fine. Cruelty is broadly defined to include physical or mental harm and harassment for dowry. The provision aims to deter offensive behavior and ensure women's dignity and safety. However, concerns have been raised about its misuse through false or exaggerated allegations, implicating many relatives of the husband. Despite widespread complaints, there's a lack of reliable data on the extent of misuse, highlighting the need for empirical study to address these concerns.Section 498A of the Indian Penal Code was intended to shield married women from harassment, yet it has become susceptible to abuse, as evidenced by instances of false accusations driven by personal vendettas. Despite its noble purpose, individuals have exploited this provision to settle scores or manipulate legal proceedings. The Supreme Court's intervention, acknowledging the rampant misuse, underscores the necessity for stringent safeguards to prevent arbitrary arrests and ensure the law's equitable application. While the provision remains vital for protecting

[89]Indian Penal Code, No. 45 of 1860, § 304-B, India Code (1860).
[90]Ibid

women's rights, its implementation requires careful oversight to prevent injustices stemming from unfounded allegations. Balancing the need to address genuine cases of marital cruelty with safeguarding against misuse is imperative to uphold the integrity of Section 498A and maintain trust in the legal system.[91]

### 3.2.5. The Protection of Women from Domestic Violence Act 2005

The Protection of Women from Domestic Violence Act 2005 defines domestic violence broadly to include any act, omission, or conduct that harms, injures, or endangers the physical or mental well-being of the aggrieved person. This encompasses physical abuse, sexual abuse, verbal and emotional abuse, and economic abuse. Sexual violence against the wife falls under the purview of domestic violence, with the Act recognizing various forms of abuse within a domestic setting. The law provides for a range of remedies, including counseling[92], protection orders[93], residence orders[94], monetary relief[95], custody orders[96], and compensation orders[97], to address the needs of aggrieved women.

Matrimonial discord is increasingly prevalent, posing challenges to the sanctity of marriage and affecting society. Factors such as women's socio-economic independence, smaller families, and emphasis on individual fulfilment contribute to less stable marriages. Cultural norms heavily influence marital behavior, impacting the fabric of society. Despite material wealth, a happy home is built on love and emotional connection, not physical structures. True happiness stems from enduring values, not circumstantial gratification.

## 3.3. Constitutional & Legal Provisions on Mediation

### 3.3.1 Definition- Mediation

[91] Arnesh Kumar v. State of Bihar, (2014) 8 S.C.C. 273 (India).
[92] Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India), § 14.
[93] Ibid. § 18.
[94] Ibid§ 19
[95] Ibid§ 20
[96] Ibid§ 21
[97] Ibid§ 22

"mediation" includes a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator, who does not have the authority to impose a settlement upon the parties to the dispute.[98]

### 3.3.2. Historical Perspective

The historical perspective on mediation in India traces back to ancient times, where the early Aryans invoked divine wisdom and prudence to govern disputes. The Vedic epoch saw the development of collaborative dispute resolution methods, such as assemblies and parishads, reflecting the cultural co-existence of diverse communities. Scholars like Yagnavalkya and Parashar set up tribunals and associations to resolve disputes based on principles of justice and equity. Buddhism further emphasized mediation as a wise method of conflict resolution. Even during the Mughal era, mediators like Birbal played significant roles in resolving disputes. In parallel, the evolution of mediation in the United States took various paths, including community mediation, private mediation, and court-annexed mediation, each addressing specific needs of disputing parties. The pivotal Pound Conference in 1976 underscored the need for alternatives to litigation, leading to the concept of a "Multi-door Courthouse" and emphasizing the role of mediation in providing satisfactory resolutions to disputes. Overall, the historical journey of mediation demonstrates its deep-rooted significance in fostering peaceful conflict resolution across cultures and civilizations.[99]Mediation, conciliation, and arbitration have deep historical roots in India, predating the Anglo-Saxon adversarial legal system. Before British rule, various forms of mediation and arbitration were prevalent, especially among businessmen who sought resolution through impartial mediators like the Mahajans. However, with the advent of British colonial rule, the British legal system gradually replaced indigenous adjudication procedures, causing a conflict between British values favoring clear-cut decisions and Indian values promoting compromise. Despite India gaining independence in 1947, the British legal system persisted, delivering swift justice but struggling to handle the increasing volume

[98] Mediation Act, 2023, Acts of Parliament, 2023 (India), § 3(h).
[99]Mediation Training Manual of India ch. 1 (Mediation & Conciliation Project Comm., Supreme Court of India

of litigation in the 21st century. This led to a shift towards alternative dispute resolution methods, mirroring trends in other democratic countries like the United States, Australia, and the United Kingdom, which have embraced mediation to alleviate court congestion and improve access to justice. Even the European Union advocates for mediation in commercial disputes among member states.[100]

The legal recognition of mediation in India began with the Industrial Disputes Act of 1947, which mandated conciliators to promote settlements in industrial disputes. Arbitration was recognized even earlier, in 1879, and was incorporated into the Civil Procedure Code of 1908. The Legal Services Authorities Act of 1987 further advanced mediation by establishing the National Legal Services Authority, tasked with encouraging dispute resolution through negotiation, arbitration, and conciliation. The Arbitration and Conciliation Act of 1996 provided detailed procedures for conciliation proceedings, including the appointment of conciliators and submission of statements. Additionally, the Code of Civil Procedure was amended in 1999 to include Section 89, allowing for the reference of court cases to alternative dispute resolution methods, including mediation. The Supreme Court of India initiated studies in the mid-1990s to address delays in the civil justice system, leading to proposals for case management amendments to the Civil Procedure Code. Overall, the acceptance of mediation has grown in India, especially with the recognition of its potential to alleviate the backlog of cases in civil courts amidst economic liberalization and law reforms.[101]The Mediation Act of 2023, enacted on September 14th, 2023, aims to promote and facilitate mediation, particularly institutional mediation, for resolving disputes, whether commercial or otherwise. It seeks to enforce mediated settlement agreements, establish a body for registering mediators, encourage community mediation, and enhance the acceptability and cost-effectiveness of online mediation processes. The Act addresses various aspects related to mediation and aims to streamline the dispute resolution process while supporting alternative methods of resolving conflicts.[102]

### 3.3.3. Concept of Mediation

[100]Ibid
[101]Ibid
[102]The Mediation Act, No. 27 of 2023, Gazette of India, Extraordinary, Part II, sec. 1 (Sept. 15, 2023) (India).

The concept of mediation revolves around several fundamental principles. Firstly, it's a voluntary process where parties maintain the autonomy to decide whether to settle a dispute and the terms of any settlement, regardless of external mandates. Secondly, mediation is centered on the parties themselves, fostering their active involvement in the resolution process, although a mediator facilitates discussions. Despite following a structured process, mediation allows flexibility to adapt to the parties' needs. Additionally, it serves as an assisted negotiation, aiming to address both factual/legal issues and underlying interests for a mutually agreeable solution. Mediation is prized for its efficiency, cost-effectiveness, and preservation of dignity and respect. Central to this process is the neutrality of the mediator, ensuring impartiality and objectivity. Moreover, confidentiality is paramount, safeguarding statements and information disclosed during mediation. Any settlement reached is formalized in writing and enforceable, but if no agreement is reached, the mediator's report simply indicates "not settled." Mediators cannot be compelled to testify, and parties have the freedom to settle even if it disregards legal entitlements. Finally, mediation's scope extends beyond the referred dispute to encompass related matters, offering a comprehensive approach to conflict resolution.[103]

### 3.3.4. Benefits of Mediation

The advantages of mediation are multifaceted and underscore its effectiveness as a dispute resolution mechanism. Firstly, parties retain full control over the process and its outcome, allowing for flexibility in scope and settlement terms. Secondly, mediation fosters active participation from all parties, ensuring direct engagement in negotiations. Its voluntary nature enables parties to withdraw at any stage, ensuring compliance with the settlement. Moreover, mediation is known for its efficiency, cost-effectiveness, and adaptability to suit individual case demands, while maintaining an informal and conducive atmosphere. Importantly, the process is fair, impartial, and confidential, facilitated by a neutral mediator. Effective communication is promoted, aiding in the preservation or restoration of relationships between parties. Mediation prioritizes long-term and underlying interests, seeking mutually beneficial settlements and often resolving related cases creatively. Settlement agreements, being self-determined,

[103]Ibid Chapter-III

typically lead to compliance and promote finality, with no avenue for further litigation. Additionally, court-referred mediations may entail refunds of court fees upon settlement.[104]

### 3.3.5. Role of Mediator

The role of a mediator in the mediation process is pivotal, serving as an impartial and neutral facilitator to assist disputing parties in reaching a mutually acceptable resolution. The mediator does not impose solutions but instead fosters open communication, identifies issues, and explores options for settlement. While facilitating the process and maintaining control, the mediator helps parties generate solutions and encourages agreement. Additionally, the mediator plays an evaluative role by guiding parties in assessing their case and settlement options through reality testing. It's important to distinguish a mediator from a conciliator and an adjudicator: Unlike a conciliator who may suggest settlement terms, and an adjudicator who makes binding decisions, a mediator does not provide judgments or impose solutions; instead, the parties themselves retain control over the outcome, with any settlement agreement being binding upon them.[105]

### 3.3.6. Counselling and Pre-marital counselling

Counselling and pre-marital counselling play crucial roles in resolving matrimonial disputes, addressing various factors unique to such conflicts. While counselling aims to help couples iron out their differences or settle separation details, conciliation focuses on repairing disagreements and resolving conflicts between parties. Traditionally, successful conciliation was often equated with couples choosing to remain together, but there's now a broader understanding that conciliation can lead to various outcomes beyond reconciliation. Even if reconciliation fails, the process helps parties prepare for life after divorce and cope with associated emotions. Conciliation proceedings, even when divorce seems inevitable, hold significant value in helping parties navigate changed circumstances. It's vital for counselling to be provided early, ideally before legal proceedings, by counselors knowledgeable in social customs, psychology, and

[104]Ibid
[105]Ibid Chapter-VII

socio-economic contexts. Pre-litigation counselling, before parties become entrenched in legal battles, often yields better results, fostering forgiveness and cooperation. Counseling centers, often part of Women Protection Cells, offer individual counselling to couples facing domestic issues, sometimes involving legal experts and psychologists for peaceful resolution. Counselors focus on probing facts, identifying root causes, exploring reconciliation possibilities, facilitating agreed solutions, and shaping settlements effectively.[106]

### 3.3.7 Current legislative provisions for Mediation within Indian law.

#### 3.3.7. a. Constitutional Mandate

Article 21 of the Constitution of India[107] guarantees the fundamental right to life and personal liberty, emphasizing fair and just procedures for any deprivation of these rights. The Supreme Court[108] has interpreted this provision broadly, including the right to a speedy trial within its scope. This interpretation aims to alleviate the mental, financial, and emotional strain individuals face during legal proceedings, ensuring effective defence. Consequently, the concept of Alternative Dispute Resolution (ADR) including Mediation has been incorporated into various statutes by the legislature, recognizing mediation as a mechanism to expedite justice and reduce the burdens of traditional litigation.

