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## The efficacy of mediation in matrimonial cases: A social legal study with special reference to Hindu law

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### Abstract

Finally, this research concludes that mediation is a culturally aligned, socially sensitive and effective means for altering matrimonial disputes, especially matrimonial disputes under Hindu law which prescribes reconciliation, family unity and the moral duties of the family members in the family structure. With its characteristic collaborative, less adversarial approach, mediation deals with the emotional, the relational aspects of matrimonial disputes leading the couple to finding solutions that they can accept mutually without its ugliness which is common in litigation. Mediation also provides a practical benefit causing it to be a more economical choice for many individuals by reducing financial and emotional costs in court procedures. The research findings show that they are in place with Hindu values of conflict resolution and family harmony, and that they are empowering for the individual, particularly women, by permitting a voice in the negotiation and giving the feeling of agency over the results. However, the study also recognizes challenges, such as poor awareness and access to mediation services and sometimes resistance, based on societal expectations or personal disposition against litigation.

**Keywords:** Mediation, culturally aligned dispute resolution, socially sensitive approach

### Introduction

Matrimonial disputes, often marked by complex emotional, financial, and social dimensions, can be highly contentious. In India, with its diverse cultural, religious, and legal traditions, these disputes present unique challenges, especially within the framework of Hindu Law. The rise in divorce and separation cases has underscored the need for alternative dispute resolution (ADR) mechanisms, with mediation emerging as a particularly effective tool. Mediation, a process whereby a neutral third party facilitates communication and negotiation between parties, seeks to resolve conflicts amicably without resorting to prolonged and often adversarial litigation.

Mediation of matrimonial cases is of benefit not only to relieve the imposition on the judiciary but to encourage a more positive, non-adversarial approach to conflict resolution. A major difference between litigation and mediation is that litigants tend to become cemented into an adversarial position and don't focus as much on the mutually beneficial outcome. This process can be of special help in matrimonial cases, especially to protect family connections, to ensure the wellbeing of children from the trauma of the parental dispute, and to find practical ways to disentangle the tangled complications, such as the custody, alimony and division of property. Due to the sacred nature of marriage as a unit in Hindu Law and family unity in the Indian context, mediation in this context is very suitable. The law to accommodate mediation, and courts have become increasingly enthusiastic about spouses trying to reconcile first through mediation, before formal litigation. In this study we explore the efficacy of mediation in matrimonial disputes with particular reference to Hindu Law, looking at how social, cultural and legal factors can determine whether mediation will prove successful. An objective of this study is to assess the efficacy of mediation to resolve matrimonial disputes among Hindus with reference to legal framework and the cultural attitudes about marriage and divorce in India. This research will explore the possible opportunities for mediation to solve matrimonial disputes without losing the cultural sensitivity by focusing on the Hindu law perspective, so as to reduce the adversarial mode associated with traditional litigation while promoting reconciliation. Based on family preservation and personal wellbeing goals, which still exist in less progressive cultures, this approach also fits.

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### Need of the Study

The role played by mediation in matrimonial cases within Hindu law is studied in consideration of the culturally rooted, religious and emotional importance attached to marriage in India. Divorce, custody and maintenance matrimonial disputes tend to escalate in traditional litigation, thereby causing unending emotional tension and a drain on finances. However, mediation is collaborative approach to resolve such conflicts, which is a sacred view of marriage in Hindu culture. This study examines the success and failures of mediation in these cases in order to determine how, to what extent, mediation fosters peaceful and true to family integrity settlements. This research can provide guidance to reforms in family courts that lead to more accessible and respectful of the unique social values in Hindu matrimonial disputes.

### Need for alternative dispute resolution (ADR) mechanisms

Since the judicial systems of such countries like India, are overburdened, the need for alternative dispute resolution (ADR) mechanisms is quite apparent. Traditionally, disputing parties must go through the costly, emotionally exhausting process of traditional litigation. ADR is a great option presenting an alternative way to resolve conflicts quickly, amicably and often more cost effective than in the formalities of the courtroom. In matters where it is best to keep issues private, mediating, mediating, and conciliating the biggest components of ADR can help achieve flexibility, privacy and collaborative problem solution that suits the situation.

