CHALLENGES IN GENDER-NEUTRAL MEDIATION OF MATRIMONIAL AND FAMILY DISPUTES

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ABSTRACT

Mediation is increasingly the preferred avenue for matrimonial and family litigation in India. Backed by the Mediation Act, 2023 and the Supreme Court's directive to encourage early referral, it is often characterised as a gender neutral process: one mediator, one set of procedures and equal chance to speak for both spouses. This paper asks whether that formal neutrality is appropriate where in practice, the parties often have contrasting bargaining power, access to money and information, and risk of violence. Using a doctrinal approach assisted by secondary data from the NCRB and the National Family Health Survey, it finds six recurrent problems in matrimonial mediation: a power imbalance, hidden domestic violence, the challenge of the purported neutrality of the mediator versus a fair process, substantive gendered law affecting the bargaining process, the nexus between a criminal complaint and the settlement, and structural deficits such as lack of statutory screening procedures. It further discusses the possible position of a man who is falsely accused or subject to domestic violence, with limited recourse. In this context, the paper submits that neutrality needs equal respect for both parties, complemented by specific gender sensitive protections, and it outlines a risk-tiered screening mechanism with specific reforms.

Keywords: *mediation; matrimonial disputes; gender neutrality; power imbalance; domestic violence; Mediation Act, 2023*

1. INTRODUCTION

Family disputes differ from commercial disputes in one important respect: the parties rarely walk away from each other when the case ends. Spouses stay linked through children, extended families, shared homes and finances, so the way a dispute is resolved shapes the relationship that follows. This is the biggest reason Indian law has steadily moved matrimonial conflict towards conciliation and mediation. The Family Courts Act, 1984 needs family courts to assist and persuade parties to settle, the Supreme Court has treated matrimonial causes as suitable for referral under Section 89 of the Code of Civil Procedure (Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd. 2010), and the Mediation Act, 2023 gives mediation its first dedicated statute.

Mediation is generally characterised as a process that is neutral. The mediator does not take sides, the same rules apply to spouses, and the result is for the parties. The problem is that the neutrality of procedure does not necessarily translate into fairness of outcome when the parties start from unequal positions. Feminists warned that informal private bargaining may replicate any inequalities that formal law seeks to address (Grillo, 1991). A concern from the other direction is suggested by experience in India. Courts have

repeatedly noted that gender-specific criminal laws may be exploited in marital disputes (Sushil Kumar Sharma v. Union of India, 2005; Preeti Gupta v. State of Jharkhand, 2010), and male victims find that statutes apply to women but not to them. Both are relevant to the question of what "gender-neutral" should mean in a mediation room.

This paper raises three questions: (a) how to conceive of gender neutrality in family mediation? (b) what are the obstacles facing Indian matrimonial and family mediation in ensuring neutrality and fairness? And (c) what can be done to safeguard parties of all genders without making the mediator the advocate of one side? Discussion is carried out in the order of method and scope, conceptual structure, Indian legal system, key challenges, learning points from comparisons, gender-sensitive model and conclusions.

2. METHODOLOGY AND SCOPE

The research is doctrinal and analytical. Primary sources are legal, jurisprudence; secondary sources legal (Law Commission) and government publications, statistical data (from the NCRB and NFHS), and published scientific and institutional literature. It has not been necessary to obtain primary data. The graphs shown below are reproductions of other published data; the model (Figure 3) and safeguards (Table 4) proposed by the author are analytical, not empirical tools.

Three limitations are noted. First, to the author's knowledge, no publicly available national dataset reports the outcomes of Indian family mediation by the sex of the parties, so conclusions about outcomes rely on international research and reasoning from the legal system. Second, NFHS data provide detailed measures of violence against women in marriage, and crime statistics record cruelty only against women, so comparable evidence on male victimisation is limited; this gap is itself part of the issue addressed here. Third, since Indian marriage and family statutes are structured around spouses, the discussion focuses on husbandwife disputes, though the analysis also considers partners and families of any gender.

3. CONCEPTUAL FRAMEWORK

3.1 Neutrality, impartiality and gender neutrality

Mediator neutrality is generally understood to mean that the mediator has no interest in the outcome and does not favour any party, while impartiality refers to treating all parties equally during the process. Astor (2007) notes that these concepts are more difficult to implement than they seem: for example, a mediator who seeks to balance power between parties may be perceived as compromising neutrality, leading some commentators to suggest abandoning the ideal. Bush and Folger (1994), from the transformative mediation perspective, argue that the value of mediation lies in empowering the parties and fostering mutual recognition, rather than simply achieving settlement. This view suggests that mediators should consider each party's ability to participate. The Mediation Act, 2023 maintains the traditional approach: mediators enable rather than impose settlements and are required to disclose any conflicts of interest (sections 10 and 16).

