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Research Article

Mediation In Matrimonial Disputes in Assam: A Socio-Legal and Legal Analysis

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Abstract

Matrimonial disputes occupy a distinctive position within the Indian justice system because they involve not merely legal rights but also intimate relationships, emotional concerns, children, maintenance, residence, property and the future welfare of the family. Conventional adversarial litigation may determine legal rights, but it does not always address the relational dimensions of a matrimonial conflict. Mediation therefore assumes particular importance in matrimonial disputes because it provides a confidential, participatory and settlement-oriented process through which parties may attempt to resolve their differences with the assistance of a neutral third person.

The legal framework governing mediation in India has developed substantially through Section 89 of the Code of Civil Procedure, 1908, the Family Courts Act, 1984, judicial decisions of the Supreme Court and High Courts, and, more recently, the Mediation Act, 2023. The statutory framework is especially significant for Assam because matrimonial litigation is dealt with within the institutional framework of Family Courts, subordinate courts and the mediation mechanisms supported by the Gauhati High Court and the Assam State Legal Services Authority. The Family Courts Act imposes a duty upon Family Courts to make efforts for settlement, while the Mediation Act, 2023 provides a comprehensive legislative framework for mediation and recognises the particular relevance of mediation in matrimonial matters.

This article examines the legal basis, procedure, advantages and limitations of mediation in matrimonial disputes in Assam. It also analyses the role of Family Courts, court-annexed mediation centres, legal services institutions and trained mediators. Particular attention is given to concerns relating to domestic violence, unequal bargaining power, child custody, maintenance, confidentiality and the need to ensure that settlements are voluntary and legally sustainable. The article argues that mediation should be promoted in appropriate matrimonial disputes in Assam, but it must remain a consensual and rights-sensitive process rather than a mechanism for pressuring parties into compromise.

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I. INTRODUCTION

Marriage is both a personal relationship and a social institution recognised and regulated by law. Disputes arising from matrimonial relationships may concern cruelty, desertion, maintenance, divorce, restitution of conjugal rights, custody of children, residence, property and allegations connected with matrimonial offences. The traditional litigation process places these disputes before a court for adjudication. Although adjudication is indispensable where rights must be judicially determined, the adversarial character of litigation may sometimes deepen hostility between spouses who continue to have responsibilities towards their children or other family members.

Mediation offers a different approach. It does not authorise a third party to impose a decision. Instead, the mediator facilitates communication between the parties and assists them in exploring a mutually acceptable settlement. The Mediation Act, 2023 defines mediation as a process in which parties attempt to reach an amicable settlement with the assistance of a mediator who does not have authority to impose a settlement upon them.¹

The relevance of mediation to matrimonial disputes has long been recognised by Indian courts. In *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, the Supreme Court identified disputes arising from strained or soured relationships, including matrimonial causes, maintenance and child custody, as categories normally suitable for ADR processes.² The Court's approach demonstrates that matrimonial disputes are not merely ordinary civil disputes; their relational character makes consensual settlement particularly significant.

In Assam, this issue assumes practical importance because mediation is already supported through the institutional mechanisms of the Gauhati High Court and the Assam State Legal Services Authority. The Assam State Legal Services Authority describes mediation as a method of ADR intended to provide speedy, affordable and accessible justice and identifies court-annexed mediation as an important mechanism for reducing litigation burdens.³

The present article therefore examines whether the existing mediation framework can effectively address matrimonial disputes in Assam while preserving the rights, dignity and autonomy of the parties.

II. Concept and Nature of Mediation

Mediation is a consensual dispute-resolution mechanism in which an impartial mediator facilitates communication and negotiation between disputing parties. Unlike adjudication, the mediator does not determine who is right or wrong. The settlement remains dependent upon the willingness of the parties. The central characteristics of mediation include voluntariness, neutrality, confidentiality, party autonomy and settlement

orientation. These characteristics make mediation particularly relevant to matrimonial disputes. A matrimonial conflict frequently continues beyond the immediate legal controversy because the parties may remain connected through children, maintenance obligations or other family relationships.