In matrimonial disputes, however, these limitations of conventional litigation are quite pronounced. Courtroom battles that drag on can damage family relationships and also do more harms to both parties, as well as children. Finally, ADR mechanisms, especially mediation, provide couples where conflicts can be resolved without the characteristic hostility that would be present were they to occur in an adversarial setting. But this process is a good thing as it allows both parties to come to agreement through cooperative dialogue rather than through the divisive nature of the traditional legal battle. ADR mechanisms lower the courts workload. Millions of cases are in India's case backlogs, and its judiciary is consistently struggling with them. By directing a large part of cases, especially those concerned with family and civil disputes, to ADR, courts can be more effective at litigating more advanced legal affairs. ADR generally speeds up settlements, better ensuring that agreements reached are complied with, as parties are more likely to abide by resolutions they have themselves created. With the increasing frequency of matrimonial disputes in India, mediation- a relatively new and ADR mechanism- goes well with cultural and legal precedents, in particular, under Hindu law, which tends to give prominence to family harmony and reconciliation. Improving ADR in marriage supports mental and emotional health of people involved, and matches goal of family preservation. For this reason, then, it becomes essential to equate ADR mechanisms with improved access to justice.

### Overview of the Hindu Marriage Act, 1955, and relevant amendments

The Hindu Marriage Act of 1955 is a landmark statute in India that codifies and modernizes Hindu personal law

relating to marriage, divorce and other matters of personal family. This Act contains provisions relating to marriage among Hindus, Hindus by religion, Buddhists, Jains and Sikhs and provides for uniform legislation for manner in which matrimonial issues are to be decided. Located within a broader wave of social reforms which characterized post-independence India, the Hindu Marriage Act brought into being legal adjudication of marriage registration; grounds for divorce; and the rights for maintenance of marital relationships, based on equality and fairness of marital relationships. The Act also specifies when marriage is a valid marriage; these include attaining the legal marriageable, being of sound mind and not being of a prohibited relationship. Provisions about solemnization of marriage in accordance with customary rites, under civil registration, would provide flexibility in implementation of the Act. It further propounded the concept of divorce, a major departure from the traditional notion of marriage as a never ending bond between husband and wife, accompanied by specific grounds of divorce for husband and wife, adultery, cruelty, desertion, mental disorder and incurable diseases.

The Hindu Marriage Act has also seen several amendments over the years which are made for changing social norms as well as for promoting gender equality. For example, Marriage Laws (Amendment) Act 1976, provided grounds for divorce, enabling couples to obtain mutual consensual divorce, which is much more convenient when both partners decide to separate from each other. But other amendments have examined maintenance of the wife and the legitimacy of children born out of the dissolved marriage to cover all sections in the legal framework. As the Hindu Marriage Act's family unity ethos is firmly rooted under the Family Courts Act of 1984 through laws establishing family courts that emphasize reconciliation and use of ADR mechanisms, family courts established under the Family Courts Act of 1984 reflect the ethos of reconciliation. While the Act remains in force, it has changed with the evolvement of judicial interpretations and societal shifts colorable to India's ongoing need to strike the balance between tradition and its amendment towards progressive legal reform in family law. Despite this the Hindu Marriage Act continues to play a pivotal role in the protection of the rights of people in marriage, with the important space to enable mechanisms for amicable dispute resolution through mediation.