3.2 Three ways of being "neutral"

For the purposes of this paper it is helpful to distinguish between three approaches (Table 1). A gender-blind process ignores the sex or gender of the parties and the social context in which they negotiate. A formally gender-neutral process applies identical rules to both parties and avoids stereotyped assumptions about roles. A gender-responsive process maintains equal respect but also considers how gender, economic dependency, and violence affect each party's ability to bargain freely, and adjusts the process so. My argument is that Indian family mediation is currently at best formally gender-neutral, and that the realistic goal is gender-responsiveness that remains impartial between persons.

Table 1: Three approaches to neutrality in family mediation

Approach	What it means in the mediation room	Main risk
Gender-blind	Same script for every case; the sex or gender of the parties and the social setting are treated as irrelevant.	Silently reproduces existing hierarchies; no screening for violence or dependency.
Formally gender-neutral	Equal rules and equal speaking time; mediator avoids role stereotypes (for example, assuming who is the carer or the earner).	Treats unequal parties as equals; coercion can pass unnoticed as consent.
Gender-responsive	Equal respect plus attention to how gender, dependency and violence shape each party's capacity to negotiate; process adjusted accordingly.	If applied carelessly, can slide into partiality or into stereotyping either sex.

Source: author's analytical classification, drawing on Astor (2007) and Bush and Folger (1994).

4. LEGAL AND INSTITUTIONAL FRAMEWORK

4.1 Statutory and judicial architecture

Indian law addresses matrimonial mediation through multiple provisions (Table 2). Family courts are required to make efforts toward settlement (Family Courts Act, 1984, s. 9), and the Hindu Marriage Act, 1955 obliges courts to attempt reconciliation (s. 23(2)), while also permitting divorce by mutual consent (s. 13B). The Supreme Court has determined that the statutory waiting period for mutual consent divorce may be waived in appropriate cases (Amardeep Singh v. Harveen Kaur, 2017). In Afcons, the Court identified disputes stemming from strained or broken relationshipsincluding matrimonial matters, maintenance, and child custodyas suitable for mediation referral. In K. Srinivas Rao v. D.A. Deepa (2013), the Court further supported mediation of matrimonial disputes even when a Section 498A IPC complaint was pending, and instructed mediation centres to establish pre-litigation desks for such cases.

Table 2: Principal legal instruments relevant to matrimonial mediation in India

Instrument	Relevant provision	Significance for mediation
Family Courts Act, 1984	ss. 6, 9	Counsellors and a duty on the court to assist parties towards settlement.
Code of Civil Procedure, 1908	s. 89; Order XXXIIA	Court-referred ADR; *Afcons* treats matrimonial causes as suitable for mediation.
Hindu Marriage Act, 1955	ss. 13B, 23(2), 24–25	Mutual consent divorce; duty to attempt reconciliation; interim and permanent maintenance claimable by either spouse.
Protection of Women from Domestic Violence Act, 2005	ss. 2(a), 2(q), 14	Remedies for women; counselling may be directed; no rule on screening before mediation.
Bharatiya Nyaya Sanhita, 2023	ss. 85–86 (earlier IPC s. 498A)	Cruelty to a woman by husband or his relatives; settlement reached through quashing (*B.S. Joshi*, *Gian Singh*).
Mediation Act, 2023	ss. 5, 6 and First Schedule, 10, 16, 23, 27, 28	Pre-litigation mediation, mediator duties, confidentiality, enforcement and limited grounds of challenge.

Source: compiled by the author from the statutes listed in the references.

4.2 The Mediation Act, 2023

There is no reference to gender bias in the Mediation Act, 2023 (Act 32 of 2023). It covers pre-litigation mediation of civil and commercial disputes (s. 5), recognises court-annexed and online mediation, makes mediation communications confidential and privileged (s. 23), and makes a mediated settlement agreement final and binding and enforceable like a decree (ss. 19 and 27). It also brings for a Mediation Council of India to register mediators and promote institutional mediation. There are three things to note here for family disputes. Firstly, it excludes matters not fit for mediation (s. 6 read with the First Schedule), including criminal prosecution, but leaves room for courts to refer compoundable offences, including matrimonial offences connected with civil proceedings (Clyde & Co, 2023). Secondly, exclusion of disputes affecting third-party rights does not extend to matrimonial disputes where a child's interest is impacted. Thirdly, a settlement can be challenged within 90 days but only on limited grounds, that is fraud, corruption, impersonation, or mediation of a dispute not fit for mediation (s. 28); coercion and undue influence are not individually mentioned. As for the text read for this paper, Act as well is silent on that to require screening for domestic abuse or power imbalance until the mediation has commenced.

