



Mediation in Matrimonial Disputes: A Compromise-Oriented Approach and its Interface with Human Rights

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DOI : <https://doi.org/10.5281/zenodo.18612395>

ARTICLE DETAILS

Research Paper

Accepted: 18-01-2026

Published: 10-02-2026

Keywords:

*Compromise-oriented,
Human Rights,
Matrimonial Disputes,
Mediation.*

ABSTRACT

In India, mediation has emerged as a preferable mechanism for resolving matrimonial disputes, and an alternative to adversarial litigation. Its increasing institutionalisation within the legal system mirrors the general policy trend towards consent based dispute resolution. However, when analysed through a human rights perspective, mediation in matrimonial disputes raises some very complex and disturbing dimensions. In this paper, the researcher adopted a theoretical and normative approach to examine how mediation often becomes a compromise-oriented process which gives priority to settlement over substantive justice. It goes on to add how mediation frequently functions on unfair basis, putting undue pressure on parties to compromise their dignity, rights and autonomy. While mediation has the ability to diminish conflict and facilitate healing, its present practice runs the danger of strengthening patriarchal norms unless re-imagined within a rights-based framework.

1. Introduction

Mediation has gained prominence as a peaceful and civilised way to handle and resolve personal conflicts without making them an issue of public discussion. When things fall apart between couples, it steps in as



the calm middle ground which promises healthy conversations over a courtroom battle. In theory, it sounds perfect. Who would not want peace over conflict and conversation over arguments? But in real life, particularly in matrimonial disputes, things are not really that simple. The concept of mediation which looks so gentle, often hides the silent sufferings of those sitting across the mediation table. When viewed through the perspectives of human rights, mediation in matrimonial matters reveals a problematic issue. While the vulnerabilities of women in matrimonial mediation have rightly received greater scholarly attention, a human rights oriented approach must also recognise that men, too, experience distinct forms of pressure, stigma, and emotional distress within the mediation process. Mediation, when examined closely, unfolds not in a vacuum of equality but within deeply ingrained social and gendered expectations that burden both spouses, albeit in unequal and different ways. Mediation which begins with the promise of confidentiality, neutrality, and mutual understanding, often unfolds on unequal ground. Women particularly those who are victims of abuse, neglect, or abandonment come into mediation not as equals but as survivors. Most of such women carry more than just broken promises and trust. They carry numerous scars, some on the body and many on the soul. They carry years of compromise, adjustments, silence, and fear. They are not just negotiating the end of an abusive relationship, but are also navigating the centuries of social conditioning. And when they sit down to talk it out, they are often expected to go back to the same house, live with the same people, and face the same violence and abuse. Directly or indirectly, they are told “to adjust”, “to save their marriage”, “to think of their children” or “not to ruin the family’s name”. These suggestions are common to all women who dared to question their marriage in public and refused to live in such inhumane conditions where she was deprived of their dignity, rights, and liberty. In the mediation rooms, these suggestions come wrapped in smiles, and reinforced by mediators, family members, relatives, and even lawyers who mean well but fail to recognise the depth of the injustice done. Thus, the very space meant to heal people, resolve disputes peacefully, and foster fairness sometimes becomes a ground for compromise born out of fear and pressure. In that moment, justice takes a backseat. And it doesn’t stop there. What is more concerning is that abuse and violence often continue during the mediation process and even thereafter. Several women face harassment and threats of serious consequences from their husbands and in-laws during the mediation process itself. Not always inside the mediation room, but around it – outside the mediation centres, at home, and even through phone calls. Such threats include losing access to children, harm to family members, or even threats to viral personal pictures. Such incidents reflect a large pattern of how power disparities work in mediation, not just before or after the process but also during the process. At the same time, the human rights concerns of husbands in matrimonial mediation are often overlooked or dismissed. Men who enter



mediation frequently do so under a different but equally constraining set of expectations. They are socialised to resist vulnerability, suppress emotions and bear the responsibility of provider regardless of personal anguish. They are assumed as the "power" player even when they themselves are emotionally shattered, falsely accused, socially humiliated or financially devastated. They are compelled to agree to monetary settlements not out of culpability or equity but in order to put an end to unwarranted litigation, and to avoid social humiliation associated with such matrimonial litigations. In such cases, mediation becomes a forum where men are indirectly told to "pay and move on" without any form of recognition for their emotional and financial loss, mental health or the effect of having been separated from children. The concept that men are capable of being replaced, as fathers, as partners or as emotional beings often comes through mediation process subtly and perpetuates the stereotypes that dehumanizes men.