### Literature Review

Kumar, M. (2021) <sup>[1]</sup>. The present discourse on Hindu Law, Indian Legal System and Legal Philosophy brings to focus the necessity of rewriting the Indian Legal studies in Indian context to represent indigenous cultural, philosophical and historical foundations in developing the Indian Legal Studies. Hindu Law has been a living entity rooted in its ancient texts and traditional norms and has been inextricably late in Indian society but only liminally in modern legal education to the extent that it has been overshadowed by colonial frameworks. The present study attempts to examine the way into which Hindu legal principles, values and philosophies could be incorporated in the present day legal studies so as to enrich the Indian jurisprudence. It is for a balanced approach that will respect the various legacies of the country's legal history and property content with today's socio legal challenges.

Tyagi, N. (2021) <sup>[14]</sup>. This research looks at the

transformative potential of Alternative Dispute Resolution (ADR) mechanisms to resolve gender justice within the context of India's matrimonial litigation landscape. Given that matrimonial disputes are complicated and emotionally charged, women disproportionately suffer the fallout, especially where there is financial or social disadvantage in protracted court action. With ADR, and especially mediation, mediating disputes is less adversarial and more accessible, enabling a faster, more empathetic outcome. The providing of an arena in which collaborative decision making can occur, ADR has the potential to offset some of the difficulties women have in traditional litigation: stigma, resource constraints, and the lengthy process.

Menski, W. (2010) <sup>[2]</sup>. One of the oldest systems of law in the world, Hindu law grew out of spiritual, ethical and philosophical conventions of ancient India. Hindu law is traditionally taken from the ancient Sanskrit scriptures, such as the Vedas, Manusmriti and Dharmashastra, and deals with aspects of personal and family life like marriage, inheritance and also religious obligations. While revised and codified to a great extent, especially during the British colonial rule, Hindu law is an important aspect of modern Indian law, especially in matters of personal law of Hindus. In Hindu philosophy, this system is based on Dharma (Moral duty), justice as conceived, connotes harmony, duty and social order. This abstract delves into how Hindu law shapes up modern legal practices, its function in predict jurisprudence, and the persistent challenge of accepting traditional ideas in India's plurality of the legal system, and along this way providing a thought into a legal system that combines age – old values with adjustment to changing social norms.

Harrington, J., & Manji, A. (2017) <sup>[6]</sup>. A realist standpoint of Hindu law focuses on the actual usage and accommodative functions of ancient Hindu legal principles in the context of modern Indian social conditions and avoids the theoretical or purely scriptural integrations. This perspective views Hindu law not as an ideal system or an idealistically religiously bound system, but as a system that operates in the real world and is as much influenced by social, political and economic factors as by others. A realist approach recognises the influence of colonial codifications, legislative reforms, and judicial interpretations and thus provides a view of the dynamic shift of Hindu law from traditional concepts of Dharma to its accommodation within a pluralistic legal system. This view equally sets the stage for considering courts and law practitioners in fashioning Hindu law to deal with the current issues pertained to marriage, inheritance and family case. In the end, a realist approach endeavors to comprehend Hindu law as a live legal custom that is persistently created, adapting to the values and intricacies of the Indian society.

### **Role of family courts and legal practitioners in promoting mediation**

For family courts and legal practitioners, promoting mediation as a worthwhile alternative to litigation in family disputes centres in themselves. Of course there is mediation as a process, which, as a practice, seeks to help aggrieved parties communicate in a transparent and negotiate to resolve cases in an amicable fashion with little or no adversarial confrontation. It is the duty of family courts, in particular, to establish such an environment that mediation is not merely accessible, but should also be encouraged as