4.3 Substantive law that frames the bargain

Under the shadow of the substantive law (Mnookin & Kornhauser, 1979), marital violence in Indian law is gendered. For instance, Section 498A IPC, which has now been re-enacted as Sections 85 and 86 of the Bharatiya Nyaya Sanhita, 2023 (in force since 1 July 2024), criminalizes cruelty to a woman by her husband or his relatives. The Protection of Women from Domestic Violence Act 2005 defines the "aggrieved person" as a woman (s. 2(a)), although the Supreme Court had delisted the words "adult male" from the meaning of "respondent" in Hiral P. Harsora v. Kusum Narottamdas Harsora (2016), which thereby permit female relatives to be made respondents. By way of comparison, a spouse of either sex can use the Hindu Marriage Act to ground a divorce claim and get maintenance. These and other asymmetries form the nub of the dispute series described below.

5. PRINCIPAL CHALLENGES

5.1 Power imbalance between the parties

The logic of genderless mediation rests on the assumption that two adults are trying to make arrangements on about equal footing. Grillo (1991) disputes that assumption using the informality and compulsion to make concessions of mediation, which are alleged to place the less socially, economically, or emotionally powerful side at a disadvantage. In these circumstances, the allegedly weaker side has tended to be the woman. Britton (1992), whose research on the kinds of people involved in mediation in British Columbia, offers some nuance: power was in fact present but not always along gender lines and in addition was impacted by law, the mediator and the participants' own ideas. The message for practice is that imbalance needs evaluating on a case-by-case basis.

Assessments are most of all relevant to Indian circumstances. A national study based on NFHS-4 data found that 31 per cent of ever married women had experienced violence from their spouses and only 13.5 per cent of these women sought help (Krishnamoorthy et al (Krishnamoorthy et al., 2020; Figure 1). 2020; Figure 1). NFHS-5 (201921) found a comparable proportion of 29.3 per cent of married women aged 1849 reporting to have experienced spousal violence (IIPS & ICF, 2021). Low levels of help seeking suggest that most women will reach mediation without any previous contact with the police, a lawyer, or even a counsellor, and that most will never have spoken about the violence experienced. Economic dependence on the family or residing within the husband's household, family concern about saving the marriage may further reduce the ability of the defender to refuse. Biases are not just to the disadvantage of women: the husband may be prejudiced by exclusion from his children, the lack of knowledge that mediation involves a process in which only the wife's side has the power to activate criminal law remedies, or the overbearing force of the family. Formal neutrality uncovers none of this.

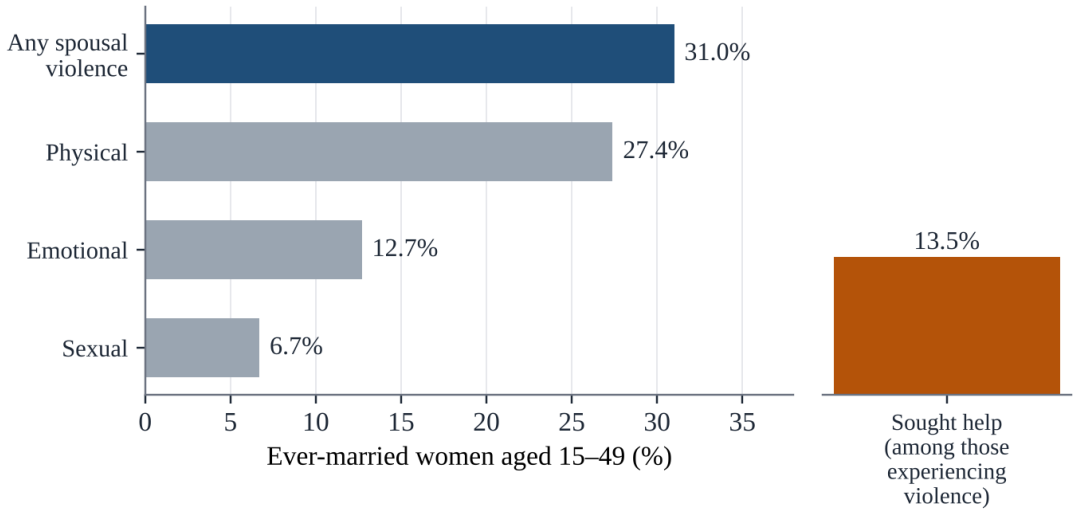


Figure 1: Spousal violence and help-seeking among ever-married women in India (NFHS-4, 2015–16)

Source: Krishnamoorthy, Ganesh and Vijayakumar (2020), analysis of NFHS-4 data (66,013 women aged 15–49). Categories overlap, so the three forms do not sum to the total.