Mediation can therefore address matters that may not be capable of being comprehensively resolved through a judicial decree. For example, spouses may negotiate arrangements concerning communication with children, educational expenses, visitation, payment schedules, return of personal belongings and other practical matters.

However, mediation should not be regarded as appropriate in every matrimonial dispute. Where there is coercion, serious violence, intimidation or a substantial imbalance in bargaining power, the process must be carefully assessed. The objective should never be settlement at the expense of justice or personal safety.

III. Statutory Framework Governing Matrimonial Mediation

A. Section 89 of the Code of Civil Procedure, 1908

Section 89 CPC provides the statutory foundation for the use of ADR mechanisms by courts. It enables courts, where elements of settlement appear to exist, to formulate the terms of settlement and refer the dispute to appropriate ADR mechanisms.

The Supreme Court's interpretation of Section 89 in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.* remains important. The Court explained the relationship between court proceedings and ADR and identified categories of disputes particularly suitable for settlement processes. Matrimonial disputes, maintenance matters and custody disputes were specifically recognised as suitable categories.⁴

B. Family Courts Act, 1984

The Family Courts Act, 1984 was enacted with the object of promoting conciliation and securing speedy settlement of disputes concerning marriage and family affairs.⁵ Section 9 is particularly important.

Section 9 requires the Family Court, in the first instance and where possible, to assist and persuade the parties to arrive at a settlement. If a reasonable possibility of settlement exists, the Family Court may adjourn the proceeding to enable attempts at settlement.⁶

The provision reflects a legislative preference for reconciliation and settlement in family disputes. It also gives institutional legitimacy to mediation and other conciliatory processes within the Family Court system.

C. Hindu Marriage Act, 1955

Section 23(2) of the Hindu Marriage Act, 1955 requires the court, before granting relief, to make every endeavour to bring

¹ The Mediation Act, 2023, s. 3(h), India Code, available at India Code — Mediation Act, 2023

² *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

³ Assam State Legal Services Authority, "Mediation", Government of Assam, available at Assam State Legal Services Authority — Mediation

⁴ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

⁵ The Family Courts Act, 1984, Preamble, India Code.

⁶ The Family Courts Act, 1984, s. 9.

about reconciliation between the parties where it is possible consistently with the nature and circumstances of the case.⁷

This provision demonstrates that matrimonial adjudication is not necessarily intended to begin and end with adversarial determination. The law recognises that, in suitable cases, preservation or peaceful restructuring of the relationship may be preferable.

D. Mediation Act, 2023

The Mediation Act, 2023 represents a significant development in India's mediation framework. Section 3 defines mediation as a process through which parties attempt to reach an amicable settlement with the assistance of a mediator who lacks authority to impose a settlement.⁸

Section 5 provides for pre-litigation mediation in civil and commercial disputes where the statutory conditions are satisfied. However, matrimonial disputes require particular attention because the First Schedule identifies matters that are not generally fit for mediation. Importantly, Section 6 contains an express proviso permitting courts, where appropriate, to refer compoundable matrimonial offences pending between the parties to mediation.⁹

The provision therefore requires a nuanced approach: mediation is encouraged in appropriate matrimonial disputes, but matters involving non-mediabile rights or serious public-interest considerations cannot simply be converted into private settlements.

IV. Matrimonial Disputes Suitable for Mediation

A wide variety of matrimonial issues may be suitable for mediation, subject to the facts and circumstances of each case.

1. Divorce and separation

Where spouses have reached the conclusion that continuation of marriage is impracticable, mediation may help them negotiate the consequences of separation. These may include maintenance, permanent alimony, return of belongings, withdrawal or settlement of related proceedings and arrangements concerning children.

2. Maintenance

Maintenance disputes can frequently generate prolonged litigation. Mediation can assist parties in negotiating a realistic amount, payment schedule and other financial arrangements, provided that the settlement does not defeat statutory rights.

