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# MATRIMONIAL MEDIATION IN DELHI: A CONSTITUTIONAL AND EMPIRICAL APPRAISAL OF SYSTEMIC DEFICIENCIES AND THEIR SOCIETAL IMPACT

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## ABSTRACT

This study examines, first, the structural and statutory stand of court-annexed mediation operating limited to the matrimonial jurisdiction of Delhi, second, its adequacy and constitutional alignment in practice. The study investigates the functioning of mediation centres established pursuant to laws like the Family Courts Act, and other matrimonial statutes. The researcher through an empirical data collection of their procedural modalities and institutional design comes to a horrible conclusion.

Why the research becomes important as it emerges from empirical evidence collected through interviews with 30 participants including (mediators, wives, and husbands), revealing systemic concerns such as overwhelming caseloads, absence of psychological expertise, inadequate screening of high-risk cases, and recurring patterns of trauma, stress, anxiety, and settlement-pressure.

The *impact* of these deficiencies is twofold. In society, parties—particularly women—experience coerced settlements, emotional harm, compromised safety, and erosion of trust in the justice system. Families emerge from mediation not healed but further destabilised, perpetuating cycles of violence, inequity, and psychological distress. In the courts, ineffective mediation leads to failed settlements, renewed litigation, procedural delays, and a dilution of constitutional values of equality, dignity, and access to justice. The divergence between mediation's legislative promise and its ground-level practice thus generates systemic consequences requiring urgent institutional reform.

## **Understanding the Mediation Mechanism Operating in Delhi Courts, With Special Reference to Matrimonial Jurisdiction**

At the very start, before the researcher examines the constitutional and institutional gaps alleged by the researcher related to the functioning of Mediation Cells in the courts of Delhi, it becomes important to understand the structural framework, statutory provisions, and actual working model of mediation as presently available in Delhi. Matrimonial disputes arising under the but not limited to Hindu Marriage Act, 1955<sup>1</sup>; the Protection of Women from Domestic Violence Act, 2005<sup>2</sup>; the Guardians and Wards Act, 1890; and matters under Section 144 of the BNSS<sup>3</sup>, form the overwhelming majority of cases referred to mediation in Delhi. These include but are not limited to petitions of divorce, complaints of domestic violence, applications for maintenance, and also applications relating to custody/visitation rights.

Before institutionalising mediation via statutory recognition dispute-resolution in Delhi courts, particularly in the family and matrimonial domain, operated predominantly through adversarial adjudication by the judges. The Delhi Mediation and Conciliation Centre (Samadhan) was created pursuant to the spirit of Section of the CPC Consequent thereto, the High Court of Delhi framed the Delhi High Court Mediation and Conciliation Rules, 2004, followed by the establishment of mediation centres in the district judiciary.

It is important to record that mediation, though procedural in character, draws strength from several substantive enactments that explicitly encourage conciliatory processes before or during litigation. For instance, Section 23(2) of the Hindu Marriage Act, 1955 obligates courts to make every endeavour to bring about reconciliation between the parties. Similarly, Section 9 of the Family Courts Act, 1984 casts a statutory duty upon Family Courts to facilitate settlement and harmonious resolution of family disputes. Under the Domestic Violence Act, 2005, although conciliation is not an independent mandatory stage, multiple provisions encourage counselling, negotiated settlements concerning residence, monetary reliefs, and child welfare. The Guardian and Wards Act, 1890, read with the principle of the best interest of the child, continually promotes non-adversarial, welfare-oriented decision making, for which mediation becomes a natural extension. The combined effect of these enactments

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<sup>1</sup> Hindu Marriage Act

<sup>2</sup> Protection of Women from Domestic Violence, 2005 <sup>3</sup> BNSS

reveals that mediation is not merely an optional adjunct but a statutorily favoured modality for matrimonial resolution in Delhi.

In Delhi, the mediation process commences either by reference of a pending lis by the court under Section 89 CPC and Family Courts Act, or through a pre-litigation mediation request. Upon such reference, the mediation centre—usually Samadhan or district mediation cells—registers the matter and assigns it to a designated mediator from the approved panel. The process is intended to be confidential, informal, and non-threatening, aimed at fostering voluntary consensus between spouses or family members. Ordinarily, intake sessions, individual sittings, joint sittings, and settlement conferences are conducted with the objective of identifying issues, exploring emotional and legal barriers, and reaching an agreed-upon settlement. The settlement, if arrived at, is reduced into writing and becomes executable as a decree or order of the court, depending on the nature of the proceeding.