Furthermore, confidentiality in mediation, while designed to protect privacy, can work against both spouses. There is no judge, no cross-examination, and no record of the process. What happens behind those doors of the mediation centre can never be fully known due to the rules requiring confidentiality of the process. And when parties are told to settle and denied their right to choice just to avoid shame, ruining the family name or out of fear, coercion, ignorance, or emotional manipulation, one needs to ask – what kind of justice is this? From a human rights perspective, this is a matter of grave concern. And here arises the bigger question: when there is power disparity, can any agreement arrived between the parties be fair? Mediation presumes equal voice, yet the reality suggest otherwise. Women may agree due to fear, social pressure, or concern for children. Men may accept out of tiredness, fear of legal retaliation, or the desire to restore social equilibrium at the expense of emotional integrity. If either of the parties is compelled into a settlement not as a result of genuine discourse but by force, fear or fatigue then it robs mediation of its moral legitimacy. Rights are a matter of dignity and liberty and not just about laws. In such circumstances, how can one speak of free will or informed consent? The idea that mediation is a voluntary process, collapses the moment fear enters the room and when fear and pressure dominate, the idea of rights becomes an illusion. The present model of mediation doesn't always see this. It treats all disputes the same way, assumes both sides have equal say, and moves towards compromise like it is always the best answer. But in the social settings, where patriarchy runs so deep, where women are taught to worship their husbands, to stay quiet and bear the burden of an unhappy marriage, compromise is just another word for surrender. It allows families and communities to restore honour while burying the women's sufferings under silence. On the other hand, for men it can mean emotional erasure, loss of reputation in the society, burden of false allegations, malicious litigations and financial strain. Both outcomes indicate a failure to appreciate the human rights of individuals beyond their



gendered roles. Without recognizing the miseries of both parties, mediation risks strengthening silence rather than delivering justice.

2. Mediation in Matrimonial Disputes: The Concept and Legal Framework

Matrimonial disputes differ from ordinary legal matters and present unique challenges. They emerge from intimate relationships, strong emotional bonds, societal pressures and shared experiences. In addition to legal claims, these disputes are accompanied by significant emotional distress and protracted litigations which requires a specialised mechanism for resolution of such disputes. As a result, the Indian law has gradually adopted mediation as a preferred mechanism that enables disputing parties to communicate freely, reflect on their choices, and make decisions concerning their future with dignity. It does not place the individuals in adversarial roles. Rather, it is a structured and voluntary process where a neutral third party called mediator, assists the disputing parties in arriving at a mutually acceptable resolution of their dispute. It promotes constructive dialogue and does not impose a decision. It focuses on the idea that the married couples are in best position to decide what is best for them provided they are given a safe and impartial environment to communicate. The conceptual underpinnings of mediation in matrimonial disputes tilt on three broad philosophies. First, marriage is viewed as a social institution that should have a chance for reconciliation. Second, family disputes can be effectively resolved privately rather than in public. Third, reconciliation or emotional healing matters as much as legal resolution. These ideas have major bearings on both the judicial thinking and legislative policy in India. It is recognised that the purpose of family law is not to punish but to encourage reconciliation where possible. This thinking has paved the way for incorporation of mediation into family dispute resolution. The Supreme Court in *M/S. Afcons Infra. Ltd. vs M/S Cherian Varkey Constn Co. P. Ltd.*, underscored the significance of mediation in civil cases, including family disputes relating to matrimonial causes, custody of children, and maintenance. In a similar vein, the Indian Judiciary have highlighted the necessity for mediation in matrimonial disputes to alleviate the trauma of litigation for the parties involved. Often in such disputes, the cause of misunderstanding is trivial and can be resolved with the help of mediation before resorting to any legal proceedings.