#### 3.3.7. b. Mediation under Hindu Marriage Act 1955

The Hindu Marriage Act of 1955, a part of the Hindu Code Bill, was enacted to regulate marriage law among Hindus and codify personal aspects of their lives. Despite legislative and judicial efforts to ensure gender equality and protect women's marital rights, issues like matrimonial violence and dowry-related crimes persist. The Act enforces strict monogamy, prohibits bigamy, and outlines conditions for valid marriages

[106]N. Bhagya Lakshmi, MDR in India through ADR Methods: A Socio-Legal Study with Reference to Visakhapatnam Family Court (2018).
[107]India Const. art. 21 (a Fundamental Right enshrined in Part III of the Constitution of India), can be directly enforced in the Supreme Court under India Const. art. 32. (It's important to note that while all Fundamental Rights are Constitutional Rights, not all Constitutional Rights can be directly enforced under Article 32.)
[108]Hussainara Khatoon (I) v. Home Sec'y, State of Bihar, (1980) 1 S.C.C. 81 (India).

under Sections 5 and 17[109], while also providing for various matrimonial reliefs like restitution of conjugal rights and divorce under Sections 9, 10, and 13[110]. Additionally, it addresses maintenance, alimony, and child custody issues. Over the years, amendments have raised the legal marriage age, simplified grounds for divorce, and introduced procedural changes to expedite matrimonial litigation. Reconciliation, a mandatory aspect under Sections 23(2) and 23(3), is prioritized by the courts, emphasizing the sacramental nature of marriage and the importance of attempting reconciliation before granting relief. Prelitigative conciliation is also encouraged to resolve family disputes effectively before legal proceedings.

In accordance with Section 23(2) of the Hindu Marriage Act, 1955, prior to granting any relief under this Act, it is incumbent upon the court to first endeavor, if feasible and appropriate given the circumstances, to facilitate reconciliation between the parties involved. Section 23(3) empowers the court to adjourn proceedings for up to 15 days to pursue reconciliation upon request from the parties or if deemed just and proper by the court, with the option to seek assistance from an external party for this purpose.[111]While this provision is not obligatory but rather advisory, it underscores the court's responsibility to prioritize reconciliation efforts, considering marriage as a sacrament rather than a mere contract. Even in cases where mutual consent for divorce exists, the court is obliged to initiate reconciliation proceedings as its primary duty. Failure to make such efforts may necessitate referring the case back to trial court.[112] Pre-litigation conciliation, conducted before parties become entrenched in adversarial positions, can prove more effective in resolving familial disputes.

### 3.3.7. c. Mediation under Special Marriage Act 1954

The Special Marriage Act, 1954 replaced the earlier Act III, 1872, with the aim of providing a special form of marriage, registration, and divorce in specific cases. It mandates certain conditions for marriage, including age requirements and prohibits unions with living partners or those prohibited by law. Marriage solemnization requires

[109]Hindu Marriage Act, 1955, §§ 5, 17 (India).
[110]Ibid
[111]Sakri v. Chhanwarlal, A.I.R. 1975 Raj. 134 (India).
[112]Subhadra Bai v. Hari Shankar Kachhi, (1989) 1 Cur. Civ. Cas. 451 (M.P.) (India).

a notice to the Marriage Officer, with provisions for objections, inquiries, and appeals if objections are raised. Additionally, the Act[113] includes a conciliatory mechanism under Section 34(2)[114], where the court is duty-bound to attempt reconciliation between parties before granting any relief, allowing for adjournment and referral to designated individuals or court-nominated persons for reconciliation efforts, with the court considering their report in its decision-making process.

### 3.3.7. d. Mediation under Family Courts Act 1984

The Family Courts Act of 1984 was enacted to provide a specialized forum for resolving family disputes in a less formal and more conciliatory manner. It aims to promote reconciliation and speedy settlement of matters related to marriage, divorce, maintenance, custody, and property disputes. The Act mandates the establishment of Family Courts by state governments, with a focus on appointing judges committed to preserving marriage and promoting conciliation. Family Courts have jurisdiction over various family-related issues and are empowered to engage counselors, medical experts, and social welfare organizations to assist in dispute resolution. The Act emphasizes the importance of reconciliation and settlement, and Family Courts are encouraged to adopt a human approach and make reasonable efforts at settlement before trial. The legislation seeks to protect the institution of marriage, promote the welfare of children, and simplify procedures to effectively resolve family disputes.

The Law Commission[115] also emphasized the need for courts to take radical approaches in handling family disputes, advocating for efforts towards settlement before trial commencement. The Family Courts Act of 1984 serves as a procedural statute, providing an alternative platform for dispute resolution without overriding personal laws. Unlike regular civil courts, Family Courts are specifically designed to foster conciliation and achieve prompt resolution of marital and family disputes. These matters are addressed in an environment of reconciliation and understanding, often with the assistance of counselors and without involvement of advocates.

[113]Special Marriage Act, 1954, § 34(2) (India).
[114]Ibid
[115]Law Comm'n of India, 59th Report on Hindu Marriage Act, 1955–Irretrievable Breakdown of Marriage as a Ground for Divorce (1974).

The directive suggests that while Section 498-A of the IPC is not compoundable, parties involved in appropriate cases should explore settlement through mediation, under the guidance of the criminal court. This process aims to address matrimonial disputes equitably without undermining the severity of the law. If parties agree to settle, they can approach the High Court to quash the complaint. However, the court must ensure that the settlement is fair and genuine. Additionally, Family Courts are directed to prioritize mediation for matrimonial disputes, setting reasonable time limits. Mediation centers are encouraged to establish pre-litigation desks to facilitate early resolution of disputes.[116]The family court considers applications for the issuance of divorce decrees under several Acts, including the Dissolution of Muslim Marriage Act, 1939, the Muslim Women (Protection of Rights on Divorce) Act, 1986, the Parsi Marriage and Divorce Act, 1936, the Divorce Act, 1869, the Special Marriage Act, 1954, and the Foreign Marriage Act, 1969.[117]Section 9 of the Family Courts Act, 1984 outlines the responsibility of the Family Court to endeavor towards settlement. Additionally, under Section 12[118], the Family Courts are empowered to enlist the assistance of a medical expert or any other individual, regardless of their relation to the involved parties, especially those engaged in promoting family welfare. This provision aims to aid the Family Court in fulfilling its obligations under the Family Courts Act, 1984. Moreover, these courts are authorized to adjourn proceedings for a reasonable duration to facilitate settlement attempts if there is a reasonable chance of success.[119]

The involvement of counselors in family courts is pivotal, as they often facilitate the resolution of cases through effective counseling. The selection process for counselors holds significant importance in ensuring the delivery of justice. Additionally, judges can also engage in counseling during the subsequent stage. Initially, cases are referred to counselors for counseling, and although in some instances initial counseling may prove unsuccessful, the proactive intervention of judges has been instrumental in resolving disputes. Counseling and conciliation serve as the fundamental principles underlying the operation of family courts, with counseling serving as the cornerstone for achieving conciliated settlements. Counselors' responsibilities extend beyond mere counseling to

[116]K. Srinivas Rao v. D.A. Deepa, A.I.R. 2013 S.C. 2176 (India).
[117]High Court of A.P. Family Courts (Court) Rules, 2005, r. 5(d) (India).
[118]Family Courts Act, 1984, § 12 (India).
[119]Family Courts Act, 1984, § 9(2) (India).

include fostering reconciliation and facilitating mutual settlements whenever feasible. Many of the cases brought before family courts can be successfully resolved through diligent counseling efforts.[120]

### 3.3.7. e. Mediation under Code of Civil Procedure 1908

The ADR movement in India experienced a significant shift with the introduction of Section 89 of the Civil Procedure Code, 1908, which mandated a special procedure for resolving disputes. This legislative mandate, coupled with active judicial efforts, sparked an ADR revolution. Section 89 allows courts to formulate settlement terms if parties are amenable, referring them to arbitration, conciliation, judicial settlement, Lok Adalat, or mediation. Rules in Order X[121] facilitate this process, with parties given the option to settle outside court. These provisions apply to Family Courts as well, empowering them to resolve disputes through alternative modes, including mediation.Order 23, Rule 3 of the Civil Procedure Code, 1908 allows for the making of a decree based on a lawful agreement or compromise between parties during the suit. If the court is satisfied that the suit has been adjusted by such an agreement, it must pass a decree accordingly. Similarly, Order 27, Rule 5B[122] mandates the court to assist in settlement efforts in suits involving the government or public officers. If there's a reasonable chance of settlement, the court may adjourn proceedings to facilitate negotiation.Order 32A[123] addresses the need for a specialized approach in cases involving family matters due to their emotional nature. It emphasizes the importance of family counseling and settlement efforts to preserve marital bonds. The provisions apply to various family-related proceedings like guardianship, custody, maintenance, etc. The court is mandated to make efforts for settlement, including providing assistance and adjourning proceedings where necessary. Similar provisions exist in other laws like the Hindu Marriage Act and Industrial Dispute Act, promoting alternative dispute resolution methods such as arbitration, conciliation, and mediation. Proper training of judges, lawyers, and court officials is crucial for the success of these methods.

[120]Namita Singh Jamwal, Family Dispute Conciliation
[121]Code of Civil Procedure, 1908, Order X (India).
[122]Code of Civil Procedure, 1908, Order 27, R. 5B (India).
[123]Code of Civil Procedure, 1908, Order 32A (India).

### 3.3.7. f. Mediation under theProtection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act, 2005 aims to safeguard women's rights and address domestic violence within family settings. Originating from constitutional provisions, the Act establishes mechanisms for protecting women and providing them with civil remedies. It defines domestic violence broadly, covering physical, sexual, verbal, emotional, and economic abuse, including harassment related to dowry demands. The Act[124] empowers women to secure housing and reside in matrimonial homes, with provisions for protection orders against the abuser. It mandates the appointment of Protection Officers and registration of NGOs as service providers to assist aggrieved women with medical, legal, and shelter-related needs. Civil remedies include protection orders[125], residence orders[126], monetary reliefs[127], and custody orders[128]. Criminal proceedings are allowed in certain circumstances, and counseling services are provided for resolving disputes.