5.2 Domestic violence and the screening gap

In contexts of violence, the case for mediation collapses dramatically. The research literature on court-connected divorce mediation in the United States documents those arguments: abuse becomes decriminalised; the victim is exposed to the perpetrator; and the settlement is driven by fear; mediator advocates claim those risks are reduced by screening, separate sessions and advocates (Pearson, 1997). Johnson, Saccuzzo, and Koen (2005) offer empirical evidence, based on a sample of child-custody mediations involving violence, that the process failed the victims of domestic violence. Kelly's (2004)

review of family mediation research reports positive findings for satisfaction and compliance, but considers evidence on fairness, and on cases involving violence, to be less conclusive.

The Indian system is less advanced. Section 14 of the Domestic Violence Act permits a Magistrate to direct counselling at any point, but neither section nor the Mediation Act offers any guidance on how a mediator is to detect violence, who is to do so, or what the outcome should be if violence is detected. Judges decide whether to send parties to mediation based on pleadings; the mediator, who will meet the parties face to face, is not statutorily required to screen for violence. Because mediation communications are confidential (s. 23), the court may never hear of a false alarm. Such a deficiency places an increased burden of accountability on the party who is least able to communicate.

5.3 Mediator neutrality versus fairness

Were neutrality because of this understood as the mediator's abstention in matters substantive, then there is no principled advantage to be gained from intervening to sustain a party that consents in fear or fatigue. If mediation involves power-balancing intervention, the mediators would risk partiality and rendering the other party a complainant of partiality, (Astor, 2007) though the mediator must be able to rebut any assertion of bias. The Mediation Act contains conflict-of-interest and disclosure obligations (s. 10) and frames the mediator as a facilitator (s. 16) but fails to prescribe a mediator response to coerced consensuality, and the grounds for challenging consent are not inclusive of it (s. 28). Training will be decisive and a national training manual has been issued by the Supreme Court's Mediation and Conciliation Project Committee (MCPC, 2016), to ensuring mediation registration under the new Act standardises qualified mediators, be that standard gender responsive.

5.4 Gender-specific substantive law and bargaining in its shadow

Mnookin and Kornhauser (1979) noted that parties negotiate in the shadow of what a court would likely award, so a legal entitlement can be a bargaining tool even if it is never litigated. In India, a wife can invoke a cognizable, non-bailable offence of cruelty, while no equivalent offence exists for a husband abused by his wife. NCRB data show why this provision matters: of 4 45 256 crimes against women registered in 2022, 31.4 per cent were cruelty by husband or his relatives, the largest single category (NCRB, 2023; Figure 2).

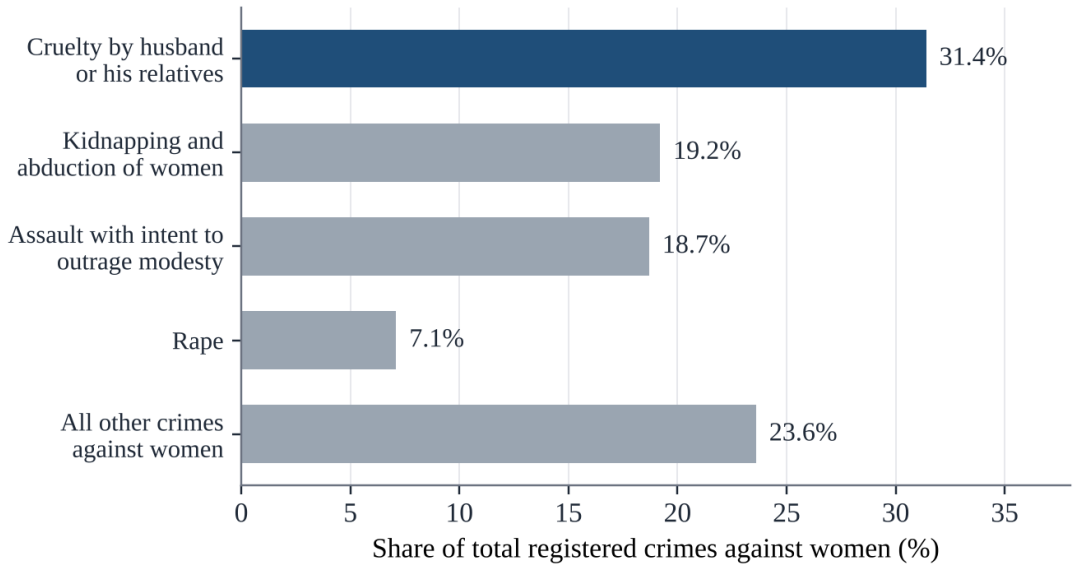


Figure 2: Share of registered crimes against women by category, India, 2022

Source: NCRB, Crime in India 2022 (2023). Total registered: 4,45,256. "All other" is the residual (100 minus the four named categories).