3. Child custody and visitation

The welfare of the child must remain paramount. Mediation can help parents develop practical parenting arrangements concerning custody, visitation, education, medical expenses and communication. The Supreme Court has recognised custody and

matrimonial disputes among categories ordinarily suitable for ADR.¹⁰

4. Property and financial disputes

Matrimonial relationships may give rise to disputes over jointly held property, household articles, stridhan, expenses and financial responsibilities. Mediation may provide a structured environment for negotiating these matters.

5. Restitution and reconciliation

In cases where the relationship has not irretrievably broken down, mediation may provide an opportunity for the spouses to communicate their grievances and consider reconciliation. The objective should not be to force continuation of marriage but to facilitate an informed and voluntary decision.

V. Mediation and Matrimonial Disputes in Assam

Assam has an institutional foundation for mediation through the Gauhati High Court and the Assam State Legal Services Authority. The Gauhati High Court's Civil Procedure Mediation Rules, 2007 provide a framework for appointment and functioning of mediators.¹¹ The Assam State Legal Services Authority also provides information and institutional support concerning mediation and ADR.¹²

The existence of these mechanisms is important because access to justice in Assam is influenced by geographical conditions, economic limitations and the availability of legal services. Court-annexed mediation can reduce the financial and emotional burden associated with prolonged matrimonial litigation.

The Assam context also requires sensitivity to the social and cultural diversity of the State. Matrimonial disputes may arise among communities governed by different personal laws and customary practices. Accordingly, mediators must understand the applicable legal framework without allowing customary practices to undermine statutory rights or constitutional guarantees.

Mediation in Assam should therefore be developed as a legally informed but culturally sensitive process.

VI. Role of Family Courts and Mediators

The Family Court remains the judicial institution responsible for adjudication. The mediator does not replace the court. The mediator's function is facilitative.

A competent matrimonial mediator should possess knowledge of family law, communication skills, negotiation techniques and sensitivity towards gender and child-related issues. The mediator should ensure that both parties have a meaningful opportunity to express their concerns.

Confidentiality is especially important. Matrimonial disputes often involve allegations concerning personal relationships,

¹⁰ Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24; see also the Supreme Court's subsequent discussion of matrimonial causes, maintenance and custody as ADR-suitable disputes

¹¹ Civil Procedure Mediation (Gauhati High Court) Rules, 2007.

¹² Assam State Legal Services Authority, "Mediation", Government of Assam

⁷The Hindu Marriage Act, 1955, s. 23(2).

⁸ The Mediation Act, 2023, s. 3(h).

⁹ The Mediation Act, 2023, s. 6.

finances and family circumstances. Disclosure of such matters during mediation should not become a source of further social or personal harm.

The mediator must also remain neutral. Neutrality does not mean ignoring coercion or vulnerability. If a mediator finds that meaningful negotiation is impossible because of intimidation or an unsafe environment, the mediator should appropriately terminate or report non-settlement rather than pressure the vulnerable party.

VII. Mediation and Women's Rights

One of the most important concerns in matrimonial mediation is the protection of women's rights. Mediation can empower women by providing an opportunity to negotiate directly concerning maintenance, residence, custody, property and other matters. At the same time, it may create risks where a woman faces economic dependence, social pressure or domestic violence.

Consequently, a mediated settlement should be examined for voluntariness and fairness. A settlement obtained through pressure cannot be regarded as a meaningful resolution.

The mediator and court should ensure that the woman understands the legal consequences of the proposed settlement and has reasonable opportunity to obtain independent legal advice. The principle of party autonomy should therefore be accompanied by informed consent.

VIII. Domestic Violence and Limits of Mediation

Domestic violence presents one of the most sensitive areas of matrimonial mediation. Not every dispute involving allegations of violence is appropriate for direct negotiation.

The existence of a statutory right or protective remedy should not be neutralised merely because mediation is available. Where there is continuing violence, threat or coercive control, the safety of the victim must take precedence over settlement.

Mediation may nevertheless be useful in appropriate cases for resolving ancillary civil issues, but this requires careful judicial supervision. The process should never be used to compel withdrawal of legitimate criminal or protective remedies merely for the sake of obtaining settlement.