The legal framework for mediation in matrimonial disputes draws on several statutes. One such provision is the section 9 of the Family Courts Act, 1984 which confers the duty on the Family Courts to make endeavour for settlement by assisting and persuading the parties, where it is possible and appropriate to do so. Another important legal provision lies in Hindu Marriage Act, 1955 which under section 23 requires the court to make every attempt to bring about reconciliation between the parties, before



granting relief in matrimonial matters. For this, the court can adjourn the proceedings up to 15 days and refer the matter for reconciliation to any person named by the parties or if parties fails to name any person, then to the person so nominated by the court. Similar provision is also mentioned in section 34 of the Special Marriage Act, 1954. These provisions together reflect a legislative inclination for settlement over separation, wherever possible and supports the idea that the courts should act as facilitators of settlement and reconciliation rather than acting merely as adjudicators. In cases where elements of settlement exists, section 89 of the Code of Civil Procedure, 1908 also empowers the courts to refer disputes to alternative dispute resolution mechanisms, including mediation. Though the said provision is generally applicable to civil disputes, courts have enthusiastically used it in matrimonial matters owing to their delicate nature. These provisions gave institutional recognition to mediation as a legitimate mechanism of dispute resolution within the formal legal system. The Legal Services Authorities Act, 1987 has also strengthened the framework of mediation by establishing Legal Services Authorities at the national, state and district level which provides mediation and conciliation services. Several matrimonial disputes are referred to mediation centres developed under such Authorities. These centres are designed to offer mediation services that are easily accessible and are cost-free. Recently, mediation has got stronger statutory support with the enactment of the Mediation Act, 2023. This legislation constitutes a significant departure by identifying mediation as an independent form of dispute resolution, not simply ancillary to litigation. The provisions of the Act lay emphasis on voluntariness, confidentiality and neutrality as fundamental features of mediation. It prescribes pre-litigation mediation, including in family matters if urgent relief is not required. Although the Act is general in its application, its principles are significant to matrimonial mediation and are likely to influence future practice.

From a theoretical perspective, mediation in matrimonial matters is based on the concept of relational justice, rather than legal rights. The emphasis is not simply on rights related to maintenance, custody, or property but also on future relationship, particularly where children are involved. Mediation encourages parties to tailor their solutions specific to their circumstances that courts are unable to apply, given their legal constraints. Another significant element of mediation process is its confidentiality. Whatever any party said, remained within the four walls of mediation centre and can not be reproduced before the Court. This confidentiality encourages free communication without any fear of legal repercussions. And in matrimonial disputes that involve highly sensitive personal details, confidentiality is frequently cited as one of the greatest reasons to opt for mediation over litigation. Another important element of mediation is the neutrality of the mediator. The mediator is supposed to be a neutral party that does not take the side of either. It is the duty of the mediator to promote dialogue and not to adjudicate or point to



strengths or weaknesses of the case. This makes mediation different from the regular court proceedings and even from conciliation, where the neutral third party may suggest solutions. Voluntariness is another essential principle. Mediation is considered to be effective only when the parties are willing to participate and any agreement arrived between the parties is expected to be the outcome of their free consent. This concept of voluntariness is at the core of the legitimacy of mediation outcomes. But, though the idea of such concepts is clearly established in theory and law, their application in matrimonial disputes present intricate questions. Assuming both parties are equally placed at the negotiation table is often unrealistic. Societal roles, emotional dependence, familial pressure, and economic disempowerment come into play. These realities call into question the notion of free consent particularly in profoundly patriarchal settings. The legal system, however well-intended it may be, largely focuses on reconciliation and settlement rather than examining power dynamics. Such provisions fails to differentiate the ordinary marital conflicts with those involving abuse and violence. As a consequence, mediation is uniformly applied without any screening or safeguards. Despite these weaknesses, mediation continues to be promoted as a crucial element of justice in matrimonial matters.

3. Compromise as the Guiding Principle of Matrimonial Mediation

In India, compromise is considered as the guiding principle in the philosophy and practice of matrimonial mediation. It is commonly depicted as the most rational, mature, and socially acceptable response to matrimonial disputes. It is not merely recommended but is celebrated as an achievement in mediation centres. Although compromise can be an effective tool for resolution of such disputes, its prevalence poses significant concerns regarding choice, power and justice. The call for compromise in matrimonial disputes is entrenched in social and cultural values. Marriage is considered a *samskara*, serving as the foundation of a new family unit. In *Doly Rani v. Manish Kumar Chanchal*, the Supreme Court observed that “*Marriage is not an event for ‘song and dance’ and ‘wining and dining’ or an occasion to demand and exchange dowry and gifts by undue pressure leading to possible initiation of criminal proceedings thereafter. A marriage is not a commercial transaction. It is a solemn foundational event celebrated so as to establish a relationship between a man and woman who acquire the status of a husband and wife for an evolving family in future which is a basic unit of Indian society.*” It is not only a union between two individuals but a social institution that is profoundly connected to family honour, moral obligation and social status. Its failure is not treated as a personal affair rather seen as a social disruption. Therefore, mediation becomes a tool which gives importance to restoration of social order by portraying compromise as an ideal way to resolve disputes. Parties who demand their legal rights are considered as