The Supreme Court has acknowledged the problem from both sides. It has recognised that the provision can be misused to settle personal scores (Sushil Kumar Sharma, 2005), that arrests must not be mechanical

(Arnesh Kumar v. State of Bihar, 2014) and that omnibus allegations against distant relatives call for caution (Preeti Gupta, 2010). In Rajesh Sharma v. State of U.P. (2017) it directed that complaints first be examined by family welfare committees, but the direction was modified in Social Action Forum for Manav Adhikar v. Union of India (2018) because it went beyond what the Code permits. In 2025 the Court endorsed family welfare committee guidelines framed by the Allahabad High Court (Shivangi Bansal v. Sahib Bansal), and in 2024 it asked the legislature to consider changes to Sections 85 and 86 BNS considering practical realities (Achin Gupta v. State of Haryana). The Law Commission of India (2012) accepted that misuse occurs but cautioned against weakening the offence to the point where it loses its deterrent effect.

But the effect of this for mediation is a two-pronged distortion. The husband and his family may compromise to avoid arrest or a drawn-out criminal process; the aggrieved wife may be made to withdraw a real complaint as part of a package. Neither is a malfunction caused by alleged mediator partiality (which was not documented) but rather by the legal imbalance, which can't be fixed through a gender-neutral process. It would also be a mistake to assume the purpose of the misuse debate was to show that complaints are all fictitious NCRB figures are based on registered complaints, not verdicts, and survey evidence on violence and help-seeking points to under reporting (Krishnamoorthy et al., 2020).

In theory, men can also suffer abuse, but their situation creates a mirror-image gap. The Domestic Violence Act offers protections only to women as aggrieved persons; the offence on sections 8586 BNS is further restricted to cruelty against a woman; and there is limited national information about male victims. A man who reports abuse to the mediator cannot simply benefit from the statutory protections to which a woman has recourse, and the mediator cannot point to legal consequences like those listed above. Whether this should be solved through gender-neutral drafting or a bifurcated offence is a matter for the legislature, but it presents difficulties to the mediator who must take both accounts seriously.

Table 3: Gender asymmetries in the law and their likely effect in mediation

Provision	Who may invoke / be proceeded against	Likely effect in the mediation room
BNS ss. 85–86 (earlier IPC s. 498A)	Complainant: a married woman. Accused: husband and his relatives.	Wife's side holds a criminal lever; husband's side may concede terms to avoid arrest. A genuine complainant may be pressed to withdraw.
Domestic Violence Act, 2005	Aggrieved person: a woman. Respondent: any person after *Harsora* (2016).	Strengthens a woman's position where violence is real; no equivalent statutory protection for a male victim.
Hindu Marriage Act, 1955, ss. 24–25	Either spouse may claim maintenance.	Formally neutral; outcome depends on honest financial disclosure, which mediation cannot compel.
Mediation Act, 2023	Any party; gender-neutral text.	No statutory screening or standard for gender-responsive training; limited grounds to challenge a coerced settlement.

Source: compiled by the author from the statutes and judgments cited.

5.5 The criminal–civil interface and settlement under pressure

Where a criminal complaint is filed, mediation is pursued under legal duress that few other civil disputes face. The offence under Section 498A IPC was non-compoundable, but the Supreme Court has continued to allow High Courts to quash proceedings in matrimonial disputes after a valid settlement (B.S. Joshi v. State of Haryana, 2003; Gian Singh v. State of Punjab, 2012), and Deepa advocates for the framing of the Act to also allow Quashing on mediation. These doctrines make settlement suitable for everyone, but they also create the possibility that the complaint becomes simply a tool for negotiation. Several commentators have observed that if a complainant initially reports to police and then refers to mediation as an option, this would weigh on a High Court to approve a settlement and quash the proceedings, rendering mediation pro forma (Mahajan & Kukreja, 2024). The Act excludes criminal prosecution only from the mediation process, but family settling issues determines whether a High Court is willing to quash.

5.6 Children, extended family and third parties

Matters rarely between just two individuals in Indian matrimonial disputes. Parents-in-law, wife's brother and sister and wife's natal family may all attend, address, and assert influence, raising questions about whose voice is heard. The Mediation Act acknowledges that a child may have an interest (for example to prevent violence), and extends protection, but does not specify how the child's wishes are to be presented; the then answer was that in a matter, which affects a child's interest, the child is a party (Clyde & Co, 2023), although this is not followed by guidance on how the child's position is to be ascertained. The Domestic Violence Act has extended liability to female relatives after Harsora, so that family ties may be wide-ranging, and formal formality could allow a powerful member of the family to dominate the session so that neither husband nor wife get a say.