### 3.3.7. g. Settlement of Matrimonial disputes through Lok Adalats

The efficacy of Lok Adalats[129] in resolving family disputes has been recognized as a vital component of alternative dispute resolution. Rooted in indigenous justice systems, Lok Adalats offer a less formal, expeditious, and cost-effective alternative to traditional courts. With the evolution of modern legal mechanisms, Lok Adalats have gained popularity for their effectiveness in settling disputes and reducing the burden on regular courts. They promote peace and justice, especially benefiting marginalized groups like women. The Delhi High Court[130] has emphasized the importance of Lok Adalats, leading to the establishment of permanent ones, albeit limited to certain types of disputes. In matrimonial cases, Lok Adalats have facilitated mutual divorce decrees, providing a swift resolution for couples who cannot reconcile. This highlights the ease

[124]The Protection of Women from Domestic Violence Act, No. 43 of 2005, § 1 (India).

[125]Ibid., § 18.
[126]Ibid., § 19
[127]Ibid., § 20
[128]Ibid., § 21
[129]The Legal Services Authorities Act, No. 39 of 1987, ch. VI & VIA (India).
[130]Abdul Hasan & Nat'l Legal Servs. Auth. v. Delhi Vidyut Bd. & Ors., AIR 1999 Del. 88 (India).

of obtaining divorce through mutual consent, as seen in cases before the Supreme Court's Lok Adalat. Overall, Lok Adalats offer a promising avenue for accessible and timely justice delivery, particularly in family matters.

### 3.3.7. h. Mediation under Mediation Act 2023

The Mediation Act of 2023, passed by both the Rajya Sabha[131] and the Lok Sabha[132], aims to promote and facilitate mediation as a method of dispute resolution. It applies to mediation proceedings conducted in India or involving parties with ties to India.[133] The Act encompasses various forms of mediation, including pre-litigation mediation[134], online mediation[135], and community mediation[136], providing a framework for settling disputes amicably with the assistance of a third party. Key features of the Act include provisions for the applicability of mediation agreements, pre-litigation mediation, exceptions to mediation, and the power of the court to refer parties for mediation. It also outlines the conduct of mediation proceedings[137], addressing conflict of interest, the place of mediation, commencement, and the role of the mediator[138]. The Act sets a time limit for completing mediation proceedings and defines the form and registration process[139] for mediated settlement agreements. It mandates the submission of a non-settlement report[140] by the mediator in certain circumstances and ensures confidentiality of mediation proceedings. Additionally, the Act establishes the Mediation Council of India[141] to promote mediation and accredit mediation service providers.Overall, the Mediation Act of 2023 is a significant step towards enhancing the mediation framework in India, providing a formal, efficient, and harmonious method for resolving disputes outside of court.

The use of Alternative Dispute Resolution (ADR) including mediation can offer various benefits to parties involved in a dispute, such as reducing contentious issues and

[131]Rajya Sabha Deb., Aug. 1, 2023 (India).
[132] Lok Sabha Deb., Aug. 7, 2023 (India).
[133]The Mediation Act, No. 29 of 2023, § 2 (India).
[134]Ibid., § 5.
[135]Ibid., § 13
[136]Ibid., ch. X
[137]Ibid., § 15
[138]Ibid., § 16
[139]Ibid., § 20
[140]Ibid., § 21
[141]Ibid., ch. VIII

providing cost-effective resolution options. However, there's no guarantee of reaching a final decision through mediation, as any party can terminate the process at any stage. In a democracy, it's essential to have effective dispute resolution mechanisms to maintain the rule of law and prevent the escalation of conflicts. Smooth trade and commerce also rely on efficient dispute resolution.

While judicial reforms are necessary, courts may not be able to handle the entire burden of the justice system. It's the government's responsibility to provide various dispute resolution options at reasonable costs to accommodate the diverse range of disputes that arise. Encouraging litigants to explore mediation can help alleviate the workload of the court system, leaving it to focus on critical disputes. Adaptability is key in the legal process to meet the evolving needs of society.

## IV. Comparative Study of Mediation and Litigation in Matrimonial Dispute Resolution

Matrimonial disputes presents significant challenges, including deciding between mediation and litigation. Mediation involves a neutral mediator facilitating discussions to reach compromises, fostering cooperation and potentially saving time and money. Litigation is the traditional court process where parties present their cases to a judge, often leading to higher costs and longer proceedings. While mediation promotes amicable resolutions, litigation offers structured legal procedures but can intensify conflicts. Understanding the pros and cons of each method is crucial in determining the best approach for your unique circumstances.[142]

The resolution of matrimonial disputes has undergone significant changes in the past five decades, driven by amendments and landmark judgments in family laws. This includes transformations in divorce laws, child custody, alimony, and marital property rules, reflecting a shift towards gender equality and awareness of legal rights, especially among women. However, the emergence of the pandemic has exacerbated marital

[142]Michael Liptrot, Mediation vs. Litigation: Choosing the Right Path for Your Divorce, Tully Rinckey PLLC (Apr. 1, 2024), https://www.tullylegal.com/resources/articles/mediation-vs-litigation-choosing-the-right-path-for-your-divorce/.

discontent, leading many families to seek legal intervention, resulting in overburdened family courts and prolonged disputes.[143]

Litigation, traditionally used to resolve family disputes, has become less favored due to its potential to escalate conflicts and invade privacy, among other reasons. Instead, alternative dispute resolution (ADR) methods such as mediation, arbitration, negotiation, and conciliation are increasingly preferred for their effectiveness and efficiency. The Supreme Court of India has emphasized the importance of mediation, making court-referred mediation mandatory in family disputes. Furthermore, the Bar Council of India has taken steps to train law students in mediation techniques, recognizing the role of lawyers in promoting ADR.[144]

The adoption of innovative approaches to family law dispute resolution, particularly mediation, has the potential to significantly improve the justice system in India. This article supports this claim with empirical data on Indian family disputes and resolution approaches, highlighting the benefits of ADR in achieving fair and timely outcomes.[145]

Pending Cases in India (including District Courts, High Courts and Supreme Court)

| | |
|---|---|
| Total Civil Cases | 10937759 |
| Total Criminal Cases | 33473054 |
| Total Cases | 44410813[146] |

Table Source: National Data Grid, 2024

As of April, 2024, data from the National Data Grid reveals a daunting backlog of pending cases in India, with a total of 10,937,759 civil cases and 33,473,054 criminal cases, resulting in an overall tally of 44,410,813 pending cases. This backlog underscores the immense strain on the judicial system and highlights the urgent need for comprehensive reforms to address delays in dispensing justice. Efforts to streamline

[143]Ritu Gautam, Mediation and Family Dispute Resolution Mechanism: A Case Study on Clinical Legal Education, 20 Elementary Educ. Online 2490, 2490–2505 (2021).
[144]Ibid.
[145]Ibid
[146]National Data Grid, Pending Cases in India (2024), https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard (last visited Apr. 1, 2024).

court procedures, enhance judicial efficiency, invest in infrastructure, and promote alternative dispute resolution mechanisms are essential to alleviate the burden on the judiciary and expedite case resolution. Failure to address this backlog not only undermines public trust in the legal system but also deprives individuals and communities of their fundamental right to timely and fair justice.

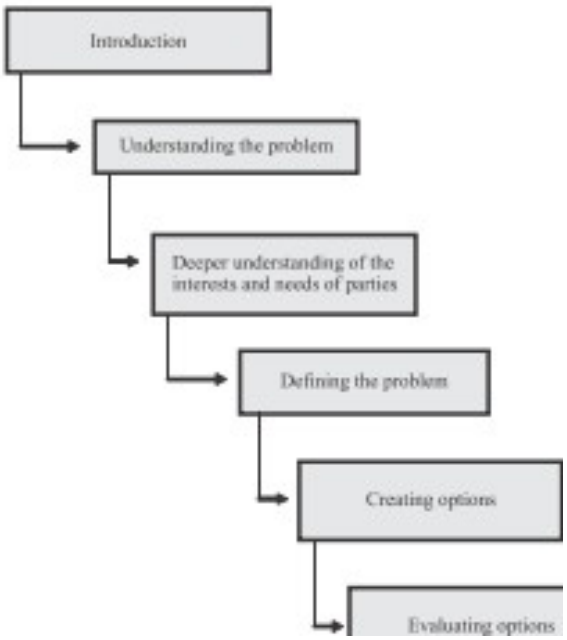
### 4.1 Overview of Mediation Process in Matrimonial Disputes

The mediation process in matrimonial law disputes involves several steps to facilitate resolution:[147]

1. Preparation: Before mediation begins, the mediator meets with the parties to explain the process, address any concerns, and answer questions, which can be done either face-to-face or over the phone.
2. Introduction: The mediator provides opening statements, clarifies their role, and confirms whether both parties agree to proceed. If agreed, the mediation progresses; otherwise, the court may impose cost sanctions for non-compliance.
3. Statement of the Problem: Each party presents their issues during opening statements, allowing both parties and the mediator to gain a comprehensive understanding of the situation.
4. Joint Discussion: The mediator facilitates discussions on the issues raised by both parties, asking relevant questions to gather additional information and prioritize settlement topics.
5. Private Discussion: Following the joint discussion, each party has a private opportunity to express concerns to the mediator and, if desired, their lawyers. This step prepares parties for negotiation.
6. Negotiation: Parties engage in negotiations until they reach a mutually acceptable settlement, with the mediator providing solutions that safeguard both parties' interests. If negotiation fails, the matter may proceed to court.

[147]How Mediation Functions in Family Law Disputes, iPleaders Blog, https://blog.ipleaders.in/mediation-functions-family-law-disputes/#Steps_followed_during_the_mediation_process_in_a_family_law_dispute (last visited Apr. 1, 2024).

7. Agreement: Once settlement terms are agreed upon, parties reconvene, and the mediator orally confirms the terms before they are formalized in a written agreement signed by all parties. This agreement is legally binding and enforceable in court. The mediator concludes the process with a closing statement, expressing gratitude for the parties' participation and cooperation.