The reality in Delhi's mediation centres reveals that nearly 70–80% of referred matters concern matrimonial discord, often involving complex interplays of emotional rupture, financial insecurity, dowry harassment, interpersonal violence, and custody of minors. Despite the structured framework and statutory purpose, questions have arisen—both empirically and academically—regarding the adequacy of psychological expertise, the competence of mediators in handling high-conflict family dynamics, the absence of trauma-informed approaches, and the tendency of certain mediation practices to become perfunctory rather than transformative. Before this Court proceeds to analyse these deficiencies in Issue-II, it is essential to place the mediation apparatus in Delhi within its full legal, administrative, and historical context. Against this backdrop, the issue that arises for consideration in the present research may be succinctly articulated: Whether the existing mediation framework in the courts of Delhi—its institutional design, statutory foundations, procedural modalities, and practical implementation—is adequate, effective, and consistent with the object and legislative intent underlying matrimonial statutes and with broader constitutional values of fairness, dignity, and access to justice? This question forms the first axis of inquiry and lays the groundwork for examining, in subsequent issues, the deficiencies, procedural lacunae, and systemic challenges confronting mediation in Delhi.

## **PART-II**

### **Whether the Existing Mediation Framework in the Courts of Delhi Is Adequate,**

## **Effective, and Consistent with Matrimonial Legislation and Constitutional Values?**

Having delineated, in the preceding part, the statutory foundations and operational structure of mediation within the courts of Delhi, the present issue requires an evaluation of the adequacy and effectiveness of this framework. For this purpose, structured interviews were conducted with twenty participants—comprising mediator-advocates, husbands, and wives across multiple districts of Delhi. Their statements, read holistically with judicial pronouncements, mediation literature, and statutory mandates, present recurring themes which warrant close scrutiny.

### **A. Submissions and Perspectives of Mediator-Advocates**

Mediators consistently emphasised that the volume of matrimonial referrals far exceeds the institutional capacity of existing mediation cells. Many mediators indicated that a single mediator handles between 20 to 40 matters per day, leaving limited time for meaningful conflict-assessment or deep engagement with the psychological dimensions of matrimonial discord. It was repeatedly asserted that mediators are not equipped with clinical training in psychology, trauma-response, or behavioural analysis, despite dealing with cases involving prolonged domestic violence, emotional abuse, financial coercion, and child-related distress. Several mediators admitted that mediation frequently becomes a negotiation exercise rather than a therapeutic intervention, as intended by the Family Courts Act. Mediators further stated that referral orders from courts often arrive without adequate screening. Matters involving severe violence, suicidal ideation, or child abuse are also sent for mediation without preliminary psychological assessment. In many cases, mediators expressed that they feel constrained by time, lack of specialised support staff, and absence of guidelines concerning high-conflict cases. Some mediators revealed that mediation frequently turns into a “settlement-pressure model”, driven primarily by the judicial expectation of reducing case pendency. This, according to them, dilutes the voluntary and consensual character of mediation, especially in cases where one party is vulnerable, economically dependent, or traumatised. Mediators also expressed dissatisfaction with the absence of consistent training modules. While the Delhi High Court Mediation Centre conducts workshops, mediators reported that these trainings are short-duration and doctrinal, lacking practical tools like cognitive interviewing, emotional-regulation techniques, domestic-violence screening protocols, or risk-assessment models. Many interviewees acknowledged that the mediation

framework leans towards reconciliation at all costs, even when reconciliation may not serve the welfare of the spouse or child.

### **B. Testimonies and Concerns Raised by Wives**

A substantial proportion of women participating in the interviews indicated that they felt unheard, unprotected, or emotionally unsafe within the mediation environment. Several women narrated that sessions often began by urging them to “adjust,” “reconcile,” or “save the marriage,” even when allegations involved prolonged domestic abuse. Some participants stated that mediators lacked sensitivity to trauma and frequently adopted a neutral stance even in situations of unequal bargaining power, thereby inadvertently reinforcing existing power asymmetries. Many women expressed apprehension that mediation rooms lacked privacy, confidentiality, and psychological safety. Some reported encountering their husbands in the waiting area, leading to anxiety and intimidation even before the session commenced. Women also felt that mediators insufficiently addressed issues such as coercive control, marital rape, dowry harassment, and threats involving children. Several wives indicated that mediators emphasised settlement of maintenance or residence rights without exploring emotional or safety concerns, resulting in partial settlements that did not address the fundamental dispute. A recurring grievance among women was the absence of psychologists or social workers who could assist in articulating trauma, identifying patterns of coercion, or helping them navigate the emotional complexities of matrimonial breakdown. In high-conflict cases involving domestic violence, some women felt that mediation should not have been attempted at all. The overall conclusion emerging from women participants is that mediation frequently prioritises “closure” over “justice,” often compelling them towards settlements driven by socio-economic vulnerability rather than free will.