stubborn or rigid, whereas those who are ready to compromise are admired for being rational and progressive. This moral framing greatly influenced the mediation process. It dissuades assertion of rights and encourages adjustment. Eventually, compromise becomes an expectation and is no longer a choice. The prominence of compromise is evident from the way matrimonial disputes are referred to mediation. Courts often refer parties to mediation at the initial stages, sometimes even before assessing the nature and gravity of allegations levelled in the complaint. The underlying philosophy is that all matrimonial disputes has the potential to be resolved if the parties are directed toward compromise. Though well-intentioned, this approach may oversimplify the complexities involved in matrimonial disputes. In reality, compromise in mediation often require parties to lower their demands. Women are advised to reconsider their demands relating to maintenance or to resume cohabitation in order to maintain family harmony. Men are encouraged to come up with financial compromises as a means to avoid protracted litigation. Although such outcomes may bring short-term remedy, they raise serious questions about whether compromise is being utilised as a means of achieving justice or as a shortcut to disposal of cases.

The emotional aspect of compromise cannot be ignored. The parties came to the mediation emotionally drained as a result of the years of conflict, social pressure, litigation, as well as the anxiety associated with the litigation. In such a situation, compromise seems more as an escape route than a voluntary decision. The need to end uncertainty often overshadows the desire to seek justice. Instead of empowering parties, mediation take advantage of this exhaustion. This aspect is particularly concerning in matrimonial disputes involving uneven power relations. Emotional reliance, economic vulnerability, and social conditioning shape how parties react to compromise. Many women understand compromise within the context of their experiences. They have been taught from childhood that sustaining relationships requires sacrifice. When such women enter mediation, they are again reminded of the need for them to compromise, thereby perpetuating this pattern. On the other hand, man experience compromise in a different way. They are expected to settle disputes through monetary settlement. Emotional pain, reputational damage, and deprivation of access to their children are frequently overlooked. For them, compromise always carries a cost to restore normalcy in their life, even if they feel neglected and mistreated. The mediation setting rarely provides scope to express these emotional losses. The situation is further complicated by the neutral aspect of mediation. Mediation process require the mediator to be impartial. However, impartiality may highlight existing inequalities in an imbalanced social setting. It may happen in a mediation process where compromise is seen as an obvious outcome, causing mediators to direct dialogue towards a compromise without considering whether such terms of settlement are fair and voluntary. Instead of being focused on justice, the process becomes result-oriented.



The other significant aspect of mediation, marketing another level of complication, is confidentiality. Although privacy promotes free and open communications, confidentiality prevents scrutiny of the mediation process by concealing any official record of how parties reached a settlement, pressures being used, and if there is full and voluntary consent. This obscurity clouds the distinction between genuine compromises and forced agreements. The stress on compromise also affects how success in mediation is defined. A mediation is considered successful if it ends in settlement. Whether the settlement really resolves the underlying issues or merely postpones the conflict is not given much importance. The long-term impact of compromise has not yet been ascertained due to the absence of follow-up mechanisms. In cases where the parties find themselves exposed to the same harmful environment or feels the grudges that have not yet been resolved, the process of compromise can prove to be highly counterproductive. Theoretically, compromise in matrimonial mediation signifies a shift from structural approaches of justice to relational management. The focus shifts to conflict management instead of resolving harm. The goal becomes managing the conflict instead of resolving harm. While this approach moves toward preserving family structures, it runs the danger of subordinating individual dignity to communal harmony. Human rights discourse, however, call for a different perspective. It requires that dignity and autonomy cannot be compromised for the sake of social convenience. The balance between compromise and consent is the spirit of matrimonial mediation. True compromise requires informed consent, absence of fear and equality. In absence of these conditions, compromise loses its moral credibility and becomes a form of silent coercion, camouflaged as consent. However, this does not refute the significance of compromise in matrimonial mediation. Instead, compromise can be significant when it results from mutual respect and informed choice. It can help parties to part ways with dignity, or make an attempt to modify their relationship on healthier terms. The issue arises when compromise is viewed as an end in itself instead of a possible outcome of the dispute. Therefore, it is important to re-evaluate the idea of compromise. The institution of mediation needs to depart from the premise that settlement is always appropriate and desirable. Mediators and parties need to be taught that refusal to compromise can be an assertion of self-respect, dignity and autonomy and does not always equate to failure. In summary, compromise has become the guiding principle for matrimonial mediation. It not only acts as an alternative approach to conflict resolution but also possesses the prospect of jeopardizing justice through indiscriminate application. Therefore, there is a need for a balanced approach that appreciates the importance of compromise in the context of the need for dignity.