Source Mediation Training Manual of India[148]

### 4.1. a. Role of referral judges

The role of referral judges in court-referred mediation is pivotal, ensuring the success of the mediation process through proper case selection and guidance. Referral judges, responsible for directing cases to alternative dispute resolution (ADR) methods, play a crucial role in determining the suitability of cases for mediation. Mandated by legal provisions such as Section 89 of the Code of Civil Procedure, referral judges must consider the nature of the dispute and the parties' consent before referring cases for mediation. Timing is critical, with family disputes ideally referred to mediation soon

[148]Mediation and Conciliation Project Committee, Supreme Court of India, Delhi, Mediation Training Manual, ch. XII

after service of notice on the respondent. Referral judges motivate parties to consider mediation, explaining its benefits and encouraging settlement even when parties are initially disinclined. The referral order, laying the foundation for mediation, must be comprehensive, detailing case specifics and the mediation process. Post-mediation, referral judges oversee the implementation of settlement agreements, ensuring their legality and enforceability. They refrain from probing reasons for mediation failure to protect confidentiality and may explore settlement possibilities between parties. Referral judges ensure mediation's efficacy by examining settlement agreements and facilitating their implementation, potentially modifying terms with parties' consent to overcome procedural hurdles.[149]

### 4.1. b. Role of Lawyers in Mediation

The involvement of lawyers in mediation, a form of alternative dispute resolution (ADR), is significant as they guide parties through the process of resolving disputes with the assistance of a neutral mediator. While the role of lawyers differs from their role in litigation, their service during mediation is professional and proactive. Lawyers play a crucial role in all phases of mediation, starting from pre-mediation where they educate parties on the concept and benefits of mediation, assisting them in understanding the mediator's role and changing adversarial attitudes to collaborative ones. During mediation, lawyers ensure constructive participation, maintaining a positive attitude, and guiding their clients through the process, including advising on case presentation and evaluating progress. They cooperate with mediators during sub-sessions and assist in finalizing settlement agreements. In the post-mediation phase, lawyers guide parties on further legal options if no settlement is reached and reassure clients about settlement decisions. They also cooperate with the court for the execution of settlement terms, ensuring the spirit of the agreement is upheld.[150]

### 4.1. c. Role of Parties in Mediation

In mediation, parties play a central and decisive role in reaching a mutually agreeable resolution to their dispute. While they receive assistance from their advocates and a

[149]Id. ch. XIII.
[150] Ibid Ch. XIII

neutral mediator, the ultimate decision rests with the parties themselves. Participation in mediation is voluntary, with parties retaining the authority to determine whether to settle the dispute amicably and the terms of the settlement. Neither the mediator nor the lawyers can make decisions on behalf of the parties, respecting their right to self-determination. Throughout the mediation process, parties are encouraged to focus on their interests rather than legal technicalities, fostering open communication and a willingness to negotiate. Trust in the mediator is crucial for the success of mediation, and parties are free to engage the services of lawyers to assist them. Ultimately, any settlement reached in mediation is binding on the parties, who are obligated to cooperate in executing the terms of the settlement agreement.[151]

### 4.1. d. Advantages of Mediation:[152]

1. **Cost Savings**: Mediation can significantly reduce the financial burden associated with legal proceedings, particularly in divorce cases where litigation costs can be exorbitant.
2. **Flexibility**: Unlike traditional court proceedings, mediation offers parties and their counsel greater control over scheduling and the format of proceedings, whether in-person or virtual, enhancing convenience and accommodating individual preferences.
3. **Time Savings and Continuity**: Mediation typically results in quicker resolutions compared to lengthy court trials, minimizing disruptions to work, family, and overall well-being. Continual dialogue facilitated by the mediator promotes incremental agreements leading to comprehensive settlements.
4. **Privacy**: Mediation provides a confidential and intimate setting, shielding parties from the public scrutiny often encountered in courtroom proceedings, thereby reducing stress and anxiety associated with divorce.
5. **Long-Term Results**: Studies indicate that mediated resolutions, particularly in child custody disputes, foster healthier post-divorce relationships between

[151] Ibid Ch. XIV
[152]Hon. Sherry Klein Heitler (Ret.), 5 Benefits of Mediation for Family Law Dispute Resolution, JAMS ADR Insights (July 13, 2022), https://www.jamsadr.com/blog/2022/5-benefits-of-mediation-for-family-law-dispute-resolution (last visited Apr. 6, 2024).

parents, promoting ongoing involvement in children's lives and minimizing co-parenting conflicts. Mediation emphasizes understanding and collaboration, laying the groundwork for sustainable solutions and preserving relationships, especially crucial when children are involved.

### 4.1. e. Disadvantages of Family Mediation

Listed below are some disadvantages associated with the mediation process:[153]

1. Non-Mandatory Submission: Despite reaching an agreement during mediation, parties are still required to engage their own solicitors to file an application with the Court to ensure legal binding.
2. Unresolved Issues: In cases where parties are unwilling to cooperate or agree, unresolved issues persist, leaving them no recourse but to resort to court intervention to settle disputes.
3. Non-Guaranteed Outcomes: The mediation process does not ensure that couples will reach an agreement. Neither party can be assured that all their disputes will be resolved satisfactorily.
4. Challenging Negotiations: As both parties negotiate without the mediator offering judgments, it may lead them to believe they can demand more, making negotiations challenging.
5. Wasted Mediation Costs: If mediation proves unsuccessful, the costs incurred during the process become wasted expenses, and both parties are still liable to bear the expenses of court proceedings.

### 4.2 Overview of Litigation Process in Matrimonial Disputes

Litigation is a formal legal process used to resolve disputes, covering a broad spectrum from personal injury claims to contract breaches. It can occur in state or federal courts, governed by specific rules of civil procedure. Hiring an experienced attorney is advisable for plaintiffs or defendants due to the complexity involved. The process begins with a plaintiff filing a complaint, followed by serving court documents to the

[153]Maisha Khanom, Advantages and Disadvantages of Family Mediation (Nov. 25, 2022), https://www.connaughtlaw.com/advantages-and-disadvantages-of-family-mediation/ (last visited Apr. 7, 2024).

defendant, who then responds with an answer. Initial motions and counterclaims may be filed, leading to the discovery process where evidence is exchanged. Pre-trial conferences often occur to address scheduling and settlement options. A trial ensues, where both parties present evidence and arguments, with a judge or jury ultimately making a decision. Appeals may follow, focusing on legal issues rather than factual disputes. Enforcement of the judgment concludes the process, emphasizing the need for legal expertise at every stage to navigate complex rules and deadlines effectively.[154]

In accordance with Indian divorce laws, a contested divorce, where one party seeks divorce without the other's consent, can be pursued based on various grounds specified in the Act[155]. This process typically commences with consulting a seasoned divorce lawyer who can provide tailored advice based on the client's marital situation.

1. Drafting the Divorce Petition: In a contested divorce scenario, the initiating party collaborates with their lawyer to detail the facts, upon which the lawyer drafts the petition supported by relevant documents. Once finalized, the petition, along with affidavits and vakalatnama, is signed by the initiating party.
2. Filing the Petition: Upon completion of formalities, the petition is filed with the appropriate family court based on jurisdiction.
3. Court Scrutiny: During the initial hearing, the court reviews the petition and hears opening arguments from the petitioner's lawyer regarding the grounds and allegations.
4. Respondent's Appearance: Upon the court's satisfaction to proceed, a notice is issued to the respondent, who must appear in court with their lawyer on the subsequent hearing. The respondent files a reply to the divorce petition as required.
5. Mediation Direction: The court may initially attempt mediation to facilitate an amicable resolution between the parties. If unsuccessful, the divorce proceedings continue.

[154]Christy Bieber, J.D., What Is Litigation? Understanding The Litigation Process, Forbes Advisor (Apr. 3, 2024), https://www.forbes.com/advisor/legal/litigation/ (last visited Apr. 3, 2024).
[155]Hindu Marriage Act, No. 25 of 1955, India Code (1955).

6. Framing Issues and Evidence Recording: The court frames issues and records evidence submitted by both parties, including cross-examinations and supporting witnesses, crucial in determining the case's outcome.
7. Final Arguments: Following the evidence process, counsels for both parties present final arguments before the judge, culminating in the scheduling of a decision pronouncement.
8. Court Decision: The judge renders a final decision, potentially granting a decree of divorce based on the case's merits. Parties dissatisfied with the verdict can file an appeal within three months from the order date, with assistance from their divorce lawyer.

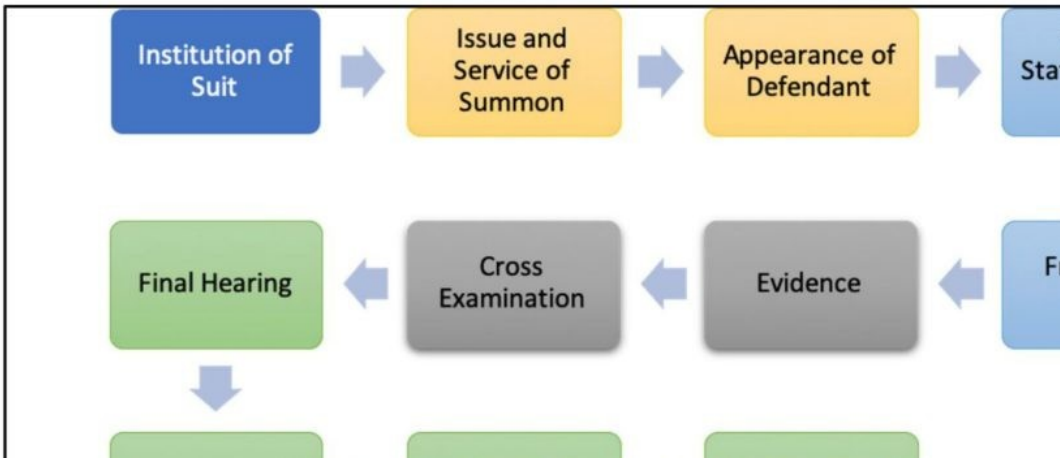



Image Source Facly[156]

**4.2. a. Advantages of Litigation:[157]**

1. Forced Cooperation: Litigation compels opposing parties to cooperate by imposing specific requirements and deadlines set by a judge, ensuring progress and preventing unnecessary delays.
2. Strict Evidence Guidelines: Litigation adheres to stricter evidence guidelines compared to alternative dispute resolution methods, allowing the use of

[156]At Which Stage Are Cases Pending in Indian Courts?, Factly (Apr. 7, 2024), https://factly.in/at-which-stage-are-cases-pending-in-indian-courts/.
[157]Earl Hargrave, What Are Some Advantages to Litigation?, Earl Hargrave Lawyer (Apr. 1, 2023), https://www.ehargravelaw.com/2023/04/what-are-some-advantages-to-litigation/.

substantial evidence to support arguments and making it challenging for the opposing party to dispute claims.