an initial tending measure in deciding child custody, divorce and property issues. To facilitate the benefits of mediation, one of the core function of family courts is to provide families with information about it. To do this, mandatory pre-trial mediation sessions or informational meetings are instituted to make clear to families that mediation can result in quicker, more satisfactory and less costly settlements. Another way courts can get involved is to partner with trained mediators to help families who get these services to have the highest quality of services. And there are many family courts with in house mediation programs, so the act of mediation would not always be an outside interference in a judicial process; it would be a part of the judicial process. Along with attorneys and family law specialists, legal practitioners also help promote mediation. The accomplishment of mediation also requires the participation of experts, lawyers, especially those who will contribute to relieving the stress and financial burden that lawyers would expend in the process of settling litigation. Reframing the expectations of their clients so they can see mediation as a cooperative process, rather than a win or lose battle, may help legal practitioners encourage mediation of their clients' disputes. Therefore, if lawyers are trained as mediators or know how to adopt mediation strategies, they help their clients to prepare for their sessions, thus making their products effective. Family courts and the legal practitioners can make this culture shift towards mediation of family law by projecting peaceful resolution of problems and putting families at the center with the power to make decisions for the future by putting long term relationships and the wellbeing of the children over and above only self-interests and need to prevent an accusations. Reducing court congestion and creating a judicial system that is both interested in cooperation and the achievement of mutual agreement, this collaborative approach reduces court congestion for both state and defendants.

### **Hindu Law and Its Principles in Family Conflicts**

Historically the Hindu law, which is mostly founded in the Vedas, Manusmriti and Dharmashastra, is a special legal system which also considerably impacts the conditions and relationship of members of a family regarding marriage, inheritance and familial duties, etc. Hindu law is centred entirely on the concept of Dharma, which denotes moral and social obligations, which rules the way in which people act in family and society. In family disputes, the principles of Hindu law seek to promote harmony, persuade mutual respect, and prevent discord, and to preserve the ties of family, preferring reconciliation as opposed to advocacy. Marriage as a sacred union is not just a contract but a lifetime union with social and spiritual dimension. Thus, Hindu law favours the maintenance of this institution and in case of conflict inclines to arbitration, and mediation and reconciliation as the best methods of solution of matrimonial problems between spouses.

According to Hindu law the family is a cornerstone allotted responsibilities and roles. For example, there are pativrata duty for a wife and grahastha role of a husband, which prescribe respective duties in their marital relationship: loyalty, respect, and support. Hindu law regards the welfare of the group of people, namely the family unit as a whole as being important, including the welfare of the children and of the family in the society. However, in Hindu Family Law cases, courts often translate these traditional values to

achieve fair and equitable solutions reconcilable with modern legal standards while keeping touch with traditional Hindu values. While these principles are historical, they have still set a standard that resonates in the contemporary legal practice as the same principles are taken into account by family courts in India which argue for family law resolutions in matrimonial disputes and resolve around ethical impositions of Hinduism and evolving sociological context.

### **Mediation Practices in Matrimonial Cases Globally**

Consequently, mediation has gained international traction as an alternative way of settling matrimonial disputes which often are devoid of the stepped approach of litigation. Over the past few decades, mediation has become more and more integrated into the family law legal frameworks of countries throughout the world because the potential it holds to arrive at amicable resolutions whereby both parties mutually work to meet each other's needs, regardless of their current relationship status, as well as to ensure the well-being of their children. Take for example, mediation in the US where mediation is common in divorce matters and family courts frequently require that you attend mediation sessions before litigation is permitted. This method has succeeded in decreasing court case loads and in finding collaborative answers with child custody and property division cases in particular. Countries on the continent, such as the United Kingdom, Germany and France, have made mediation in family law a success, getting couples to settle legal wrangles outside the courtroom with programmes that encourage couples to mediate, often government funded and court referred. In the case of these countries, mediation is seen not only as a conflict resolution tool but as a way of continuing on in post marriage relationship mostly where children are concerned. The Family Law Act of Australia stipulates that parties must try mediation before filing for divorce and the government helps with services that encourage this process. Japan, Singapore and India are among Asian countries gradually incorporating mediation into their matrimonial dispute resolution framework of matrimonial dispute with cultural sensitivity and family unity in mind. In these contexts, mediation frequently combines traditional values with formal legal practice with an eye to reconciliation and reducing the stigma associated with involvement in a lawsuit. Mediation in matrimonial cases – Mediation in matrimonial cases is a very good option since globally it is appreciated as a cost effective, as confidential means and also emphasizes on maintaining the future of marriage, keeping in view the long relationship hence it is considered the best way of achieving peaceful and balanced solution of all family conflicts.