4. Outcomes of Mediation in Matrimonial Disputes

Mediation in matrimonial disputes does not yield a homogeneous result. Rather, its outcomes tend to vary in nature depending on the nature of the dispute, social conditions of the parties, competence level of the mediator, or expectations surrounding marriage itself. In contrast to judicial decisions which result in a definitive legal order, mediation yield results that tend to be more dynamic, amenable, and deeply influenced by human behaviour and social realities. It is necessary to understand these outcomes in order to assess whether mediation truly advances justice or simply redirects the conflict into different forms. Reconciliation with a resumption of marital life is one possible outcome of mediation. It is usually presented as an ideal or desirable solution by the court as well as the families. In such cases, parties mutually decide to give another chance to their marriage. Mediation creates an avenue for communication that may have broken over time and may help in addressing several concerns such as misunderstanding, ego-clashes, and interference by extended family. It may also encourage meaningful communication and rebuild trust in situations where dispute arises from stressful situations rather than ongoing harm. But even then, the viability of outcome ends up depending on whether a problem has been solved or simply deferred. Another common outcome of mediation in matrimonial disputes is conditional reconciliation, where parties agree to resume cohabitation subject to certain conditions. Such conditions may include attending counselling, living separately from extended family, sharing financial responsibilities, not to abuse each other, withdraw of litigations, or obeying agreed behavioural boundaries. Such outcomes reflect a negotiated attempt to strike a balance between personal well-being and emotional bonds. Although, this outcome appears to be realistic but its success depends on goodwill and accountability. In the absence of follow-up mechanisms, violations of conditions may leave parties with limited remedy.

A significant number of mediations result in mutual separation or divorce by consent. In such instances, mediation serves more as a structured process to exit the relationship than as a tool to preserve the institution of marriage. The parties reach a consensus on issues such as spousal support, child support, child custody, visitation, and withdrawal of all pending litigation. From a legal perspective, this helps in clearing the backlog of cases and expedites the dispute resolution process. However, from a human perspective, it reflect emotional exhaustion rather than true closure. Parties choose settlement not as a means to satisfy their sense of justice, but it allows them to move forward without any conflict in the future. Monetary settlement is frequently the central feature of such mediated separation. Financial compromise becomes the price of peace. Husbands may agree to lump-sum payments to avoid prolonged



litigation and reputational damage. Wives may agree to reduced amounts than legally entitled to, in lieu of immediate relief and closure. While these settlements bring certainty, they raise concerns about fairness, especially when economic inequality or legal unawareness informs such decisions. Another outcome of mediation is partial settlement where parties may reach a compromise on a number of issues while leaving others unresolved. For instance, parties may settle the issue of spousal support leaving the issue of child custody to be determined by the court. Such outcomes reflect the flexible nature of mediation process. They allow parties to narrow the scope of conflict. However, partial settlements can also elongate litigation and cause emotional suffering if unresolved issues are central to the dispute. In other cases, a mediation process may lead to no settlement at all. Parties may find their disputes incapable of settlement even after multiple mediation sessions. Distrust, allegations of abuse and violence, and emotional breakdown prevent the parties from reaching consensus. This outcome is often seen as a failure of the mediation process but in reality, it may be an affirmation of self-esteem and an indication of respect for personal autonomy. Additionally, mediation can also produce unintended outcomes. One such outcome is delayed access to legal remedies. Prolonged mediation attempts may postpone judicial intervention in cases where urgent relief is required. Another unintended outcome is reinforcement of unequal power relations. When one party dominates the negotiation process, mediation may legitimise imbalance under the guise of agreement. There are also outcomes that benefit the legal system more than the parties. Speedy disposal of cases, reduction of case backlogs, and efficiency of administration are some advantages of mediation. Although these positive outcomes serve the institutional interests, they must not outshine the experiences of the parties involved. From a human perspective, mediation outcomes are rarely absolute. Emotional scars persist even after agreements are reached. Resentment might continue unresolved alongside reconciliation. Separation might come along with mixed feelings of loss and relief. For children, especially, the outcomes extend beyond legal terms. Therefore, outcomes of mediation must be evaluated by their impact on human lives and not simply by the conclusion it offers. In short, the outcomes of mediation are varied and complex which ranges from compromise, refusal to compromise, reconciliation or separation. Every outcome has an impact on dignity, autonomy, and justice. Mediation cannot be evaluated solely in terms of settlement rates but rather in terms of the quality and durability of the outcomes. It is only then that a nuanced understanding of these various kinds of outcomes will inform a more effective, just, and humane mediation framework.