5.7 Structural and procedural constraints

Practical considerations also affect the quality of neutral mediation. Unlike court proceedings, mediation does not require compulsory financial disclosure, so settlements about maintenance and property rely on honesty from both parties. Settlements reached are final, and the opportunity to challenge them is limited to 90 days (s. 28(3)), which brings little recourse if a party later discovers the agreement was made under pressure or with incomplete information. While online mediation increases accessibility, it can make it more difficult to verify who is present during the session. Commentators further point out that the Act does not specify procedures or enforcement for mediation when one spouse lives abroad (LiveLaw, 2023), an issue that frequently arises in current matrimonial disputes.

6. COMPARATIVE PERSPECTIVES

Screening and equality are treated as design requirements rather than optional extras in international practice. For example, the Council of Europe's Recommendation No. R (98) 1 asks family mediators to pay special attention to the possibility of violence and its effect on the parties' bargaining positions. The Parliamentary Assembly's report on family mediation and equality of sexes states that neither sex should be disadvantaged by power imbalance and calls for standardised screening tools and the inclusion of family mediation in legal aid (PACE, n.d.). In Ontario, a regulation under the Arbitration Act calls for every client in family arbitration to be screened for power imbalance and domestic violence before signing an arbitration agreement, and in British Columbia, family dispute resolution professionals are expected to conduct their own screening (Linton, n.d.). In all these examples, screening is carried out by the dispute resolution professional, separately, and confidentially, before the process is chosen or continued, and if a risk is found, the process is changed rather than the finding being used as evidence in the case.

7. TOWARDS A GENDER-RESPONSIVE NEUTRAL MODEL

The analysis suggests that the real choice is not between neutral and non-neutral mediation, but between neutrality that is blind to context and neutrality that is informed by it. Figure 3 presents a risk-tiered model: each party is screened separately and confidentially before the first joint session. Low-risk cases proceed in the usual facilitative way; cases with moderate imbalance include safeguards like caucus or shuttle sessions, a support person, and access to legal advice; cases involving ongoing violence or coercion are referred back to the court or to protective remedies. In every tier, the mediator applies the same rules to both parties and owes both the same duty of impartiality; what changes is the process, not the respect. Before the agreement is finalized, a final check ensures that consent is voluntary, that each party has had access to legal advice, and that children's interests have been considered.

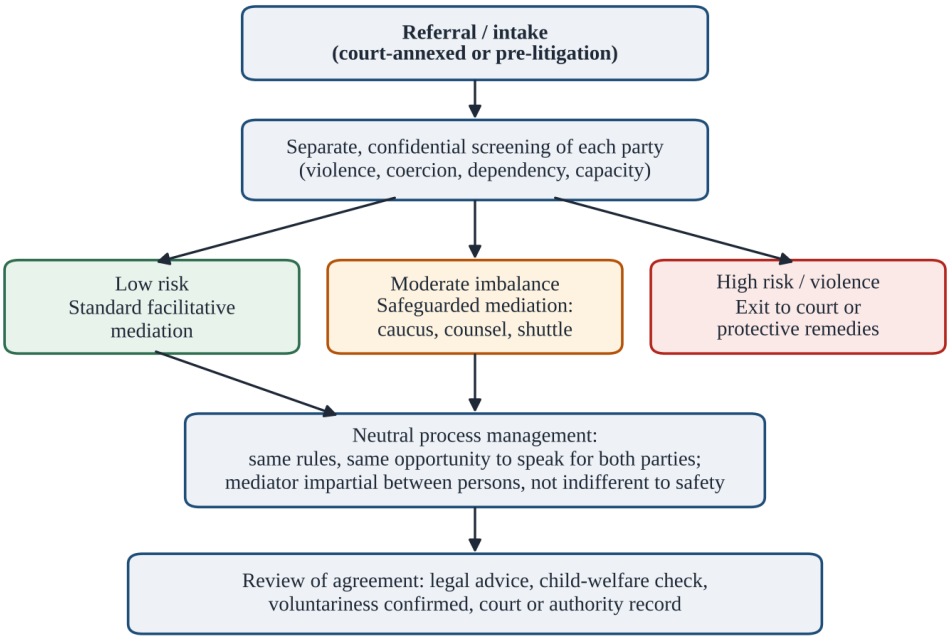


Figure 3: Proposed risk-tiered, gender-responsive mediation model

Source: conceptual model proposed by the author; not empirically tested.

Table 4 links each challenge identified above to a specific safeguard and to its basis in law or research.