3. Matter of Public Record: Lawsuits provide clear documentation of the dispute, becoming a matter of public record once a judge makes a determination, ensuring transparency and accountability.
4. Sets a Precedent: Litigation results create permanent records and set precedents for future cases, enabling parties to cite previous rulings that support their arguments, expediting the resolution process.
5. Guaranteed Results: Unlike negotiations or mediation, litigation ensures a clear-cut decision by a judge, providing closure to the dispute regardless of the outcome.
6. Ability to Appeal: Litigants have the option to appeal the court's decision if they believe it was reached in error, offering a mechanism to address mistakes in interpreting the law, procedural errors, or withheld evidence.

**4.2. b. Disadvantages of Litigation:[158]**

1. Uncertain Outcome: Litigation can be emotionally draining as the outcome is uncertain until decided by a judge.
2. Cost: Litigation involves unpredictable costs, which can escalate if the case becomes more complicated.
3. Court Backlog: Due to the backlog in UK courts, obtaining a court date and resolving the case can be significantly delayed, leading to extra expenses and emotional stress.
4. Damage to Relationships: Pursuing litigation can strain relationships between parties involved, potentially causing long-standing rifts.
5. Time-Consuming: Litigation often has a lengthy time frame for resolution, sometimes taking several years, especially in complex cases.
6. Impersonal: Litigation lacks the opportunity for personal communication and rapport-building, as court hearings focus on key facts without fostering personal connection.

[158]Advantages and Disadvantages of Litigation: A Quick Guide, Robsols (Apr. 7, 2024), https://robsols.co.uk/advantages-and-disadvantages-of-litigation-a-quick-guide/.

Overall, while litigation may offer resolution and justice, it can also be emotionally and physically draining, highlighting the importance of seeking professional guidance before proceeding.

Matrimonial disputes, often emotionally charged and complex, present parties with the dilemma of choosing between litigation and mediation for resolution. A comparative analysis of these two approaches reveals distinct advantages and disadvantages, influencing the effectiveness and outcomes of dispute resolution processes.

Litigation, characterized by formal court proceedings, offers several advantages in matrimonial disputes. Firstly, litigation provides a structured framework that compels cooperation between parties, setting specific requirements and deadlines enforced by the court[159]. Secondly, the strict evidence guidelines in litigation ensure the admissibility of substantial evidence, bolstering the credibility of arguments presented[160]. Additionally, litigation results become a matter of public record, ensuring transparency and legal documentation of the dispute[161]. Moreover, court rulings in litigation set precedents for future cases, offering clarity and consistency in legal interpretations[162]. Finally, litigation guarantees a conclusive decision by a judge, providing certainty and closure to the parties involved[163].

In contrast, mediation offers a more collaborative and flexible approach to resolving matrimonial disputes. Mediation promotes open communication and cooperative problem-solving, preserving relationships and minimizing animosity between parties[164]. Additionally, mediation is often more cost-effective than litigation, involving fewer legal fees and court expenses[165]. Moreover, mediation proceedings are confidential, ensuring privacy and discretion for the parties involved[166]. Furthermore, mediation

[159]Earl Hargrave, What Are Some Advantages to Litigation?, Earl Hargrave Lawyer (Apr. 1, 2023), https://www.ehargravelaw.com/2023/04/what-are-some-advantages-to-litigation/.
[160]Ibid.
[161]Ibid.
[162] Ibid.
[163]Ibid.
[164]Maisha Khanom, Advantages and Disadvantages of Family Mediation (Nov. 25, 2022), https://www.connaughtlaw.com/advantages-and-disadvantages-of-family-mediation/.

[165] Ibid.
[166]Ibid.

empowers parties to actively participate in crafting mutually acceptable solutions, retaining control over the outcome[167].

However, both litigation and mediation have their limitations in matrimonial disputes. Litigation can be costly, time-consuming, and adversarial, straining relationships and prolonging stress for parties involved[168]. On the other hand, mediation outcomes are non-binding, potentially leading to disputes resurfacing if parties fail to comply voluntarily[169]. Additionally, power imbalances and limited legal protection may pose challenges in mediation, affecting the fairness and enforceability of agreements reached[170].

The choice between litigation and mediation in matrimonial disputes depends on various factors, including the nature of the dispute, the parties' preferences, and the desired outcomes. While litigation offers a formalized and binding resolution through court proceedings, mediation provides a more collaborative, cost-effective, and relationship-preserving approach. Understanding the strengths and limitations of each method is essential for parties to make informed decisions and achieve satisfactory resolutions in matrimonial disputes.

In case ***K. Srinivas Rao vs D.A. Deepa[171], Hon'ble Supreme Court*** held that the need for intervention in matrimonial disputes before they escalate, recognizing that both spouses may contribute to the conflict. It suggests that early counseling or mediation could prevent disputes from worsening, highlighting the importance of addressing issues before they become irreparable. The court acknowledges that often, the root cause of matrimonial disputes is trivial and could be resolved through mediation, which has gained legal recognition. It recommends referring disputes to mediation centers at the earliest stage, particularly emphasizing the suitability of mediation for issues like child custody and maintenance. Additionally, it notes the emerging trend of pre-litigation mediation, where mediation centers set up help desks to facilitate settlements before legal proceedings commence. This proactive approach to dispute resolution

[167]Ibid.
[168]Earl Hargrave, What Are Some Advantages to Litigation?, supra note 191.
[169]Maisha Khanom, Advantages and Disadvantages of Family Mediation, supra note 196.
[170]Ibid.
[171]K. Srinivas Rao v. D.A. Deepa, A.I.R. 2013 S.C. 2176 (India).

could alleviate hardship for many families, underscoring the significance of promoting mediation as a means of resolving matrimonial conflicts.

### 4.3. Case Studies Illustrating Mediation Outcomes in Matrimonial Disputes

#### 4.3. a. Case Study 1:

The November 2021 study conducted by ***Atul Dattajirao Kurane***[172] explores alternative dispute resolution (ADR) approaches to family dispute settlement, focusing particularly on the State of Maharashtra. The study begins by proposing four hypotheses regarding the necessity of special courts for family matters, the effectiveness of reconciliation and counseling, the speediness of remedies provided by Family Courts, and the impact of lawyers' absence on case disposal efficiency. Employing a combination of doctrinal and non-doctrinal research methods, including questionnaire-based data collection and SPSS software analysis, the study reveals significant findings.[173] It confirms the importance of special courts for family matters and the effectiveness of reconciliation and counseling, validating the first two hypotheses. Additionally, it establishes that Family Courts indeed provide swift remedies to litigants, supporting the third hypothesis. However, contrary to expectations, the absence of lawyers does not expedite case disposal in Family Courts, leading to the rejection of the fourth hypothesis.[174] The study concludes by highlighting the efficacy of mediation, conciliation, and counseling in resolving family disputes and the efficiency of Family Courts in providing speedy remedies. Despite the presence of lawyers, Family Courts demonstrate effectiveness in resolving disputes, albeit with a relatively low percentage of cases referred to mediation or counseling annually.[175]

#### 4.3. b. Case Study 2:

[172]Atul Dattajirao Kurane, Study of Alternative Dispute Resolution Approach towards Family Dispute Settlement with Special Reference to State of Maharashtra (Nov. 2021).
[173]Ibid.
[174]Ibid.
[175]Ibid.

The 2018 case study by ***N. Bhagya Lakshmi***[176] delves into the intricacies of matrimonial dispute resolution in India, with a particular focus on the Visakhapatnam Family Court. Through the formulation of hypotheses and subsequent empirical findings, the study illuminates various dimensions of Indian matrimonial law and its practical implementation. It begins by elucidating the historical evolution of matrimonial laws in India, illustrating the transition from customary practices to codified statutes governing divorce and separation. This evolution is contextualized within the framework of different religious communities, each governed by separate laws dictating grounds for divorce, including cruelty, desertion, and adultery. Furthermore, the study identifies a discernible shift towards divorce by mutual consent, indicative of changing societal attitudes towards marriage and divorce.[177] Despite the prevalence of adversarial legal proceedings, Indian law explicitly incorporates provisions for Alternative Dispute Resolution (ADR) methods such as mediation and counseling, suggesting a legal framework conducive to amicable dispute resolution. The study validates hypotheses regarding the legislative inclination towards easier divorce, the existence of ADR provisions, the role of advocates in dispute resolution, and the proactive stance of the judiciary in promoting ADR methods. In conclusion, the study underscores the importance of adopting a comprehensive approach to matrimonial dispute resolution in India.[178] While legal frameworks have adapted to accommodate evolving societal norms, there is an increasing recognition of the efficacy of ADR mechanisms in fostering amicable settlements and preserving familial harmony.[179]

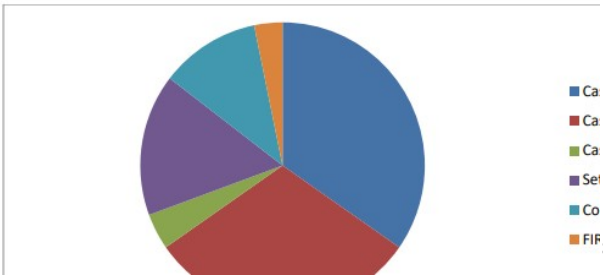
**4.3. c. Case Study 3:**

The paper titled "***Mediation and Family Dispute Resolution Mechanism***[180]: explores the pivotal role of mediation in resolving familial conflicts within the evolving legal framework. Through a mixed-methods approach, the study combines primary observations from the authors' involvement at the Family Dispute Resolution Clinic

[176]N. Bhagya Lakshmi, Matrimonial Dispute Resolution in India Through Alternative Dispute Resolution Methods: A Socio-Legal Study With Reference to Visakhapatnam Family Court (2018).
[177]Ibid.
[178]Ibid.
[179]Ibid.
[180]Ritu Gautam, Pradeep Kulshrestha & Avinash Krishan Goswami, Mediation and Family Dispute Resolution Mechanism: A Case Study on Clinical Legal Education, 20 Elem. Educ. Online 2490, 2496 (2021).

(FDRC) with secondary data analysis. It emphasizes FDRC's remarkable success rate of approximately 88% in resolving cases, particularly in matrimonial disputes, at the pre-First Information Report (FIR) stage. The introduction underscores the shift towards mediation as an alternative dispute resolution mechanism in family law, focusing on FDRC's operational dynamics. Methodologically, the study draws insights from the authors' experiences at FDRC and secondary data analysis to analyze trends in family dispute resolution within the Indian legal system. Results highlight the critical role of mediation in alleviating the burden on the Indian justice system, with FDRC emerging as a leading example of effective pre-FIR mediation. The conclusion emphasizes the growing prominence of mediation in family law and underscores FDRC's success in fostering effective dispute resolution, offering valuable insights for stakeholders. Additionally, the FDRC Case Status Report details the significant contributions of FDRC to family dispute resolution, showcasing its focus on pre-FIR mediation and impressive success rate, indicative of its role in preserving familial harmony and improving access to justice.