5. Mediation in Matrimonial Disputes and Human Rights: A Critical Interface

Matrimonial mediation is celebrated as a humane approach to dispute resolution as compared to adversarial litigation. It encourages communication and understanding as opposed to resentment and discord. However, it also reveals a more intricate and layered reality when examined through the human rights perspectives. Mediation is not simply a procedural mechanism. It operates within the social structures that influence how rights are understood and exercised. Therefore, a critical examination of mediation must take into account how it affects the human rights of both spouses in the socio-legal setting in which it is practiced. In matrimonial disputes, human rights go beyond the legal rights. These include the right to dignity, equality, privacy, personal liberty, autonomy, and freedom from violence and abuse. Mediation directly interfaces with these rights since it addresses the most intimate aspects of one's personal life. Decisions made in mediation deeply impact not only legal outcomes but also emotional health, social identity, and future relationships. From the perspective of women, mediation often intersects with existing structural inequalities. Many women come to mediation after experiencing episodes of abuse and violence. Even when violence is not evident, there may be some degree of control and dependence. In such instances, the use of mediation, which foregrounds communication and compromise, could actually impair women's rights to safety and dignity. The moment women are encouraged to reconcile without addressing power disparities, mediation simply becomes a place where silence is equated with consent. The right to dignity is central to this issue. The dignity of a person demands that he or she be treated as an end and never as a means to maintain the social harmony. In mediation sessions, women are frequently asked to think about the family unity, rather than about their personal harm. The calls of "adjustment," "sacrifice," "endurance," when couched in the guise of wisdom, may undermine dignity by denying women the legitimacy of their suffering. The moment dignity is impaired, the process ceases to be just and fair no matter how positive the solution is. Autonomy, another core human right, is closely linked to the idea of free and informed consent. Mediation theory assumes that parties voluntarily choose outcomes. In reality, emotional exhaustion, fear of social disgrace, loss of access to their children, and financial dependence dominate the women's choices. These pressures may not be evident in the mediation session, but they severely affect the decision-making process. The human rights basis of mediation is shaken to its roots when consent is shaped by fear rather than freedom. The confidentiality and privacy aspects of mediation also present different challenges. While confidentiality protects the privacy of parties by shielding them from public scrutiny, it also safeguards forced dynamics from public oversight. Threats or pressure that occur



alongside mediation remain undocumented. This absence of responsibility raises serious human rights concerns, especially when matrimonial disputes involving domestic violence are mediated.

At the same time, the vulnerability faced by men in matrimonial mediation should also be acknowledged. Men are often presumed to be the stronger party, yet this assumption can obscure their own rights and experiences. Many husbands enter mediation carrying emotional distress, social shame, and anxiety over false or exaggerated allegations. The social narrative that frames men primarily as providers can reduce their human worth to financial capacity alone. The right to dignity applies equally to men. However, in mediation, men may feel that their emotional suffering is overlooked or dismissed. They are expected to show rationality by making monetary settlements, regardless of the emotional consequences. Their dignity is diminished when they are considered replaceable or when their role as caregivers is devalued. Autonomy of men is impaired but in different ways. They are frequently pushed toward settlement by social pressure to quickly resolve the disputes, avoid prolonged legal battles, limited access to children, professional consequences, and to protect the family honour. In such circumstances, consent may reflect desperation rather than genuine agreement. The right to family life and parental association is another significant human rights concern for men. Mediation often frames custody as a secondary issue, resolved through financial arrangements. Emotional bonds between fathers and children may receive limited attention. When mediation outcomes prioritise convenience over relational rights, men's right to family life is diminished. Equality, as a human rights principle, demands recognition of difference without discrimination. Mediation, however, often operates on a formal notion of equality, treating both parties as similarly situated. This approach fails to account for substantive inequalities affecting women and the specific vulnerabilities affecting men. Formal neutrality, in such cases, risks reinforcing existing hierarchies. The absence of judicial safeguards in mediation adds more complexity to the human rights interface. There is no cross-examination, no evidentiary value and limited scope for review. Although this flexibility aims to empower parties, it does lack security mechanisms that would have ensured the protection of rights. This risk is further exacerbated by the absence of mandatory legal representation or rights-awareness sessions. Another crucial aspect is the right to effective remedy. Human rights law places a strong focus on accessibility of justice and effective redress for violations. This opportunity for effective remedy is eroded when mediation delays or diverts parties from judicial remedies, particularly in situations involving abuse and violence. Thus, mediation should serve to complement access to formal justice mechanisms rather than replace it. Children's rights, though not the primary focus of this paper, further intersect with parental rights. Decisions made in mediation shape children's emotional and social worlds. When outcomes prioritize settlement over stability, children's rights to care and security may be