The Mediation Act itself recognises that certain categories of disputes are not fit for mediation and makes a limited provision concerning compoundable matrimonial offences.¹³

IX. Judicial Approach to Matrimonial Mediation

Indian judicial policy has generally encouraged settlement of appropriate matrimonial disputes. In *K. Srinivas Rao v. D.A. Deepa*, the Supreme Court emphasised the importance of mediation and counselling in matrimonial disputes and recognised the need for institutional mechanisms capable of addressing matrimonial conflicts before they become irretrievably destructive.¹⁴

In *Afcons Infrastructure*, the Supreme Court categorised matrimonial causes, maintenance and child custody among disputes normally suitable for ADR.¹⁵

More recent judicial practice also demonstrates that mediation remains an important mechanism in matrimonial litigation. The Supreme Court has continued to refer matrimonial matters to mediation centres where there is a possibility of settlement, although mediation may fail where the relationship has irretrievably broken down.¹⁶

The judicial approach therefore supports mediation without treating settlement as inevitable.

X. Challenges to Matrimonial Mediation in Assam

Several challenges may affect the effectiveness of mediation in Assam.

First, there is a need for a sufficient number of professionally trained mediators with specialised knowledge of matrimonial law.

Second, rural and economically disadvantaged litigants may not always have adequate awareness of mediation.

Third, language and cultural differences may create communication barriers.

Fourth, power imbalance between spouses can affect genuine consent.

Fifth, cases involving domestic violence and coercive control require special safeguards.

Sixth, mediation should not become merely another procedural stage that unnecessarily delays adjudication. Referral should be purposeful and followed by appropriate monitoring.

Seventh, mediated settlements must be drafted carefully. Ambiguous settlement terms can create further litigation.

XI. SUGGESTIONS

The following measures may strengthen matrimonial mediation in Assam:

Specialised matrimonial mediation panels should be developed with appropriately trained mediators.

Regular training programmes should be organised through judicial academies, legal services institutions and recognised mediation institutions.

Gender-sensitive mediation protocols should be developed for disputes involving allegations of domestic violence or significant power imbalance.

Child-sensitive procedures should be adopted where custody or visitation is disputed.

Legal-aid support should be strengthened so economically weaker parties can obtain independent legal advice before entering settlement agreements.

Awareness programmes should be conducted at the district level to inform litigants about mediation.

¹⁵ *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226.

¹⁶ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24.

¹³ The Mediation Act, 2023, s. 6 and First Schedule.

¹⁴ The Mediation Act, 2023, s. 6 and First Schedule

Local-language assistance should be made available where necessary to ensure informed participation. Quality control of settlement agreements should be strengthened so that terms are clear, lawful and enforceable. Data collection should be undertaken concerning referrals, settlements, partial settlements and unsuccessful mediations in matrimonial cases in Assam. Mediation should remain voluntary in substance, even where courts refer parties to the process. A party should never be compelled to accept a settlement.

XII. CONCLUSION

Mediation has considerable potential to transform the manner in which matrimonial disputes are addressed in Assam. Its value lies not merely in reducing the burden on courts but in providing parties with an opportunity to participate in shaping the resolution of their own disputes.

The Family Courts Act, 1984, Section 89 of the Code of Civil Procedure, matrimonial statutes and the Mediation Act, 2023 together create an important legal foundation for consensual dispute resolution. The Gauhati High Court mediation framework and the institutional role of the Assam State Legal Services Authority provide an existing structure upon which matrimonial mediation can be strengthened.

Nevertheless, mediation should not be treated as a universal solution. Matrimonial disputes involving violence, coercion, serious inequality or non-mediable legal rights require particular caution. The success of mediation should not be measured merely by the number of settlements. A settlement is meaningful only when it is voluntary, informed, fair and legally sustainable.

For Assam, the future of matrimonial mediation should therefore focus on specialised mediators, gender-sensitive procedures, child-centred approaches, legal awareness and effective institutional monitoring. Properly implemented, mediation can supplement the formal justice system while preserving the dignity and autonomy of matrimonial litigants.

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