(10 July 2020 to 10 Jan 2021 case statics as per the office records)



[181]

**Case Status: July 2020 till January 2021**

| Cases Reported | Cases Disposed off | Cases Under Process | Settlement signed | Complaint Withdrawn |
|---|---|---|---|---|
| 119 | 105 | 14 | 55 | 39 |

[182]

[181]Figure 1, FDRC Case Status Report, in Ritu Gautam, Pradeep Kulshrestha & Avinash Krishan Goswami, Mediation and Family Dispute Resolution Mechanism: A Case Study on Clinical Legal Education, 20 Elem. Educ. Online 2490, 2496 (2021).
[182]Ibid

### 4.3. d. Case Study 4:

This case study[183], based on the December 2016 report by the ***Vidhi Centre for Legal Policy***, examines the effectiveness of court-connected mediation centers in India, the study delves into three prominent mediation centers: the Bangalore Mediation Centre (BMC), the Mediation and Conciliation Centre of the Delhi High Court (DMC), and the Allahabad High Court Mediation and Conciliation Centre (AMC). Through a combination of doctrinal and empirical research spanning from 2011 to 2015, the study assesses the settlement rates and case types handled by these centers. Findings indicate varying settlement rates across different case types, with divorce cases consistently achieving high settlement rates, particularly in matrimonial disputes. While the BMC and DMC reported settlement rates of over 50%, the AMC recorded a lower settlement rate of less than percent during the research period. Despite variations, the study underscores the significant role of these mediation centers in facilitating settlements and relieving pressure on the Indian judicial system, suggesting the need for further research and policy interventions to enhance mediation practices in India.


Data Source: Figure 5: Total matrimonial cases and property law cases, as a percentage of the total number of cases before the BMC, between 2011 and 2015 A Report on Court-Connected Mediations published in Dec 2016

[183]Alok Prasanna Kumar et al., A Report on Court-Connected Mediations (Dec. 2016), https://vidhilegalpolicy.in/wp-content/uploads/2019/05/26122016_StrengtheningMediationinIndia_FinalReport.pdf.

*Figure 7: Cases settled at the BMC as a percentage of the total number of*


*Figure 8: Cases settled (including connected cases settled) at the DMC as a percentage of cases*

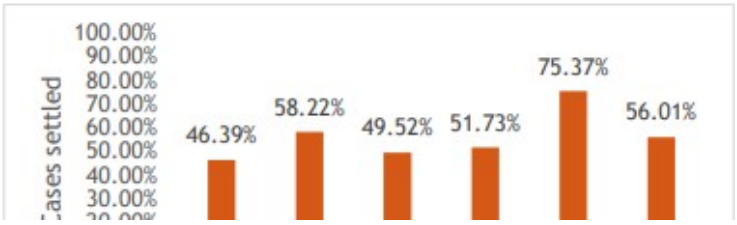



Image source: A Report on Court-Connected Mediations published in Dec 2016

### 4.3. e. Outcome from the case studies

The case studies explore diverse facets of mediation outcomes in matrimonial disputes within the Indian legal framework. The first study, conducted by Atul Dattajirao Kurane[184] in November 2021, underscores the efficacy of special courts and alternative dispute resolution (ADR) methods in resolving family disputes. While validating hypotheses regarding the importance of special courts and the effectiveness of reconciliation and counseling, the study also highlights the pivotal role of mediation, despite the presence of lawyers in Family Courts. Similarly, the 2018 study by N. Bhagya Lakshmi[185] elucidates the historical evolution of matrimonial laws in India and the increasing recognition of alternative dispute resolution (ADR) mechanisms. It

[184]Atul Dattajirao Kurane, Study of Alternative Dispute Resolution Approach towards Family Dispute Settlement with Special Reference to State of Maharashtra (Nov. 2021).
[185]N. Bhagya Lakshmi, Matrimonial Dispute Resolution in India Through Alternative Dispute Resolution Methods: A Socio-Legal Study With Reference to Visakhapatnam Family Court (2018).

validates hypotheses regarding legislative inclinations towards easier divorce and the proactive stance of the judiciary in promoting ADR methods. Conversely, the paper titled "Mediation and Family Dispute Resolution Mechanism"[186] accentuates the remarkable success rate of mediation in resolving familial conflicts, particularly at the pre-First Information Report (FIR) stage. Through a mixed-methods approach, the study showcases FDRC's efficacy in fostering effective dispute resolution, offering valuable insights for stakeholders. Finally, the case study[187] based on the December 2016 report by the Vidhi Centre for Legal Policy delves into the effectiveness of court-connected mediation centers in India, emphasizing varying settlement rates across different case types. Despite variations, the study underscores the significant role of mediation centers in facilitating settlements and relieving pressure on the Indian judicial system. Collectively, these case studies underscore the growing prominence of mediation in family law and its pivotal role in fostering amicable resolutions to matrimonial disputes, offering valuable insights for policymakers and practitioners alike.

### 4.4. Case Studies Illustrating Litigation Outcomes in Matrimonial Disputes

#### 4.4. a. Case Study 1:

In the case of ***Arnesh Kumar v/s State of Bihar***[188] the Hon'ble Supreme court opined that There has been a significant rise in matrimonial disputes in recent times, highlighting the revered status of marriage in the country. Section 498-A of the Indian Penal Code (IPC) was introduced with the explicit aim of addressing harassment faced by women from their husbands and relatives. However, this provision, being cognizable and non-bailable, has unfortunately been misused, becoming a tool of harassment rather than protection for aggrieved wives. It has become common practice to exploit this provision to have husbands and their relatives arrested, often including elderly grandparents and sisters living abroad for years. Statistics from the "Crime in India

[186]Ritu Gautam, Pradeep Kulshrestha & Avinash Krishan Goswami, Mediation and Family Dispute Resolution Mechanism: A Case Study on Clinical Legal Education, 20 Elem. Educ. Online 2490 (2021).
[187]Alok Prasanna Kumar et al., A Report on Court-Connected Mediations (Dec. 2016), https://vidhilegalpolicy.in/wp-content/uploads/2019/05/26122016_StrengtheningMediationinIndia_FinalReport.pdf.
[188]Arnesh Kumar v. State of Bihar, A.I.R. 2014 S.C. 2756 (India).

2012 Statistics"[189] report reveal a startling trend, with 197,762 individuals arrested nationwide in 2012 under Section 498-A, marking a 9.4% increase from the previous year. Alarmingly, approximately a quarter of those arrested were women, indicating a liberal inclusion of husbands' mothers and sisters in the arrests. This provision accounts for 6% of all arrests under the IPC and 4.5% of total crimes, surpassing most other offenses except theft and hurt. Despite the high rate of charge-sheeting at 93.6%, the conviction rate stands at a mere 15%, the lowest among all categories. Currently, there are 372,706 pending cases under Section 498-A, with an estimated 317,000 likely to end in acquittal, underscoring the need for reforms in the legal system to address this alarming misuse of the law.

**Data from Table 3A.7 Court Disposal of Crime against women by in-laws 2021[190]**

| Crime Head | Total cases in 2021 | Cases Quashed | Accused Discharged | Disposed of without Trial | Convicted after trial | Acquitted | Conviction Rate |
|---|---|---|---|---|---|---|---|
| 498A IPC | 765709 | 593 | 992 | 11263 | 4315 | 19851 | 17.2% |

In 2021, according to data from Crime in India 2021 Statistics by the National Crime Records Bureau, a total of 765,709 cases were reported under Section 498A of the Indian Penal Code (IPC), which pertains to crimes against women by their in-laws. Among these cases, 593 were quashed, and 992 accused were discharged from the charges. Additionally, 11,263 cases were disposed of without undergoing trial. Following trials, 4,315 individuals were convicted, while 19,851 were acquitted. The conviction rate for cases tried under Section 498A IPC stood at 17.2%, reflecting the outcomes of the legal proceedings concerning crimes against women by their in-laws during the specified period.

4.4. b. **Case Study 2:**

[189]National Crime Records Bureau, Crime in India 2012 Statistics (2012).
[190]National Crime Records Bureau, Crime in India 2021 Statistics (2021).

The case of ***G.V. Rao vs L.H.V. Prasad & Ors***[191], adjudicated by the Supreme Court of India in, illuminates the escalating trend of matrimonial disputes in contemporary Indian society. Recognizing the sacred institution of marriage as a foundation for peaceful coexistence, the court expresses concern over the eruption of minor conflicts into serious legal battles, often involving criminal accusations against family elders. It highlights the unfortunate scenario where those who could potentially mediate and reconcile familial differences find themselves entangled in legal proceedings, depriving parties of timely resolutions and consuming valuable time and resources. By emphasizing the need for alternative dispute resolution mechanisms and advocating for amicable resolutions, the court aims to mitigate the strain on the judicial system and empower couples to resolve their disputes harmoniously. The case underscores the imperative for promoting reconciliation and mutual agreement, steering away from protracted litigation and fostering peace within matrimonial relationships.

**4.4. c. Case Study 3:**

The case of ***Jitendra & Ors vs The State & Anr***[192], as adjudicated by the Delhi High Court on 25 July 2016, epitomizes the imperative to promote conciliation and expedite the resolution of matrimonial disputes in India. Against the backdrop of a burgeoning caseload stemming from marital conflicts, exacerbated by differences in temperament and lifestyles among couples, the courts are increasingly recognizing the need for amicable settlements in matters of marriage and family affairs. Emphasizing the constitutional mandate for speedy dispute resolution and the inherent challenges posed by the backlog of cases, the case underscores the pivotal role of conciliatory procedures, particularly mediation, in achieving favorable outcomes in matrimonial disputes. By leveraging its inherent power under Section 482 of the Criminal Procedure Code (Cr.P.C.), the Delhi High Court advocates for proactive judicial intervention to prioritize the closure of such disputes, thereby fostering peace and stability for the parties involved. In doing so, the court highlights the importance of fostering harmonious resolutions to mitigate the burden on the judicial system and preserve familial harmony in India.

[191]G.V. Rao v. L.H.V. Prasad & Ors., A.I.R. 2000 S.C. 2474 (India).
[192]Jitendra & Ors. v. The State & Anr., Crim. M.C. No. 1779/2016 (India).