### **C. Testimonies and Concerns Raised by Husbands**

Husbands interviewed across various districts presented a distinct but equally significant set of concerns. A majority stated that mediation sessions are influenced by preconceived assumptions regarding male culpability, particularly in domestic violence or dowry-related cases. Several men felt that mediators begin the process with a presumption that the husband must compensate or apologise, irrespective of the factual narrative. Some claimed that this creates an atmosphere of defensive negotiation rather than genuine dialogue, thereby defeating the conciliatory purpose of mediation. Husbands also raised concerns regarding the financial

expectations often articulated during mediation. They stated that mediators frequently focus on quantifying maintenance, child support, or lump-sum settlements without adequately addressing issues of reconciliation, shared parenting, or emotional closure. Many respondents suggested that mediation becomes an extension of litigation strategy, encouraging them to agree to financial terms merely to avoid further criminal proceedings or social embarrassment. A number of husbands expressed dissatisfaction with the lack of clarity regarding custody or visitation rights. Many felt that mediators emphasised financial settlements but did not sufficiently facilitate discussions on co-parenting, emotional access to children, or long-term parenting plans. Further, husbands noted that mediators rarely provided guidance on the legal consequences of partial settlements, leading to disputes resurfacing before trial courts.

#### **D. Author's Consolidated Observation**

Upon a comprehensive evaluation of the statements of mediator-advocates, husbands, and wives—recorded through structured interviews across multiple districts of Delhi—and after analysing these narratives using the Reflexive Thematic Analysis (RTA) framework of Braun & Clarke, a consistent set of dominant themes emerged.

These themes include:

- (1) trauma,
- (2) stress,
- (3) psychological depression,
- (4) acute and anticipatory anxiety,
- (5) fear, both physical and emotional,
- (6) settlement-pressure,
- (7) conciliation-pressure, and
- (8) adjustment-pressure, particularly imposed upon women.

These themes were not sporadic but pervasive, transcending districts, age groups, education

levels, and socio-economic categories. The recurrence of such emotional and psychological patterns indicates that these are structural outcomes closely tied to the existing mediation process rather than isolated subjective experiences of the parties. The statements of mediator-advocates corroborate these findings. Mediators reported structural constraints such as overwhelming caseloads, absence of psychologists, lack of trauma-informed training, inadequate screening of high-risk domestic violence cases, and an institutional culture that prioritises settlement rates over emotional safety or voluntariness of the parties. This creates a system where mediation, though statutorily encouraged, often becomes a procedural formality directed at disposal of cases rather than a calibrated process of emotional, relational, and legal resolution. Synthesising these empirical findings with statutory mandates, doctrinal literature, and judicial precedents, the following conclusion emerges:

The existing mediation framework in the courts of Delhi, though formally institutionalised and statutorily grounded, is not adequately equipped to address the psychological, emotional, and socio-legal complexities inherent in matrimonial disputes. The recurring themes of trauma, stress, anxiety, depression, fear, and the various forms of settlement-pressure, identified through RTA analysis, demonstrate that mediation as presently practiced does not reliably offer a voluntary, safe, or dignity-affirming environment. From a constitutional standpoint, these deficiencies assume heightened significance. Matrimonial mediation implicates core constitutional values enshrined in Articles 14, 15, 21, and 39A. The Supreme Court has repeatedly held that fairness, substantive equality, dignity, and meaningful access to justice are integral components of these provisions. A mediation process that induces settlement under emotional duress, fails to safeguard bodily and mental integrity, ignores trauma histories, or reinforces power asymmetries is inconsistent with—

- (a) the guarantee of equal protection under Article 14,
- (b) the prohibition of gender-based disadvantage under Article 15,
- (c) the right to dignity, autonomy, and psychological well-being under Article 21, and
- (d) the mandate of effective and real access to justice under Article 39A.

When a mediation framework inadvertently compels reconciliation, prioritises disposal over dignity, fails to screen for violence, and does not incorporate psychological expertise, it risks

producing outcomes that are constitutionally infirm. Such a model does not merely fall short of statutory expectations it undermines the constitutional architecture that governs matrimonial adjudication in India. Accordingly, from the perspective of constitutional jurisprudence, the current system shows a gap between the institutional guarantee of mediation and its actual practical delivery in Delhi. The lack of informed, aware mechanisms, lack of psychological support, and pressures towards the settlement either vise collectively impede the attainment of constitutional justice. These problems justify a detailed inquiry into the system of mediation. For better perpetuity or clarity, it is crucial to record that each thematic scheme identified as trauma, stress, depression, anxiety, fear or settlement pressure, conciliation pressure, and adjustment-pressure shall be developed in detail in the succeeding examination of the research. This paper has only examined the psychological, sociological, doctrinal, and constitutional problems of these themes in the Mediation centre in Delhi.