Table 4: Challenges and proposed safeguards

Challenge	Proposed safeguard	Basis
Power imbalance	Separate pre-session screening; option of counsel or support person; caucus or shuttle format.	R (98) 1; Ontario and British Columbia practice; Grillo (1991)
Undetected violence	Trained, sex-neutral, behaviour-based screening; clear exit to court or protective remedies.	Pearson (1997); Johnson et al. (2005); Krishnamoorthy et al. (2020)
Neutrality versus fairness	Code of conduct stating the mediator's duty to pause or end the process if consent is compromised; supervised practice.	Astor (2007); Mediation Act ss. 10, 16
Gender-specific law	Plain-language briefing on legal consequences; legal advice before signing; legislative review of asymmetries.	*Harsora* (2016); Law Commission (2012); *Achin Gupta* (2024)
Criminal–civil pressure	Voluntary referral where a complaint is pending; no withdrawal as a precondition; court review before quashing.	*B.S. Joshi*; *Gian Singh*; *Deepa*
Structural capacity	Accreditation with gender-responsive training; sex-disaggregated outcome data kept by the Mediation Council of India.	Mediation Act, 2023; MCPC (2016)

Source: author's synthesis.

7.1 Implementation pathway

No new primary legislation is required for the model to be implemented. Four practical steps are possible. First, courts, and mediation centres can adopt a written referral protocol with a referring judge noting whether any allegations of violence have been made and the centre completing the screening before allocating the matter. Second, the Mediation Council of India, once mediators are registered, can condition registration and continuing accreditation on gender responsive screening and adherence to an ethics code. Third, centres can start routinely collecting gender-disaggregated information about referral source, settlement, and compliance, creating an empirical basis for analysing whether outcomes are affected by the role of the parties. Fourth, over time, Parliament can introduce an express screening and exit provisions into the Mediation Act, and review the practical operation of the domestic violence provisions in the Domestic Violence Act and Bharatiya Nyaya Sanhita including for victims other than women on relevant jurisprudence such as the Supreme Court's encouragement of legislative reform of BNS Sections 85 and 86 (Achin Gupta, 2024).

The model is not value-free. A screening tool can be used stereotypically, for example by assuming that only wives are at risk, and a trained mediator may be tempted to decide the case. These risks are best managed by using sex-neutral questions that focus on behaviour rather than identity, by supervision, and by regular review of outcomes by party role and referral sourcedata that are not currently collected in India.

7.2 Four illustrative scenarios

Below are sample cases, created solely for illustration and not based on any real file, showing how the model would operate.

Scenario A (low risk). A couple with a teenage child disputes the division of a jointly owned flat and the father's time with the child. Both are working and neither accuses the other of violence. Screening finds low risk, so standard facilitative mediation proceeds. The mediator's task is to keep both voices equal and to make sure the child's interests are considered.

Scenario B (moderate imbalance). A wife who has never worked outside the home lives with her husband's parents. Screening finds no physical violence but identifies financial control and fear of being sent back to her parents' home. The case is classified as moderate imbalance: separate sessions are held, a support person from legal aid is present, and legal advice on maintenance is provided before any terms are discussed.

Scenario C (subject of a criminal complaint) husband, whose wife has initiated a complaint of cruelty against him and his parents, is referred to mediation. He claims the wife's complaint is unfounded, but she claims ongoing threats. Both are re-screened. The complaint is not yet time-barred as threats are current, and joint sessions are not conducted until protective measures are adopted. Withdrawal of the complaint is not a condition of the agreement; the High Court may decide its validity on an application to quash the proceedings.

Scenario D (male complainant). A husband informs the mediator that his wife frequently denigrates and beats him, and that he is afraid of losing access to the child if he speaks out. Again, the screening process is the same and the fact is recorded with the same seriousness as a wife's report. The mediator advises him of all the available remedies, such as cruelty as a ground for divorce and all the general criminal law, and gives him referral and records that no section comparable to the Domestic Violence Act exists for him.

8. CONCLUSION

Gender neutrality in matrimonial and family mediation is a laudable ideal but equal treatment cannot be the end of the story. The Mediation Act, 2023 is a progressive approach to a modern piece of legislation, and the language it employs is neutral; the problem is in what it does not say. It does not require screening for violence or coercion, adequate gender-responsiveness in training, or any mechanism to prevent settlements, which are made under criminal law. Gendered substantive law is a reality whatever the justification for it in criminal law or public policy and it permeates every negotiations; reporting victims of violence, and those who allege false reporting of abuse, are poorly served by a process that pays no heed to those realities. This paper has shown that neutrality can be reconceptualized as equal respect for persons and equal attention to their bargaining capacity, and has outlined a risk-based approach with six focused protections. Future research can gather sex-disaggregated data on rate of referral, settlement, and enforcement, examine screening tools currently used in the Indian context, and study the impact of pending criminal proceedings.