indirectly affected. A balanced human rights approach calls for careful reorientation of mediation in matrimonial disputes and requires mediation to take into consideration individual vulnerabilities, power imbalances, and nature of the disputes. Safeguard mechanisms including informed consent, screening for violence and abuse, and mediator training in human rights are also crucial. Parties must not be coerced into silence rather be empowered with knowledge. In short, the interface between matrimonial mediation and human rights is multifaceted and highly contextual. Despite its potential to protect the parties' dignity and autonomy, mediation can still violate the rights if power, fear, coercion and social conditioning are not properly addressed. A human rights-centred mediation framework must move beyond formal equality and embrace substantive justice. Only then can mediation fulfil its promise as a humane and just alternative to litigation.

6. Rethinking Success in Matrimonial Mediation

Success in matrimonial mediation is often understood in simple and convenient terms. A mediation is considered successful if it leads to an agreement, reconciliation between parties or withdrawal of litigation. This understanding aligns well with the institutional goals such as easing the burden on courts and reducing the pendency of cases. However, mediation risks losing sight of the human realities it is meant to address when success is determined solely by settlement. Such a settlement may possibly close the files efficiently and may still leave individuals unsettled, harms untreated, rights violated and dignity compromised. This raises a critical question: how should success in matrimonial mediation truly be defined? If agreement alone becomes the benchmark, the process remains blind to its human cost. Matrimonial disputes are not like ordinary conflicts. They involve dignity, autonomy, and emotional safety of the parties. They may have long-term consequences for both spouses and children if left unsettled. Therefore, evaluation of success must go beyond numerical indicators. At present, mediation frameworks largely rely on agreement rates as indicators of effectiveness. A higher number of settlements is seen as an indicator that mediation is working effectively. This limited metric overlooks the quality and sustainability of the outcomes. It fails to evaluate whether a voluntary agreement has been reached between the parties, whether they were aware of their rights, and whether each party is protected from potential harm. In many cases, agreements are result of exhaustion rather than fairness. Parties agree to settle because they want to avoid prolonged litigation, not because justice has been served. For women, this limited definition of success may create a pressure to compromise. A woman's return to her matrimonial home after mediation is viewed as an achievement, even when the circumstances that lead to the dispute remains unaltered. Here, the absence of visible conflict is mistaken for resolution. Such



outcomes may satisfy social expectations but can place women back into environments of control, silence, or abuse. From a human rights perspective, such mediation cannot be considered successful. For men, success is often framed as closure. Financial settlements and withdrawal of cases are treated as pragmatic solutions. Success evaluations do not take into account emotional harm, psychological struggles, social disgrace, and separation from children. Men who agree to settle the disputes mainly to avoid disgrace, reputational damage, or prolonged litigation merely show endurance rather than justice. Their dignity and agency are reduced to financial compliance.