### 4.4. d. Case Study 4:

In the ***Gaurav Nagpal v. Sumedha Nagpal***[193] case, the Supreme Court noted with concern the overwhelming number of divorce and judicial separation cases inundating the courts. The Court emphasized that while the Hindu Marriage Act provides grounds for seeking a divorce, this should not serve as an incentive for individuals unless the marriage is irretrievably broken. Instead, the priority should be to salvage the marriage rather than terminate it hastily. Litigation should be viewed as a last resort, and couples should endeavor to resolve disputes through mediation before resorting to legal action, as highlighted in the case of ***B.S Krishna Murthy vs. B.S Nagaraj and Ors***[194] by Justice Markanday Katju. This approach aims to prevent prolonged legal battles, which are detrimental to both parties, especially in family-related disputes.

### 4.4. e. Outcome from the Case studies

The case studies delve into various aspects of matrimonial disputes and their legal outcomes, shedding light on the challenges and solutions within the Indian judicial system. Case Study 1, highlighted by the Arnesh Kumar v/s State of Bihar[195] case, underscores the misuse of Section 498A of the IPC, aimed at addressing harassment faced by women from their in-laws. Despite a high number of cases reported in 2021, the conviction rate stands at only 17.2%, reflecting the need for legal reforms to address misuse. Case Study 2, exemplified by the ***G.V. Rao vs L.H.V. Prasad & Ors***[196] case, emphasizes the importance of alternative dispute resolution mechanisms in mitigating matrimonial conflicts and promoting reconciliation. Case Study 3, represented by the ***Jitendra & Ors vs The State & Anr***[197] case, underscores the imperative for expeditious resolution of matrimonial disputes through conciliatory procedures, particularly mediation, to alleviate the burden on the judicial system and preserve familial harmony. Finally, Case Study 4, highlighted by the ***Gaurav Nagpal v. Sumedha Nagpal***[198] case, emphasizes the need to prioritize the preservation of marriages and explore mediation as

[193] *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 S.C.C. 42 (India).
[194] *B.S. Krishna Murthy v. B.S. Nagaraj & Ors.*, S.L.P. (Civil) No(s). 2896 of 2010 (India).
[195] *Arnesh Kumar v. State of Bihar*, supra note 220.
[196] *G.V. Rao v. L.H.V. Prasad & Ors.*, supra note 223.
[197] *Jitendra & Ors. v. The State & Anr.*, supra note 224.
[198] *Gaurav Nagpal v. Sumedha Nagpal*, supra note 225.

a first step before resorting to litigation, in line with Justice Markanday Katju's observations. Collectively, these case studies underscore the significance of promoting conciliation and alternative dispute resolution mechanisms in addressing matrimonial disputes and alleviating pressure on the legal system.

## V. Conclusion and Recommendations

### 5.1. Conclusion:

Marriage entails legal obligations for both spouses, with statutes mandating specific rights and responsibilities to uphold the interests of each party. Legal frameworks, including the Hindu Marriage Act, Special Marriage Act, and Foreign Marriage Act, impose obligations on husbands to ensure the security and well-being of their wives. Duties such as loyalty, support, and cohabitation are enshrined in marital laws, with provisions for maintenance and property rights outlined in statutes like Section 24 and 27 of the Hindu Marriage Act. Additionally, Muslim law recognizes the concept of Mahr as a financial consideration for wives, providing them with financial support and rights in case of divorce. The Protection of Women against Domestic Violence Act, 2005, further safeguards the rights of wives, criminalizing various forms of violence and holding husbands accountable for any infringements upon their physical, emotional, or economic security. These legal obligations underscore the importance of protecting the rights and well-being of spouses within the institution of marriage.

The concept of family in India encompasses cohesive units bound by marriage, blood, or adoption, with distinct social roles defining relationships within households. While the traditional joint family system holds historical and cultural significance, societal changes driven by factors like industrialization and urbanization have led to a shift towards nuclear families. Despite challenges such as rising divorce rates and gender imbalances, Indian families display resilience and adaptability, impacting individual well-being and societal dynamics. Contemporary issues like son preference, female foeticide, and changing gender dynamics pose challenges to traditional family structures, with implications for intergenerational relationships and community support systems. The rise of individualism and career-focused aspirations has contributed to the breakdown of joint family structures, altering socio-psychological environments and

spousal dynamics. However, these changes also highlight the evolving role of women and the need for a balance between traditional values and contemporary aspirations within Indian families.

Matrimonial disputes in India encompass a broad spectrum of conflicts and legal issues arising between married individuals, often rooted in complex emotional, social, and legal dimensions. Despite India's low divorce rate, these disputes can escalate from minor misunderstandings to significant disagreements, impacting couples socially, physically, and psychologically. Section 498-A of the Indian Penal Code plays a crucial role in addressing gender-based violence within marital relationships, but its misuse raises concerns about fairness and justice. Several court cases highlight the challenges and complexities surrounding matrimonial disputes, including issues of perjury, misuse of legal provisions, and the impact of false allegations on individuals and families. While legislative measures aim to protect women and reshape societal norms, addressing the misuse of these laws requires a comprehensive approach involving legal education, checks and balances, and recalibration of the legal framework. Achieving a just and equitable society for women in India necessitates a delicate balance between protecting victims of abuse and preventing the misuse of legal provisions for personal gain.

Matrimonial disputes also have a profound impact on children, who often emerge as the primary victims. Research indicates that children witnessing marital discord and parental divorce experience heightened rates of psychological problems, leading to challenges such as poor academic performance and susceptibility to substance abuse. In the case of Lahari ***Sakhamuri v. SobhanKodali***, the Supreme Court recognized the detrimental effects of parental conflicts on children's well-being, emphasizing the need to prioritize child rights and advocate for negotiated resolutions between parents to mitigate the impact of matrimonial disputes on children's lives.

The constitutional and legal provisions regarding matrimonial disputes in India encompass various remedies, including judicial and extra-judicial measures. Judicial remedies such as restitution of conjugal rights, judicial separation, nullity of marriage, and divorce are available based on specific grounds recognized by law. These grounds

include adultery, cruelty, desertion, impotency, venereal diseases, conversion or apostasy, failure to carry out marital obligations, the right of repudiation of marriage, and irretrievable breakdown of marriage. The Dowry Prohibition Act aims to eliminate the harmful practice of dowry exchange, and offenses relating to marriage are addressed under Chapter XX of the Indian Penal Code. However, concerns about the misuse of legal provisions, such as Section 498A of the Indian Penal Code, highlight the need for stringent safeguards to prevent injustices. The Protection of Women from Domestic Violence Act, 2005, provides comprehensive protection and remedies for women facing domestic violence, reflecting the evolving societal challenges and legal responses to matrimonial disputes.

The constitutional and legal provisions regarding mediation in India emphasizes the significance of Alternative Dispute Resolution (ADR), particularly mediation, in offering benefits such as reducing contentious issues and providing cost-effective resolution options. While mediation may not always lead to a final decision, its voluntary nature and emphasis on empowering parties are crucial in a democratic society. With the increasing burden on the court system, promoting mediation can help alleviate the workload and ensure that courts focus on critical disputes. The conclusion underscores the need for effective dispute resolution mechanisms to maintain the rule of law, support smooth trade and commerce, and accommodate the diverse range of disputes that arise, reflecting the importance of adaptability in the legal process to meet evolving societal needs.

The historical evolution of mediation in India reflects its deep-rooted origins predating British colonial rule, with informal dispute resolution mechanisms like panchayats and revered elders playing key roles. The formal recognition of mediation gained traction during British colonialism and was bolstered by legislative developments such as the establishment of LokAdalats and the introduction of section 89 of the CPC (Amendment) Act, 1999. Traditional practices of resolving family disputes through open discussions and village panchayats resonate with contemporary mediation processes, emphasizing the importance of peace and harmony within family relations. Legal frameworks in India, including the Family Courts Act and the Hindu Marriage Act, endorse mediation methods, further highlighting the efficacy of mechanisms like

LokAdalats in mediating family disputes. While domestic violence is a serious crime, the Supreme Court's decision in 2013 empowered courts to refer cases under Section 498-A of the IPC for mediation, as evidenced by the successful resolution in the case of ***Mohd. Mushtaq v. State***. This illustrates the potential of mediation in addressing complex domestic violence cases and underscores its importance in promoting amicable resolutions within family disputes.

The challenges in resolving matrimonial disputes and the importance of choosing between mediation and litigation. While mediation offers benefits such as cooperation and potential cost and time savings, litigation can lead to higher costs and prolonged proceedings. The evolving landscape of family laws reflects a shift towards gender equality and awareness of legal rights, with alternative dispute resolution methods like mediation gaining prominence over traditional litigation. However, the significant backlog of pending cases in India underscores the urgent need for comprehensive reforms to enhance judicial efficiency and promote alternative dispute resolution mechanisms. Failure to address this backlog not only erodes public trust in the legal system but also deprives individuals and communities of their fundamental right to timely and fair justice.

The overview of mediation and litigation in matrimonial disputes highlights the importance of understanding the advantages and disadvantages of each approach. While litigation provides a structured framework, ensures strict evidence guidelines, and guarantees a conclusive decision by a judge, it can be costly, time-consuming, and adversarial, potentially straining relationships. On the other hand, mediation offers a collaborative and flexible approach, promoting open communication, preserving relationships, and often being more cost-effective. However, mediation outcomes are non-binding, and power imbalances may pose challenges.

The choice between litigation and mediation depends on various factors, including the nature of the dispute, parties' preferences, and desired outcomes. Early intervention through counseling or mediation, as recommended by the Hon’ble Supreme Court in ***K. Srinivas Rao vs D.A. Deepa,*** can prevent disputes from worsening, especially in issues like child custody and maintenance. Promoting mediation as a proactive approach to

dispute resolution can alleviate hardship for many families, emphasizing the importance of understanding and considering alternative dispute resolution methods in matrimonial conflicts.

The conclusion drawn from the ***case studies illustrating litigation outcomes in matrimonial disputes***highlights the escalating trend of matrimonial disputes in India and the need for alternative dispute resolution mechanisms.

1. Case Study of ***Arnesh Kumar v/s State of Bihar the Hon'ble*** emphasizes the misuse of legal provisions, such as Section 498-A of the IPC, leading to a high number of cases and low conviction rates, indicating the need for legal reforms to address this issue.
2. Case Study of ***G.V. Rao vs L.H.V. Prasad & Ors.*** underscores the importance of promoting reconciliation and amicable resolutions to mitigate the strain on the judicial system and empower couples to resolve their disputes harmoniously.
3. Case Study of ***Jitendra & Ors vs The State & Anr*** highlights the imperative of conciliatory procedures, particularly mediation, in achieving favorable outcomes in matrimonial disputes, emphasizing proactive judicial intervention to prioritize dispute closure.
4. Case Study of ***Gaurav Nagpal v. Sumedha Nagpal*** emphasizes the importance of salvaging marriages and viewing litigation as a last resort, advocating for mediation to prevent prolonged legal battles detrimental to both parties, especially in family-related disputes.