REFERENCES

Statutes

- Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), ss. 85–86.
- Code of Civil Procedure, 1908 (Act 5 of 1908), s. 89 and Order XXXIIA.
- Family Courts Act, 1984 (Act 66 of 1984), ss. 6, 9.
- Hindu Marriage Act, 1955 (Act 25 of 1955), ss. 13B, 23(2), 24–25.
- Mediation Act, 2023 (Act 32 of 2023).
- Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), ss. 2(a), 2(q), 14.

Cases

- *Achin Gupta v. State of Haryana*, Supreme Court of India (decided 3 May 2024).
- *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.* (2010) 8 SCC 24.
- *Amardeep Singh v. Harveen Kaur* (2017) 8 SCC 746.
- *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273.
- *B.S. Joshi v. State of Haryana* (2003) 4 SCC 675.
- *Gian Singh v. State of Punjab* (2012) 10 SCC 303.
- *Hiral P. Harsora v. Kusum Narottamdas Harsora* (2016) 10 SCC 165.
- *K. Srinivas Rao v. D.A. Deepa* (2013) 5 SCC 226.
- *Preeti Gupta v. State of Jharkhand* (2010) 7 SCC 667.
- *Rajesh Sharma v. State of U.P.* (2018) 10 SCC 472.
- *Shivangi Bansal v. Sahib Bansal*, Supreme Court of India (2025).
- *Social Action Forum for Manav Adhikar v. Union of India* (2018) 10 SCC 443.
- *Sushil Kumar Sharma v. Union of India* (2005) 6 SCC 281.

Reports and official data

- Council of Europe, Committee of Ministers. (1998). *Recommendation No. R (98) 1 on family mediation*. Strasbourg.
- International Institute for Population Sciences & ICF. (2021). *National Family Health Survey (NFHS-5), 2019–21: India*. Mumbai: IIPS.
- Law Commission of India. (2012). *Report No. 243: Section 498A, IPC*. New Delhi.
- Mediation and Conciliation Project Committee, Supreme Court of India. (2016). *Mediation training manual of India*. New Delhi.
- National Crime Records Bureau. (2023). *Crime in India 2022* (Vol. I). New Delhi: Ministry of Home Affairs.
- Parliamentary Assembly of the Council of Europe. (n.d.). *Family mediation and equality of sexes*. Strasbourg. https://pace.coe.int/en/files/17171/pdf

Books, articles and commentary

- Astor, H. (2007). Mediator neutrality: Making sense of theory and practice. *Social & Legal Studies, 16*(2), 221–239.
- Britton, B. J. (1992). *Power and gender in family mediation* (Master's thesis). University of Victoria, Canada.
- Bush, R. A. B., & Folger, J. P. (1994). *The promise of mediation: Responding to conflict through empowerment and recognition*. San Francisco: Jossey-Bass.
- Clyde & Co. (2023, 26 September). *A forward plunge in the realm of alternate dispute resolution – the Mediation Act, 2023*. https://www.clydeco.com/en/insights/2023/09/a-forward-plunge-in-the-realm-of-alternate-dispute
- Grillo, T. (1991). The mediation alternative: Process dangers for women. *Yale Law Journal, 100*(6), 1545–1610.

➢ Johnson, N. E., Saccuzzo, D. P., & Koen, W. J. (2005). Child custody mediation in cases of domestic violence: Empirical evidence of a failure to protect. *Violence Against Women, 11*(8), 1022–1053.

➢ Kelly, J. B. (2004). Family mediation research: Is there empirical support for the field? *Conflict Resolution Quarterly*, *22*(1–2), 3–35.

➢ Krishnamoorthy, Y., Ganesh, K., & Vijayakumar, K. (2020). Physical, emotional and sexual violence faced by spouses in India: Evidence on determinants and help-seeking behaviour from a nationally representative survey. *Journal of Epidemiology and Community Health, 74*(9), 732. https://doi.org/10.1136/jech-2019-213266

➢ Linton, H. (n.d.). *Best practices for screening for family violence and power imbalances in family mediation-arbitration*. Riverdale Mediation. https://www.riverdalemediation.com

➢ LiveLaw. (2023). *The Mediation Act, 2023: Paving the way for India as a mediation hub*. https://www.livelaw.in

➢ Mahajan, S., & Kukreja, H. (2024, 12 April). Is mediation pragmatic in matrimonial disputes filed under Section 498A of the Indian Penal Code, 1860? *Mapping ADR*, Jindal Global Law School. https://jgu.edu.in/mappingADR

➢ Mnookin, R. H., & Kornhauser, L. (1979). Bargaining in the shadow of the law: The case of divorce. *Yale Law Journal*, *88*(5), 950–997.

➢ Pearson, J. (1997). Mediating when domestic violence is a factor: Policies and practices in court-based divorce mediation programs. *Mediation Quarterly*, *14*(4), 319–335.

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