A rights-sensitive approach demands a redefinition of success in matrimonial mediation. Success must first be measured by the absence of coercion. Coercion in mediation is not always visible. It may be apparent in the form of family influences, social disgrace, emotional stress, or fear of legal repercussions. Although formally valid, the agreement reached under such conditions lacks moral legitimacy. Second, informed and voluntary decision-making is required for the meaningful evaluation of success. Informed consent can not be mechanically presumed in matrimonial mediation, especially when the parties come from diverse social and economic backgrounds. It must be actively ensured as mediation can turn into a place where ignorance is exploited rather than rectified in the absence of awareness of rights. Therefore, parties need to be informed of their legal rights, remedies available to them, and the consequences of settlement. Third, protection from continued harm must be given importance in the evaluation of success. When mediation results in reconciliation without addressing the issues of emotional abuse, violence, and coercive control, it fails to safeguard the most basic human rights of the parties. Similarly, settlements in which either party walks away carrying lasting financial burden or emotional turmoil cannot be termed as successful merely because they put an end to litigation. Fourth, real success has to be based on respect for the freedom and dignity of parties. Mediation as a process must empower the parties to make real choices. Such a right to choose must include the choice not to compromise. Refusal to compromise should not always be taken as a failure. In some cases, walking away from mediation is an assertion of self-respect and autonomy. A process that silences individuals for the sake of agreement undermines the very purpose of mediation. Redefining success in this manner requires structural reform. There should also be compulsory screening for coercion and domestic violence prior to mediation. Parties should be provided with compulsory “know your rights” sessions, so that each party can negotiate on informed ground. Mediators should be provided with specialised training to recognise gendered expectations, economic and emotional vulnerability, and power imbalances. In absence of such safeguards, mediation can at best perpetuate inequality in the guise of neutrality. Mediation’s success should be measured not just by the outcome, but also by the process. A failed mediation that lets parties articulate their positions,



clarify their rights, and claim their own decisions is better than the successful mediation which brings settlement through pressure or silence. Success lies in enabling choices and not in forcing agreement. The success of mediation in matrimonial disputes is usually measured by disposal figures and agreement rates. These numbers merely show the visible portion of a broader reality. Mediation works to preserve the rights and dignity of the parties. It works only by preventing harm, protecting values, and ensuring informed decisions. Mediation can be a tool of justice only when success is redefined in these terms.

7. Conclusion

Mediation in matrimonial disputes remains a precarious and contested space between harm and healing. The realization of mediation itself as a humane alternative to litigation holds the promise of communication, understanding, and voluntary agreement. This promise, however, becomes ambiguous when placed in the deeply patriarchal social structures. The compromise-oriented nature of matrimonial mediation frequently places women in situations where they are expected to choose between social acceptance and personal dignity. In such circumstances, mediation risks becoming less a tool of justice and more a mechanism of quiet conformity. Justice cannot be achieved through silence or forced harmony. A settlement that looks peaceful on the surface may actually be concealing fear, intimidation, or emotional surrender under it. It is important for the mediation to go beyond the settlement rates and encounter the lived realities of the parties. Therefore, a human rights approach is essential which addresses the power imbalances, financial and emotional vulnerabilities, social pressure, and the lasting consequences of mediated outcomes. Without such recognition, mediation remains blind to the very harm it claims to resolve. This paper does not portray mediation as an adversary to justice. Mediation is not the enemy but a friendly tool for the resolution of disputes, the value of which depends on how it is used and in whose hands it rests. In matrimonial disputes, where emotions run so high and the stakes are deeply personal, mediation must be handled with utmost care and sensitivity. But in India, the present legal system lacks the required safeguards such as mandatory screening, security measures, and the legal obligation on the part of the mediator to inform participants of their rights. In reality, women particularly those from rural or low-income backgrounds often enter into mediation rooms unarmed. They are unaware of their legal rights and lack legal representation. They are accompanied by family members who are more concerned about their reputation than justice. They are mediated by those, who despite their good intentions, lack the tools to balance the scales. The outcome is a process that is heavily weighted in favour of reconciliation, not because it is the best possible outcome but because it is the most simple and socially acceptable. This reality compels a fundamental rethinking of how success in



matrimonial mediation is defined. At present, a successful mediation is one which ends in agreement. But arriving at an agreement really a success? What if it means a woman being forced to go back to the same household where she suffered abuse and violence, or silences her voice for the sake of family honour and harmony while robbing her of her right to dignity and right to make a real, informed, and fearless choice? What if it means a man being forced to enter into a monetary settlement beyond his ability? What if it means forcefully trying to tape a marriage knot which is already broken beyond repair? In simple words, mediation in matrimonial disputes stands at a delicate crossroads. It can either safeguard human rights or silently violate them. It can be a means of healing or can demand a sacrifice. It can be a means to bypass the patriarchal norms or reinforce them more strongly under the guise of neutrality. The difference lies in how mediation as a process is imagined, implemented, and supported.

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