Further the conclusion drawn from the ***case studies illustrating mediation outcomes in matrimonial disputes***emphasizes the efficacy and importance of mediation in resolving matrimonial disputes in India.

1. Case Study of ***Atul Dattajirao Kurane*** underscores the effectiveness of mediation, conciliation, and counseling in resolving family disputes, highlighting the efficiency of Family Courts in providing speedy remedies.
2. Case Study of ***N. Bhagya Lakshmi*** illuminates the importance of adopting a comprehensive approach to matrimonial dispute resolution, recognizing the

increasing recognition of Alternative Dispute Resolution (ADR) mechanisms such as mediation.

3. Case Study of ***Mediation and Family Dispute Resolution Mechanism*** emphasizes the pivotal role of mediation in alleviating the burden on the Indian justice system, showcasing the success of Family Dispute Resolution Clinics (FDRCs) in resolving cases, particularly in matrimonial disputes.
4. Case Study of ***report by the Vidhi Centre for Legal Policy*** assesses the effectiveness of court-connected mediation centers in India, indicating varying settlement rates across different case types but underscoring the significant role of these centers in facilitating settlements and relieving pressure on the judicial system.

Based on the presented case studies, it becomes evident that mediation offers several advantages over litigation in resolving matrimonial disputes.

Firstly, mediation has been shown to be highly effective in resolving family conflicts, as evidenced by the success rates reported in various studies. The FDRC, for instance, boasts an impressive success rate of approximately 88% in resolving matrimonial disputes at the pre-FIR stage. This indicates that mediation can effectively alleviate the burden on the judicial system by resolving disputes outside of court, thus conserving valuable resources and time.

Secondly, mediation promotes amicable settlements and preserves familial harmony. Unlike litigation, which often exacerbates conflicts and strains relationships, mediation encourages parties to work together to find mutually acceptable solutions. This is particularly important in matrimonial disputes, where preserving family relationships is paramount.

Furthermore, mediation offers a more flexible and personalized approach to dispute resolution. It allows parties to actively participate in the resolution process and tailor solutions to meet their unique needs and interests. In contrast, litigation imposes rigid legal procedures and outcomes that may not always align with the parties' preferences.

Additionally, mediation is generally faster and more cost-effective than litigation. Family Courts, as highlighted in one of the case studies, provide swift remedies to litigants, but mediation centers like the BMC and DMC have reported settlement rates of over 50% in matrimonial disputes, indicating faster resolution compared to court proceedings.

Moreover, mediation helps alleviate the backlog of cases in the judicial system by facilitating settlements and reducing the number of cases that require adjudication in court. This is crucial given the overwhelming caseload and delays often associated with litigation.

In addition to its numerous benefits in resolving matrimonial disputes, mediation also has the potential to curtail the misuse of legal provisions, as highlighted in the case study of ***Arnesh Kumar v/s State of Bihar***.By opting for mediation instead of immediately resorting to litigation, parties have the opportunity to resolve their disputes amicably and without the need for aggressive legal action. In a mediated setting, parties can openly discuss their grievances, concerns, and misunderstandings under the guidance of a neutral third party, often leading to a better understanding of each other's perspectives and a more cooperative approach to finding solutions.

Furthermore, mediation encourages parties to focus on finding mutually beneficial outcomes rather than seeking retribution or punishment. This shift in focus can help prevent the misuse of legal provisions like Section 498-A, which may be used as a means of retaliation or coercion in adversarial legal proceedings.

Moreover, mediation promotes confidentiality, allowing parties to discuss sensitive issues without fear of public scrutiny or legal repercussions. This confidentiality can encourage parties to be more forthcoming and honest in their discussions, leading to more meaningful and productive resolutions.

In conclusion, the evidence from the case studies overwhelmingly supports the argument that mediation is a superior option for resolving matrimonial disputes compared to litigation. It offers numerous benefits, including effectiveness, preservation of familial harmony, flexibility, speed, cost-effectiveness, and alleviation of the burden

on the judicial system. Therefore, promoting mediation as the primary method of resolving matrimonial disputes could lead to more efficient, equitable, and satisfactory outcomes for all parties involved.

**5.2. Recommendations:**

1. **Provision of Mandatory Mediation**: Amending the Family Courts Act 1984 to include mandatory mediation would encourage disputing parties to engage in direct communication, fostering amicable resolution without court intervention. This amendment should prioritize the resolution of disputes through mediation, except in cases involving serious domestic violence, which would be treated separately.
2. **Specialized Training for Mediators**: Mediators handling family disputes must undergo comprehensive training to understand the complexities of family dynamics, psychology, and relevant legal frameworks. This training ensures mediators are equipped with the necessary skills to facilitate constructive dialogue and resolution.
3. **Pre-Filing Counseling**: Given the sensitive nature of matrimonial litigations, couples should be directed to marriage counselors before resorting to legal action. This proactive step aims to mitigate emotional trauma and increase the likelihood of reconciliation, fostering healthier outcomes for families.
4. **Preferential Resolution within Family Courts**: Matrimonial disputes, including divorce, property division, and custody matters, should be primarily resolved within family courts. Litigation in higher courts should be reserved for cases of extraordinary severity, thus optimizing the efficiency of judicial resources.
5. **Emphasis on Reconciliation**: Promoting mandatory reconciliatory procedures ensures that family disputes are conclusively resolved, fostering long-term harmony within families. This approach prioritizes consensus-building and minimizes the need for prolonged legal battles.
6. **Pre-Marital Counseling**: Investing in pre-marital counseling services helps prevent early marriage breakdowns by equipping couples with essential communication and conflict resolution skills. This proactive measure

strengthens the foundation of marriages, reducing the likelihood of future disputes.

7. **Encouragement of Community Mediation**: Community mediation mechanisms offer informal and amicable dispute resolution, preserving relationships while addressing grievances. Encouraging community mediation fosters community cohesion and empowers individuals to resolve disputes independently.
8. **Awareness Campaigns**: Comprehensive awareness campaigns are essential to educate both educated and uneducated individuals about alternative dispute resolution methods. By increasing awareness, individuals can make informed decisions and access available resources effectively.
9. **Effective Coordination**: Coordination at both operational and structural levels is crucial for the success of ADR mechanisms. Promoting pre-trial conciliation and streamlining ADR practices enhances efficiency and accessibility for disputing parties.
10. **Institutional Development for ADR**: Institutional mechanisms for ADR should be developed with supervisory roles to coordinate and streamline ADR efforts effectively. Establishing robust institutional frameworks strengthens the credibility and efficacy of ADR mechanisms.
11. **Referral of Non-Family Matters**: Refraining from referring non-family matters to family courts expedites the resolution of family disputes, optimizing court resources and facilitating timely justice delivery.
12. **Child-Friendly Legal Institutions**: Legal institutions handling matrimonial disputes must prioritize child-friendly proceedings, ensuring the inclusion of children's perspectives and safeguarding their interests.
13. **Incorporating ADR in Legal Education**: Legal education must evolve to incorporate practical training in negotiation, conciliation, and mediation alongside traditional case-based learning. This equips future lawyers with the skills necessary for effective dispute resolution.
14. **Addressing Root Causes of Court Delays**: To mitigate court delays and case backlog, it's imperative to address underlying issues such as inefficient case

management, inadequate technology infrastructure, and human resource constraints.

15. **Training for Mediators in Rural Areas**: Establishing institutions to provide training to mediators in rural areas ensures equitable access to ADR mechanisms. Legal aid camps can effectively disseminate information and empower rural communities to address family disputes effectively.
16. **Streamlining Legal Procedures**: Simplifying rules and procedures within family courts reduces reliance on legal practitioners, ensuring a more accessible and user-friendly legal system for disputing parties.
17. **Utilizing Information Technology**: Leveraging modern technology facilitates efficient communication and dispute resolution, eliminating the need for face-to-face interactions. Implementing secure web-based networks enhances accessibility and authenticity of communication.
18. **Professional Training for Lawyers**: Legal professionals must receive training on the importance of mediation and their role in facilitating the process. Refresher courses conducted by professional bodies ensure ongoing awareness and skill development among legal practitioners.
19. **Improving Court Infrastructure**: Enhancing court infrastructure to provide conducive environments for dispute resolution fosters effective communication and resolution. Adequate space for litigants and facilities for children contribute to a more inclusive and supportive legal system.
20. **Community Engagement**: Involving Panchayat Raj Institutions in identifying and addressing marital problems strengthens community-based support systems, facilitating early intervention and resolution.
21. **Preventive Programs**: Pre-marital courses and counseling programs play a crucial role in preventing marital conflicts by equipping individuals with essential relationship skills and knowledge.
22. **Education on Dispute Resolution**: Incorporating dispute resolution education into school curricula promotes a culture of peaceful conflict resolution from an early age, fostering a more harmonious society.

23. **Recognition of Mediation in Legal System**: Legally recognizing mediation and enforcing its decisions within the framework of family courts enhances the credibility and effectiveness of ADR mechanisms.
24. **Increased Participation of Social Welfare Agencies**: Collaborating with social welfare agencies and professional counselors enriches the expertise available within family courts, fostering more flexible and informal dispute resolution processes.
25. **Diversification of Family Court Judges**: Liberalizing eligibility criteria for family court judges promotes diversity and inclusivity, ensuring a broader range of perspectives and expertise in handling family disputes.
26. **Preservation of Family Institutions**: Family courts should prioritize the preservation of family and marriage institutions, focusing on reconciliation and settlement rather than adjudication.
27. **Role of Lawyers in Family Disputes**: While lawyers play a crucial role in legal proceedings, their involvement should be balanced with the aim of preserving the informal and non-adversarial nature of family court proceedings.
28. **Classification of Family Court Functions**: Categorizing family court functions into pre-litigation counseling, post-litigation mediation, and adjudication streamlines processes and ensures clarity of purpose.
29. **Government Support for Family Courts**: Providing adequate resources and staffing to family courts, mediation, and conciliation services enhances their efficiency and effectiveness in resolving family disputes.
30. **Data Maintenance for Research and Evaluation**: Maintaining detailed records of family court cases, mediation, and counseling outcomes facilitates ongoing research and evaluation, informing continuous improvement efforts in family dispute resolution mechanisms.