### **Purpose and scope of the research**

This research aims to measure the ability of mediation as a tool of resolving matrimonial disputes and more exclusively focusing as to whether it is effective in resolving matrimonial dispute in terms of Hindu law which governs personal and family matters of a larger section of India's population. The matrimonial cases are generally complex with high emotions and they concern sensitive issues relevant to not just the immediate family, but also the entire social circle. The objective of this study is to examine if mediation is a more peaceable, swift and culturally appropriate solution to the expensive, time consuming and

adversarial nature of traditional litigation. This research focuses specifically on Hindu law, hoping to come to some understanding of how mediation fits into reconciliation, duty, and family unity which are the values within Hindu philosophy, and how these values are reflected in the outcomes of the mediations. This study looks at mediation in Hindu matrimonial cases, from the point of view of practical implementation, impact on socio-legal levels of mediation vis. litigated outcomes, and cultural or systemic constraints on effective mediation. This research also examines how those involved in dispute (Disputing parties and legal professionals) feel about mediation as a method of conflict resolution. The end goal of the study is to join the existing family law reform debate in India through an advocacy for mediation as a culturally resonant approach to fairness and harmonious resolution of matrimonial disputes.

### **Research Problem**

The research problem concerns the effectiveness of mediation in matrimonial disputes under Hindu law where conventional litigation generally fails to deal with the emotional, cultural, and relational dimensions involved in these cases. Such adversarial litigation of matrimonial conflicts such as divorce, child custody and maintenance appears in India to heighten conflict and to worsen emotional trauma and damage family relationships. In Hindu law itself, marriage is usually viewed as an alliance rarer than love or an alliance that transcends mere contractual obligation, and is often detracted from by the violent legal battles entangled within marriage. It comes with a need to search for alternative avenues of dispute resolution, such as mediation, that favor citizens' concussions and the maintenance of harmony in a family. However, mediation in Hindu matrimonial cases is not widely used or researched, and so questions about its effectiveness, accessibility and cultural appropriateness arise. This study seeks to fill in these gaps by determining if mediation can adequately solve the above problems while being able to advocate for Hindu marriage values found in socio cultural settings. As a result, the research problem focuses on the amount to which mediation can serve as a suitable replacement of litigation, so that matrimonial disputes can be resolved more productively. Through a mediation impact assessment, the study will contribute information to legal practice and reform that enhance family integrity and respectful resolution in the context of Hindu matrimonial law.

### **Conclusion**

It concludes that the mediation as an effective, culturally aligned, socially sensitive method of resolving matrimonial disputes, especially under Hindu law or law of marriage and divorce as it emphasizes reconciliation, family unity and moral obligations of individuals in family set up. Mediation, unlike litigation, takes a cooperative, yet less confrontational, tact towards matrimony disputes, dealing with the psychological and relational elements of these disputes and hence comes up with more favourable solutions that do not poison with bitterness. Mediation additionally has a practical benefit, because it reduces the financial and emotional costs involved in court procedures making it more accessible for many people. Accordingly, research findings indicate close alignment of mediation with Hindu values of conflict resolution and family harmony and

enablement of individuals – particularly women - not only to have a voice in the negotiation process, but also to have a say in the resolution shaped by them. The study also indicates that there are challenges, such as limited mediation awareness and mediation services access, and sometimes the resistance to mediation arising from social and cultural expectations or mediation personal biases led to litigation. Where these barriers are addressed through reforms in law, increased training of mediators and public awareness programmes, the efficacy and acceptance of mediation in matrimonial cases can be enhanced. The study insists that mediation as a tool has a far greater place within the Indian legal system and should be adopted more widely for family disputes to help achieve fair, humane and culturally acceptable resolutions for the benefit of social stability and in maintaining the honour of family relationships.

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